

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DUANE HENRY MAXWELL,

Defendant-Appellant.

UNPUBLISHED

June 3, 1997

No. 175628

Wayne Circuit Court

LC No. 93-002266

Before: Cavanagh, P.J., and Reilly and White, JJ.

PER CURIAM.

Defendant appeals his bench trial conviction of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). Defendant subsequently pleaded guilty of habitual offender, second, MCL 769.10; MSA 28.1082. Defendant was sentenced to five to fifteen years on the second-degree criminal sexual conduct conviction. The sentence was vacated and defendant was sentenced to five to fifteen years on the second habitual offender conviction. We affirm.

Defendant first argues that the trial court's findings of fact were clearly erroneous and were not specific enough to disclose the basis for each of its determinations. We disagree. Brief, definite, and pertinent findings and conclusions by the trial court on the contested matters are sufficient, without overelaboration of detail or particularization of facts. MCR 2.517(A)(2). Factual findings are sufficient as long as it appears that the trial court was aware of the issues and correctly applied the law. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993).

The trial court specifically found that Shamika Brazir's was the only testimony relevant to the second-degree criminal sexual conduct charge. Shamika testified she was in ninth grade. She testified that while residing at 4851 Lakewood in the summer after sixth grade, or 1992,¹ she woke up in the early morning because she had to go to the bathroom, and because of the light shining into the room from the kitchen, and observed defendant sit on the couch where the victim, who was approximately nine years old at the time, was sleeping, about seven feet away. Shamika was approximately thirteen years old at the time of the incident. Shamika testified that she saw defendant's hand moving toward the

victim, whose thigh and waist area was not under the covers, saw defendant put his hand under the victim's nightgown, and saw defendant move his hand on and around the victim's vaginal area for approximately five minutes. The trial court found Shamika credible beyond a reasonable doubt. The trial court found the victim incredible based on her testimony that she remembered nothing about an incident that was the basis for a first-degree criminal sexual conduct charge against defendant, which the prosecutor dismissed during trial, and because the victim testified that her mother and defendant's mother told her to say she did not remember it. The trial court also found that the victim showed fear of her mother noting that while the victim testified, she asked that her mother be removed from the court window. The trial court also found defendant's and the victim's mother's testimony incredible because they directly contradicted each other regarding what Shamika and the victim told the victim's mother about the incidents.

Upon a review of the record, we are not left with a definite and firm conviction that a mistake has been made as to the trial court's determinations regarding the credibility of each witness. *People v Kvam*, 160 Mich App 189, 196; 408 NW2d 71 (1987). We further hold that the trial court's findings were specific enough to disclose the basis for each of its determinations. The trial court made brief, definite, and pertinent findings and conclusions on the contested matters in the case. MCR 2.517 (A)(2). It specifically stated which witnesses it believed and which it did not, and stated the reasons for these beliefs. We conclude that the trial court was aware of the issues and correctly applied the law. *Kemp, supra*.

Defendant also argues that insufficient evidence was presented to sustain his second-degree criminal sexual conduct conviction. We disagree. In determining whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 366; 285 NW2d 284 (1979).

The offense of second-degree criminal sexual conduct requires proof that: (1) the defendant intentionally touched the complainant's genitals or the clothing covering that area, (2) that this was done for sexual purposes or could reasonably be construed as having been done for sexual purposes, and (3) the complainant was under thirteen years old at the time of the alleged act. *People v Vandervliet*, 444 Mich 52, 76; 508 NW2d 114 (1993) modified on other grounds 445 Mich 1205 (1995); *People v Fisher*, 77 Mich App 6, 12-13; 257 NW2d 250 (1977).

Viewing the evidence in a light most favorable to the prosecution, we conclude that the prosecution presented sufficient evidence of an intentional touching of the victim's genital area, for the purpose of sexual gratification, when the victim was under the age of thirteen. There was testimony that defendant intentionally moved his hand around the victim's genital area for approximately five minutes. A rational trier of fact could find beyond a reasonable doubt, based on this testimony, that defendant intentionally touched the victim's genital area for the purpose of sexual gratification.

Defendant next argues that the trial court erred in failing to provide him with credit for the time that he was incarcerated prior to sentencing.

At sentencing, the trial court denied defendant any jail-time credit because, at the time of the instant offense, he was on parole for a 1991 conviction of receiving and concealing stolen property under \$100, MCL 750.535(1); MSA 28.803(1).² Defendant then filed a motion for jail-time credit, which argued, among other things, that he was entitled to jail credit due to inability to post bond, MCL 769.11b; MSA 28.1083(2), and that credit under that statute “is to be limited to jail time served for the offense of which the Defendant is convicted.” A different judge granted defendant credit for 455 days served in jail against his second habitual offender conviction, but two months later, vacated the order and amended the Judgment of Sentence to give defendant no jail-time credit.³

To the extent that defendant requested below that credit for jail time served be applied toward his habitual offender, second, conviction, the trial court properly denied defendant any jail-time credit. A defendant who has received a consecutive sentence is not entitled to credit against the subsequent sentence for time served. Rather, any jail-time credit may only be applied to the unexpired portion of the paroled offense. MCL 791.238(2); MSA 28.2308, *People v Johnson*, 205 Mich App 144, 146; 517 NW2d 273 (1994); *People v Brown*, 186 Mich App 350, 359; 463 NW2d 491 (1990). Defendant has not established that he has been denied credit against the earlier sentence.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Maureen Pulte Reilly
/s/ Helene N. White

¹ Shamika testified that she went directly into eighth grade after sixth grade, having skipped seventh grade.

² According to the SIR, defendant was sentenced to four months to five years’ for this offense on August 12, 1991. Defendant was placed on an eighteen-month parole on December 5, 1991, after having served the four-month minimum sentence. Defendant was arrested on the instant offense in early February 1993, about fourteen months later, and on March 25, 1993 a violation of parole warrant was issued.

³ The orders granting and then vacating jail credit bear the instant case’s lower court number.