STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FLOYD GRANBY,

Defendant-Appellant.

UNPUBLISHED
April 4, 1997

No. 193094
Macomb Circuit Court
LC No. 91-001050-FC

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

MEMORANDUM.

Defendant pleaded guilty to third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4), and was initially sentenced to eight to fifteen years' imprisonment. Defendant subsequently filed a motion for relief from the judgment seeking resentencing. The trial court granted resentencing and imposed a sentence of six to fifteen years' imprisonment. Defendant appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

With regard to defendant's objections to the score of fifty points for Offense Variable 12, we hold on the authority of *People v Raby*, 218 Mich App 78; 554 NW2d 25 (1996), and *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993), that the trial court's scoring decision should be upheld because there is adequate evidence to support it. See also *People v Randolph Warner*, 190 Mich App 26, 28; 475 NW2d 397 (1991). We reject defendant's argument that the trial court was bound by its order in the "court disposition" entered after the January 5, 1996 motion hearing to score zero points for OV 12. The trial court was empowered by MCR 6.435(B) to correct its mistake that it was bound by the parties' stipulation on how OV 12 should be scored. *In re Dana Jenkins*, 438 Mich 364, 372; 475 NW2d 279 (1991). Defendant was not denied due process because he was

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

provided notice and an opportunity to be heard on this matter at the resentencing hearing. Further, we note that the trial court entered its holding that OV 12 should be scored fifty points in the "court disposition" for the February 12, 1996 resentencing hearing. Under these circumstances, defendant has not established error entitling him to relief.

Because the score for OV 12 alone places the offense in Offense Severity Level IV, we find it unnecessary to consider defendant's challenges to the scores for OV 7 and OV 25. Any error was harmless because it would not affect the guidelines' minimum sentence range. *People v Jarvi*, 216 Mich App 161, 164; 548 NW2d 676 (1996), lv pending; *People v Johnson*, 202 Mich App 281, 290; 508 NW2d 509 (1993). Nevertheless, there is no record support for defendant's contention that scoring fifteen points for OV 7 violated the plea agreement. The plea agreement provided for the dismissal of the original charges of first-degree and second-degree criminal sexual conduct. It did not preclude the trial court from considering the actual facts of the offense at sentencing. Moreover, we note that the actual facts are applied in scoring offense variables. Michigan Sentencing Guidelines (2d ed), p 5; *People v Fleming*, 428 Mich 408, 418; 410 NW2d 266 (1987); *People v Cotton*, 209 Mich App 82, 84; 530 NW2d 495 (1995).

Affirmed.

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