

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JAY DREW, JR.,

Defendant-Appellant.

UNPUBLISHED

February 21, 1997

No. 185335

Ingham Circuit Court

LC No. 94-67991-FC

Before: MacKenzie, P.J., and Holbrook, Jr., and T.P. Pickard,* JJ.

MEMORANDUM.

Defendant was charged with two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), involving the alleged digital penetration of the two victims, who were both under age thirteen. Pursuant to a plea agreement, defendant pleaded nolo contendere to two counts of second-degree CSC, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), in exchange for the dismissal of the first-degree CSC counts. He was sentenced to serve two concurrent prison terms of 40 to 180 months. He appeals as of right and we affirm.

Defendant argues that the sentencing court erred in assessing twenty-five points under Offense Variable 12, criminal sexual penetration, where he was convicted of second-degree CSC and denies that penetration of the victims occurred. Defendant has waived appellate review of this issue, given that the scoring of the guidelines was an agreed upon condition of the plea agreement and that defendant expressly waived on the record his right to a sentencing hearing on the issue whether penetration was an appropriate factor for the court to consider in imposing sentence. In any event, even were we to review this issue, we would find it to be without merit. See *People v Ratkov*, 201 Mich App 123; 505 NW2d 886 (1993).

Defendant's express waiver of a sentencing hearing on the issue of penetration further abrogates his belated request to have the references to penetration stricken from the presentence report.

* Circuit judge, sitting on the Court of Appeals by assignment.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Donald E. Holbrook, Jr.
/s/ Timothy P. Pickard