

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HERMAN JOSEPH GARCIA,

Defendant-Appellant.

---

UNPUBLISHED

March 25, 1997

No. 192472

Saginaw Circuit Court

LC No. 94-010054-FC

Before: D.F. Walsh,\* P.J., and R.P. Griffin\*\* and W.P. Cynar,\* JJ.

MEMORANDUM.

Pursuant to a plea agreement, defendant pleaded nolo contendere to third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4), and habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to 5 to 22-1/2 years' imprisonment, and now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Having pleaded nolo contendere with knowledge of the sentence to be imposed, defendant cannot challenge the proportionality of his sentence without first moving for plea withdrawal—which he has not done. *People v Cobbs*, 443 Mich 276, 285; 505 NW2d 208 (1993).

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar

---

\*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

\*\*Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.