

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY W. MILLER,

Defendant-Appellant.

UNPUBLISHED

March 28, 1997

No. 189533

Oakland Circuit Court

LC Nos. 94-135900-FH;

94-135901-FH;

94-135902-FH

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

MEMORANDUM.

Defendant pleaded nolo contendere to seven counts of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b), and was sentenced concurrent terms of five to fifteen years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant argues that a score of twenty points for Prior Record Variable (PRV) 7 (subsequent/concurrent felony convictions) constitutes impermissible "double counting" because the multiple penetrations were taken into account in assessing fifty points under Offense Variable (OV) 12 (criminal sexual penetrations).¹ We disagree. PRV 7 and OV 12 are separate categories addressing different situations, and each variable is directed toward a different purpose. PRV 7 is concerned with the commission of a number of felonies at the same time. OV 12 is concerned with multiple criminal

*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.

sexual penetrations arising out of the same criminal transaction. The trial court's assessment of points for both variables was proper. See, e.g., *People v Jarvi*, 216 Mich App 161, 163-164; 548 NW2d 676 (1996); *People v Maben*, 208 Mich App 652, 655; 528 NW2d 850 (1995); *People v Vonins (After Remand)*, 203 Mich App 173, 176-177; 511 NW2d 706 (1993).

Defendant's plea was made pursuant to a *Cobbs*² agreement that he would receive a minimum sentence at the low end of the guidelines recommended range of 60 to 120 months. Because defendant was sentenced in accordance with this agreement, his proportionality argument must be rejected. *People v Rodriguez*, 212 Mich App 351, 355; 538 NW2d 42 (1995); *People v Blount*, 197 Mich App 174, 175; 494 NW2d 829 (1992).

Affirmed.

/s/ Daniel F. Walsh
/s/ Robert P. Griffin
/s/ Walter P. Cynar

¹ Defendant was convicted of seven counts of third-degree criminal sexual conduct; therefore, twenty points were properly scored for PRV 7. Michigan Sentencing Guidelines (2d ed), p 43. Because defendant forced the victim to have sexual relations with him on three occasions in April 1994, his fifty-point score for OV 12 was proper. Sentencing Guidelines, p 45. See *People v Raby*, 218 Mich App 78; 554 NW2d 25 (1996).

² *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).