

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JONATHAN DAVID DURANLEAU,

Defendant-Appellant.

UNPUBLISHED

April 4, 1997

No. 193525

Hillsdale Circuit Court

LC No. 00197396

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(1)(b); MSA 28.788(4)(1)(b), and attempted first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a) and MCL 750.92; MSA 28.287. For those respective convictions, he was sentenced to concurrent terms of 7 to 15 years' imprisonment and 3-1/3 to 5 years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court properly denied defendant's motion for resentencing. Offense Variable (OV) 12 was properly scored at fifty points for multiple sexual penetrations. *People v Raby*, 218 Mich App 78; 554 NW2d 25 (1996). Defendant molested the victim from the spring of 1992 until September 1993. Initially, the abuse occurred about once a week and later became a daily occurrence. In denying the motion, the trial court properly noted that even if OV 12 was scored at zero points (which would have changed the recommended sentencing range from six to ten years to four to ten years), defendant's

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

minimum sentence of seven years was within either range and would have been imposed regardless. See *People v Polus*, 197 Mich App 197, 201-202; 495 NW2d 402 (1992).

Offense Variable 7 was properly scored at fifteen points for defendant's exploitation of the victim's youth and abuse of his authority status. Michigan Sentencing Guidelines (2d ed), p 45. Defendant is almost twice the age of the victim, who was only ten or eleven years old at the time of the offenses. As the victim's baby-sitter, defendant was in a position of authority over the victim. *People v Nantelle*, 215 Mich App 77, 84-85; 544 NW2d 667 (1996); *People v Cotton*, 209 Mich App 82, 84; 530 NW2d 495 (1995).

Defendant's seven-year minimum sentence for third-degree criminal sexual conduct is within the recommended range of the sentencing guidelines and is therefore presumptively proportionate. *People v Blount*, 197 Mich App 174, 175; 494 NW2d 829 (1992). No unusual circumstances were presented indicating an abuse of discretion. *People v Piotrowski*, 211 Mich App 527, 532; 536 NW2d 293 (1995). Defendant emphasizes his youth at the time of the offenses, his high IQ, his employability, and the fact that he has overcome great personal obstacles. While a sentencing court may, in some circumstances, consider a defendant's age, it need not do so. *Id.*, 532-533. Defendant was twenty-one years old when he molested the victim, and, given his high IQ, he should have known that his conduct was improper. Moreover, a defendant's employment is not an unusual circumstance that would overcome the presumption of proportionality. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). The trial court properly considered that the prosecution dismissed three counts of first-degree criminal sexual conduct in exchange for defendant's plea. See *People v Duprey*, 186 Mich App 313, 318; 463 NW2d 240 (1990). Under the circumstances, defendant's seven- to fifteen-year sentence does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

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