

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN ANTHONY LEIS,

Defendant-Appellant.

UNPUBLISHED

February 4, 1997

No. 163190

Genesee Circuit Court

LC No. 92-46347-FH

Before: Gribbs, P.J., and Marilyn Kelly, and White, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of three counts of first-degree criminal sexual conduct and two counts of child sexually abusive activity. MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), MCL 750.145c; MSA 28.342a. Defendant then pleaded guilty to one count of habitual offender, third offense, and four counts of habitual offender, second offense. MCL 769.11; MSA 28.1083, MCL 769.10; MSA 28.1082. The trial court sentenced defendant to concurrent terms of forty to sixty-five years' imprisonment for the habitual offender third conviction, forty to sixty-five years' imprisonment for the habitual offender second convictions, and eleven to twenty years' imprisonment for the remaining two habitual offender counts. We affirm.

On appeal, defendant argues that the prosecution improperly bolstered the credibility of key witnesses through the admission of prior consistent statements. However, defendant failed to preserve this issue for review. Defendant failed to object or request a curative instruction at trial, the misconduct was not so egregious that no curative instruction could have removed the prejudice, and we conclude no manifest injustice would result from our failure to further review the issue. *People v Allen*, 201 Mich App 98, 104; 505 NW2d 869 (1993).

Defendant next argues that the prosecutor violated a pre-trial agreement to limit questioning regarding defendant's child abuse conviction. We find no error requiring reversal because the prosecutor did not violate the agreement and defendant failed to properly object at trial. The

prosecutor agreed only not to mention the details regarding the abuse. Moreover, the evidence was admitted for a proper purpose -- to explain why the delay in disclosing the sexual abuse, *People v Vandervliet*, 444 Mich 52; 508 NW2d 114 (1990), -- and defendant did not seek to have the court narrowly limit the use and introduction of the testimony.

We also reject defendant's argument that the prosecutor improperly appealed to the jurors' sympathy in closing argument. *People v Swartz*, 171 Mich App 364, 372-373; 429 NW2d 905 (1988). The issue was only partially preserved through proper objection. Moreover, the judge instructed the jury not to let sympathy sway its decision. We further conclude that defendant has failed to show ineffective assistance of counsel. *People v Pickens* 446 Mich 298; 521 NW2d 302-303 (1994)

Defendant next argues that error requiring reversal resulted from the judge's refusal to allow a defense witness to testify. We disagree. The witness in question would not have been able to testify as to any legally relevant evidence. See MCL 768.29; MSA 28.1052; *People v Redmon*, 112 Mich App 246; 315 NW2d 909 (1982). She could not establish when she saw the photo album. Furthermore, the evidence was cumulative. The evidence sought to be introduced through the excluded witness was admitted at trial through other witnesses.

Defendant argues that he is entitled to resentencing because he has no reasonable prospect of serving the sentence imposed. Defendant argues that he will be eighty-seven years old before he is eligible for parole, and that the sentence exceeds his life expectancy in prison. We disagree. *People v Rushlow*, 179 Mich App 172, 179-181; 445 NW2d 222 (1989), *aff'd* 437 Mich 149 (1991), involved a twenty-six year old defendant who would have to serve sixty years and nine months (under a minimum sentence of seventy-five years) before becoming eligible for parole. This Court concluded that it was reasonably possible for the defendant to live to the age of eighty-seven and that the sentence was thus valid. See also *People v Kelly*, 213 Mich App 8, 12-17; 539 NW2d 538 (1995). Defendant is not entitled to resentencing. *People v Merriweather*, 447 Mich 799, 808-811; 527 NW2d 460 (1994).

Lastly, defendant's sentence, which fell within the guidelines, was not disproportionate to the seriousness of the offense and offender and was not an abuse of discretion. *People v Cervantes*, 448 Mich 620, 626, 630; 532 NW2d 831 (1995). The court noted at sentencing that defendant was under sentence for third-degree child abuse, took no responsibility for the victim's (his daughter) condition and questioned whether defendant could be rehabilitated.

Affirmed.

/s/ Roman S. Gibbs

/s/ Helene N. White