

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM EARL HARRIS,

Defendant-Appellant.

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UNPUBLISHED

December 6, 1996

No. 185212

LC No. 94-005738

Before: Doctoroff, C.J., and Wahls and Smolenski, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of two counts of first-degree criminal sexual conduct (CSC), MCL 750.520b(1)(c); MSA 28.788(2)(1)(C), unarmed robbery, MCL 750.530; MSA 28.798, and as a third habitual offender, MCL 769.11; MSA 28.1083. Defendant was sentenced to serve concurrent terms of twenty-five to fifty years' imprisonment for the CSC convictions, ten to fifteen years' imprisonment for the unarmed robbery conviction, and twenty-five to fifty years' imprisonment for the habitual offender conviction. We affirm.

Defendant first argues that the trial court's verdict was against the great weight of the evidence. We need not determine whether defendant was required to file a motion for remand in order to preserve this issue for appeal. See MCR 7.211(C)(1)(c). The evidence showed that defendant "smacked" the complainant, and then, upon threats of physical harm, penetrated her orally, vaginally, and anally. Later, defendant tied up the complainant with telephone cord and demanded her bank card and PIN number. He threatened to shoot her in the head if she gave him the wrong information. Upon returning, he took other items from the complainant's house. After reviewing the entire record, we believe that the great weight of the evidence supported the trial court's finding that defendant engaged in sexual penetration with the complainant involving force and causing personal injury. See *People v Ward*, 206 Mich App 38, 40-41; 520 NW2d 363 (1994). In addition, the great weight of the evidence supported the trial court's finding that defendant committed unarmed robbery. *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994).

Defendant next argues that he was denied effective assistance of counsel at sentencing because his attorney failed to fully explain the consequences of opting for a twenty-five to fifty year sentence, rather than a life sentence, for his habitual offender conviction. We disagree. The record indicates that counsel engaged in sound trial strategy by carefully considering defendant's sentencing options, then recommending that defendant opt for a term of years. Accordingly, defendant has failed to demonstrate that counsel's performance fell below an objective standard of reasonableness. *People v LaVearn*, 448 Mich 207, 213; 528 NW2d 721 (1995); *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991).

Defendant also argues that his sentences for the CSC convictions are disproportionate because the sentencing court failed to consider the fact that he and complainant had previously engaged in consensual sexual relations and that he and complainant had previously shared a bank account. We disagree. The record reveals that defendant, after raping and sodomizing complainant, "hog-tied and gagged" her. Clearly, these circumstances warranted the severity of the sentence imposed. *People v Milbourn*, 435 Mich 630, 661; 461 NW2d 1 (1990); *People v McElhaney*, 215 Mich App 269, 285-286; 545 NW2d 18 (1996); *People v Cotton*, 209 Mich App 82, 85; 530 NW2d 495 (1995); *People v Clark*, 207 Mich App 500, 502; 526 NW2d 357 (1994). Moreover, because defendant's history of criminal behavior includes an attempted possession of heroin conviction and a prior conviction of first-degree CSC, defendant's sentence as an habitual offender is entirely proportionate. *People v Chandler*, 211 Mich App 604, 615-616; 536 NW2d 799 (1995); *People v Poppa*, 193 Mich App 184, 187; 483 NW2d 667 (1992).

Affirmed.

/s/ Michael R. Smolenski

/s/ Martin M. Doctoroff

/s/ Myron H. Wahls