

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RON EDDY HOWARD,

Defendant-Appellant.

UNPUBLISHED

April 1, 1997

No. 186145

Kalamazoo Circuit Court

LC No. 94-001599-FC

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

MEMORANDUM.

Defendant pleaded nolo contendere to two counts of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), and was sentenced to concurrent terms of eight to twenty years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

The trial court erred in scoring ten points for Offense Variable 6 of the sentencing guidelines because there was no evidence to suggest the presence of anyone else who was endangered during the sexual abuse of each victim. *People v Chesebro*, 206 Mich App 468, 471-473; 522 NW2d 677 (1994); *People v Hoffman*, 205 Mich 1, 24; 518 NW2d 817 (1994). Only one victim was involved in each of the criminal transactions. The fact that there were two separate convictions with separate victims does not support a score of ten points under OV 6. However, because defendant's sentences would still be within the corrected guidelines' range, the error was harmless. *People v Daniels*, 192 Mich App 658, 675; 482 NW2d 176 (1992).

*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.

Next, the trial court properly scored fifteen points for OV 25. *People v Ratkov (After Remand)*, 201 Mich App 123, 126-127; 505 NW2d 886 (1993). The evidence was sufficient to support the score. *Hoffman, supra*.

Defendant received the benefit of his bargain and has not moved to withdraw his pleas. Therefore, his challenge to the proportionality of his sentences has not been preserved for appellate review. *People v Blount*, 197 Mich App 174, 175-176; 494 NW2d 829 (1992).

Defendant has forfeited his right to raise the issue of whether the prosecutor breached the sentencing agreement by his failure to demonstrate prejudice. Absent the alleged “error,” defendant would not have received a lower minimum sentence. *People v Grant*, 445 Mich 535, 547, 551-552; 520 NW2d 123 (1994).

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar