

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD ALAN HOWARD,

Defendant-Appellant.

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UNPUBLISHED  
October 15, 1996

No. 173438  
LC No. 93-066273-FH

Before: Doctoroff, C.J., and Hood and Bandstra, JJ.

PER CURIAM.

Defendant was convicted by jury of three counts of third-degree criminal sexual conduct (CSC III), MCL 750.520d; MSA 28.788(4), and two counts of second-degree criminal sexual conduct (CSC II), MSA 750.520c; MSA 28.788(3). He was sentenced to seven to fifteen years' imprisonment on the CSC III counts and three to fifteen years on the CSC II counts. He appeals as of right. We affirm.

Defendant first argues that there was error requiring reversal where the trial court allowed the complainant to testify that defendant had shared marijuana with her on a specific occasion. We disagree. Any error that may have flowed from the complainant's testimony was harmless in light of Cristal Hackworth's unchallenged testimony regarding the same incident. The drug use incident would have been before the jury even if the complainant's testimony had been excluded. We therefore are not persuaded that the challenged testimony was outcome determinative and has resulted in a miscarriage of justice. *People v Grant*, 445 Mich 535, 547-549; 520 NW2d 123 (1994); MCL 769.26; MSA 28.1096.

Defendant also argues that the trial court inappropriately exceeded the guidelines range in sentencing defendant. We disagree. Offense variable 25 does not account for defendant's previous attempt to sexually assault another victim because it occurred more than six months prior to the convicted offense. Further, because defendant was not convicted of this assault, none of the prior record variables apply to this incident. Because the sentencing guidelines do not account for this incident, it was appropriate for the trial court to consider it. *People v Milbourn*, 435 Mich 630, 657;

461 NW2d 1 (1990). In addition, the court relied on its belief that defendant displayed an unwillingness to reform and that he presented a continuing danger. The trial court did not abuse its discretion in considering these factors and sentencing defendant outside of the guidelines. *People v Coulter (After Remand)*, 205 Mich App 453, 455-457, 517 NW2d 827 (1994); *People v Odendahl*, 200 Mich App 539, 540-541; 505 NW2d 16 (1993).

We affirm.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Richard A. Bandstra