

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANK EUGENE COMPOE,

Defendant-Appellant.

UNPUBLISHED

July 25, 1997

No. 193218

Kent Circuit Court

LC No. 95-002358 FC

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

Defendant was convicted by jury of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). He received an enhanced sentence of life imprisonment, reflecting his status as both a fourth offender and a repeat sex offender. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant failed to object below to the admission of certain similar acts testimony on the ground now asserted. Accordingly, this evidentiary issue is not preserved for appellate review. *People v Considine*, 196 Mich App 160, 162; 492 NW2d 465 (1992). An unpreserved, nonconstitutional error is forfeited unless the party claiming error demonstrates an error that is plain and that is decisive of the outcome or within the category of cases for which prejudice is presumed or reversal is automatic. *People v Grant*, 445 Mich 535, 548-549, 552-553; 520 NW2d 123 (1994). Assuming arguendo that the admission of the similar acts evidence constituted plain error, the error was not outcome determinative in light of the strong evidence of guilt, the intended proper admission of similar acts testimony of a second victim and the trial court's instruction to the jury concerning the proper use of similar acts testimony.

The trial court's failure to prepare a sentencing information report does not entitle defendant to resentencing. *People v Yeoman*, 218 Mich App 406, 423; 554 NW2d 577 (1996).

* Circuit judge, sitting on the Court of Appeals by assignment.

Additionally, defendant is not entitled to resentencing because the trial court engaged in speculation concerning what the guidelines' range might be. *People v Mitchell*, 454 Mich 145, 175-177; 560 NW2d 600 (1997). See *People v Egdett*, 220 Mich App 686, 695; 560 NW2d 360 (1996). The sole relevant inquiry is whether the sentence imposed is proportionate to the offense and the offender. *Yeoman, supra* at 422. Under the circumstances of this case, we find that the trial court did not abuse its discretion and that defendant's life sentence is proportionate to the offense and the offender, *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), and reflects the seriousness of the matter, *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995).

Affirmed.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn