

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HULAN TERRANCE PORTER,

Defendant-Appellant.

UNPUBLISHED

May 30, 1997

No. 193313

Recorder's Court

LC No. 95-3037

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction for eight counts of first-degree criminal sexual conduct, one count of armed robbery, and one of felony firearm, and resulting sentences of forty to seventy-five years on each of the capital charges plus two years for the firearm conviction. This case is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not abuse its discretion in admitting the similar acts testimony. Where identity was a principal issue in the case, and the second crime bore extraordinary similarities to the one on trial, the probative value of the similar acts testimony clearly outweighed any unfairly prejudicial impact. *People v VanderVliet*, 444 Mich 52, 65; 508 NW2d 114 (1993). Among the similarities were the perpetrator's peculiar phraseology on first accosting his victims, the age of the victims, the geographic location, the time of day, the fact that both victims had just emerged from the Gratiot bus, the fact that each victim was initially robbed, then forced to disrobe herself, then first sexually penetrated from behind, the fact that each victim was forced to accompany the perpetrator down a nearby alley and into a then vacant or unoccupied structure, and the fact that the perpetrator used a handgun. In any event, given the other evidence in the case, including defendant's arrest within minutes of the crime, after fleeing at the sight of police, wearing clothing and armed with a pistol similar to those described by the victim, and in possession of the victim's wallet and other personalty, any error in admitting the similar acts testimony was harmless because the other evidence was overwhelming. *People v Benon*, 413 Mich 530; 321 NW2d 372 (1982).

Although defendant's forty to seventy-five-year sentences are in excess of the guideline range of ten to twenty-five-years imprisonment, the trial court did not abuse its sentencing discretion in concluding that the facts of the case and defendant's character as a serial rapist made the guidelines inadequate to the task of informing the court as to the proper sentence parameters. *People v Houston*, 448 Mich 312; 532 NW2d 508 (1995). In imposing sentence, the trial court did not refer to any facts which were sufficiently inaccurate as to render the resulting sentence invalid on this record. *People v Mitchell*, 454 Mich 145; ___ NW2d ___ (1997). Given the facts of the offenses, whether defendant did or did not use a pejorative term to refer to the victim was of no moment. A reference to defendant's juvenile record did not suggest more than defendant conceded was accurate, that such charges had been brought against him as a juvenile, whether or not adjudicated.

Affirmed.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Gary R. McDonald