

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOMINIC WAYNE COFELL,

Defendant-Appellant.

UNPUBLISHED

April 1, 1997

No. 186393

Macomb Circuit Court

LC No. 94-001727-FH

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

MEMORANDUM.

Defendant pleaded guilty to attempted second-degree criminal sexual conduct, MCL 750.92; MSA 28.287 and MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), and was sentenced to forty to sixty months' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant first argues that he was denied the effective assistance of counsel because his attorney failed to object to the scoring of twenty-five points for Offense Variable 12. However, there was evidence to support the score in light of defendant's admission during his plea that he touched the victim on her vagina and the victim's testimony during the preliminary examination that she had pain in her private area between her legs. *People v Ayers*, 213 Mich App 708, 723; 540 NW2d 791 (1995). Because the trial court correctly scored OV 12, counsel had no obligation to make a groundless objection and defendant was not denied the effective assistance of counsel on this basis. *People v Rodriguez*, 212 Mich App 351, 355-356; 538 NW2d 42 (1995).

*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.

Defendant also claims he was denied the effective assistance of counsel due to his attorney's failure to object to the court imposing sentence without reviewing a psychological report which was ordered but which was not yet available. Pursuant to MCR 6.425, a current psychiatric or psychological report is to be included with the presentence report if indicated. In the present case, the only reason the court ordered the report was to see if probation was appropriate. After reviewing the presentence report, the court determined that probation would not be appropriate and therefore the report was unnecessary. Accordingly, the court properly imposed sentence without reviewing the report. Since the court's actions were proper, counsel had no ground upon which to object and defendant was not denied the effective assistance of counsel. *Rodriguez, supra*, 212 Mich App 355-356.

Defendant also argues that his sentence was not individualized. The policy of this state favors individualized sentencing for every defendant. *People v Coles*, 417 Mich 523, 537; 339 NW2d 440 (1983), overruled in part on other grounds in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Contrary to defendant's claim, the record reveals that the court did individualize his sentence, particularly since the court noted that defendant's previous conviction included the fondling of a young girl.

Finally, defendant's sentence does not violate the principle of proportionality considering that he acknowledged committing a greater offense, *People v Purcell*, 174 Mich App 126, 130; 435 NW2d 782 (1989), his plea was tendered pursuant to an agreement to dismiss the original charge of second-degree criminal sexual conduct, *People v Duprey*, 186 Mich App 313, 318; 463 NW2d 240 (1990), and he was on probation for committing a similar crime at the time he committed the instant offense.

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar