

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES POLK WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

January 21, 1997

No. 186639

Kent Circuit Court

LC No. 94-2340-FC

Before: Neff, P.J., and Smolenski and D. A. Roberson,\* JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and his sentence of twelve to fifty years' imprisonment. We affirm.

I

Defendant first argues that the trial court abused its discretion in admitting evidence of "other bad acts," consisting of the testimony of several of defendant's female relatives who described alleged incidents of sexual abuse that dated back approximately twenty-one to twenty-seven years before trial. Specifically, defendant contends that this evidence was stale, that it was improperly admitted for the sole purpose of creating a "character to conduct" inference in violation of MRE 404(b), and that its potential for prejudice far outweighed any probative value. We disagree.

The decision whether to admit evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). This Court will find an abuse of discretion only if an unprejudiced person, considering the facts upon which the trial court made its decision, would conclude that there was no justification for the ruling made. *People v Miller*, 198 Mich App 494, 495; 499 NW2d 373 (1993).

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\* Recorder's Court judge, sitting on the Court of Appeals by assignment.

MRE 404(b), governing the admission of evidence of bad acts, provides:

(1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, *intent*, preparation, *scheme, plan, or system in doing an act*, knowledge, identity, or *absence of mistake or accident* when the same is material, *whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.* [Emphasis added.]

Here, although the testimony of defendant's four daughters, his niece, and his female cousin referred to alleged incidents nearly twenty-one to twenty-seven years prior to the present trial, we find that this evidence was logically relevant to several issues other than establishing a propensity for wrongdoing, and is therefore admissible under MRE 404(b). As long as the evidence in question is not being used to show action in conformity with character, it is admissible "whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case." MRE 404(b)(1). Thus, the rule establishes no "age" requirements. Furthermore, we find that although the witnesses' allegations were somewhat vague, they included enough detail that defendant was able to respond effectively to them. The lower court was not without justification for finding that the evidence was not stale.

Next, with respect to creating an impermissible inference that defendant had a propensity to commit sexual crimes, we note that MRE 404(b) is a rule of inclusion, rather than exclusion, *People v VanderVliet*, 444 Mich 52, 64; 508 NW2d 114 (1993), modified on other grounds 445 Mich 1205; 520 NW2d 338 (1994). Within the rule's exceptions are intent, scheme, plan, or system in doing an act, and the absence of mistake or accident, all of which are applicable in the present case.

The complained-of testimony established defendant's modus operandi, or pattern of action, a pattern of systematic sexual abuse by defendant of his young female relatives, and the unlikelihood of any coincidence or misrecollection on behalf of the immediate victim. Without this testimony, the jury would have been left to consider an isolated incident involving a young girl's questionable and naive perception of her grandfather's behavior. Furthermore, although defendant was obviously prejudiced by the admission of the evidence, we note that the trial court took great precautions by repeatedly instructing the jurors concerning the proper consideration of the other bad acts evidence. We conclude that the probative value of the testimony in question far outweighed any resultant prejudice, and find no abuse of discretion in its admission.

## II

Defendant next argues that he is entitled to resentencing because the lower court erred in scoring OV 6 at ten, rather than zero, because the court abused its discretion in exceeding the recommended sentencing guidelines for reasons already adequately accounted for in the calculation of the scoring variables, and because his sentence violated the rule of proportionality. We disagree.

We first find that although the court erred in scoring OV-6 at ten points, see *People v Chesebro*, 206 Mich App 468, 473; 522 NW2d 677 (1994), the error was harmless and had no effect on the sentence ultimately imposed. Even with the increased score, the sentencing court was still dissatisfied with the guidelines range: the court indicated that the range still left the court “woefully short of an appropriate disposition,” and determined that it must be exceeded in the present case.

Next, we agree with the trial court that the guidelines were “difficult to apply and perhaps unsuitable,” given the circumstances surrounding this case. After reviewing the record, we conclude that a departure was appropriate because the recommended guidelines range did not account for the relevant variables and unique facts presented at trial, *People v Hudson*, 187 Mich App 31, 34; 466 NW2d 313 (1991). Defendant had a prior conviction for assault with the intent to commit second-degree criminal sexual conduct on his daughter which, because it dated back over ten years, was excluded from the scoring of the guidelines. Defendant also had a lengthy history of molesting his young female descendants that extended over two generations and he had traumatized several victims whose claims are now barred by the statute of limitations.

Furthermore, after reviewing the aforementioned facts, along with the fact that defendant had also been disciplined in the workplace for sexually harassing female co-workers over a ten-year span of time, we conclude that the sentence imposed by the court is proportional to the seriousness of the offense committed and the prior history of the offender. Thus, we find no violation of the principle of proportionality. *People v Milbourn*, 435 Mich 630, 657; 461 NW2d 1 (1990).

### III

Defendant’s final contention is that the judgment of sentence, along with the presentence investigation report prepared in this case, contains inaccurate information in that both documents indicate that defendant pleaded guilty to a supplemental information charging him as a second felony sex offender. As defendant correctly notes, his plea was withdrawn and the information dismissed. We therefore remand for correction of both the presentence report and the judgment of sentence. See *People v Martinez (After Remand)*, 210 Mich App 199, 202-203; 532 NW2d 863 (1995).

Affirmed and remanded. We do not retain jurisdiction.

/s/ Janet T. Neff  
/s/ Michael R. Smolenski  
/s/ Dalton A. Roberson