

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER GERALD HAYES,

Defendant-Appellant.

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UNPUBLISHED

March 4, 1997

No. 195463

Livingston Circuit Court

LC No. 94-8534-FH

Before: Young, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Pursuant to a plea bargain agreement, defendant pled nolo contendere to assault with intent to commit criminal sexual conduct involving sexual penetration, MCL 750.520g(1); MSA 28.788 (7)(1). Under the terms of the agreement, a charge of attempted kidnapping was dismissed and the prosecutor agreed to recommend a two year cap on defendant's minimum sentence. The sentencing guidelines range was zero to twelve months. Defendant was sentenced to a term of two to ten years. We affirm.

Defendant argues that the trial court abused its discretion by exceeding the sentencing guidelines. We do not agree. The sentencing court may deviate from the guidelines range when the range is disproportionate to the seriousness of the crime and the defendant's prior record. MCR 6.425 (D)(1), *People v Milbourn*, 435 Mich 630, 636, 657; 461 NW2d 1 (1990). The trial court may rely on factors already considered in the guidelines, or on unique facts exist which are not adequately reflected in the guidelines. *Id*; *People v Harris*, 190 Mich App 652, 668-669; 476 NW2d 767 (1991). A trial court's consideration of factors not adequately addressed in the guidelines becomes more compelling in a plea-based sentence when the plea was made in exchange for dismissal of other charges or was to a lesser offense. *People v DuPrey*, 186 Mich App 313, 318; 463 NW2d 240 (1990). Here, the trial court noted that the guidelines did not adequately reflect the circumstances of the attack, which involved a high school girl on a deserted road, or the serious effect of the incident on the young victim's life. We find no abuse of discretion.

Defendant also argues that the trial court failed to adequately respond to his objections to the prosecutor's allegation that defendant had been involved in other types of sexual misconduct. Although

defendant phrases this issue as involving inaccurate information, defendant never objected below to the accuracy of the prosecutor's statements. Indeed, defense counsel conceded that "the circumstances were very similar", but suggested that the prior uncharged incident should not be taken into account in the guidelines. In fact, the prior incident was not included in the guidelines, but was properly considered by the trial court. *People v Ewing (After Remand)*, 435 Mich 443, 446, 473; 458 NW2d 880 (1990); *People v Coulter (After Remand)*, 205 Mich App 453, 456; 517 NW2d 827 (1994).

Finally, defendant argues that resentencing is required because the trial court failed to articulate reasons for the sentence on the sentencing information report (SIR). We disagree that resentencing is necessary, but remand for correction of the SIR to reflect the trial court's reasons.

Affirmed. Remanded for correction of the presentence investigation report.

/s/ Robert P. Young, Jr.

/s/ Harold Hood

/s/ Roman S. Gibbs