

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THERMON LEE TAYLOR,

Defendant-Appellant.

UNPUBLISHED
October 10, 1997

No. 195707
Genesee Circuit Court
LC No. 95-052760 FC

Before: Doctoroff, P.J., and Cavanagh and Saad, J.J.

MEMORANDUM.

In a jury trial, defendant was convicted of first degree criminal sexual conduct. On May 10, 1996, he was sentenced to 20 to 40 years' imprisonment, then resentenced on May 13, 1996, to the same 20 to 40 years, albeit as a second offender. He now appeals as of right.

Defendant first contends that the prosecutor deprived him of a fair trial by presenting facts not in evidence during closing argument. If this isolated remark was not a fair inference from the evidentiary record, the distortion was so minimal that defense counsel was not prompted to object. To the extent the remarks could arguably be seen as exceeding the bounds of the evidence, a curative instruction could have obviated any prejudice, and accordingly reversible error is not established. *People v Fisher*, 220 Mich App 133, 159-161; 559 NW2d 318 (1996); *People v Dunham*, 220 Mich App 268, 274; 559 NW2d 360 (1996).

At the initial sentencing, the prosecutor inquired whether the 20 to 40 year sentence pronounced by the trial judge represented enhancement based on defendant's second offender status. The trial court responded in the negative, remarking that she was unaware of any supplemental charges. The prosecutor then moved for resentencing, which the trial court granted sub silentio by conducting a further sentencing proceeding on May 13, 1996, at which defense counsel and defendant were both present and offered an opportunity for allocution. The court then noted that it had overlooked a timely filed notice of intent to seek enhanced punishment, MCL 769.13; MSA 28.1085, and the existence of a prior felony conviction being undisputed, the same 20 to 40 year sentence was imposed, albeit under the Habitual Offender Act, which this Court recognizes adversely impacts on defendant's parole

possibilities. As the prosecutor timely sought supplementation of punishment under the Habitual Offender Act, the State was entitled to adjudication of the issue on the merits, and where the issue had been overlooked by the trial judge at the original sentencing, that sentence was invalid and resentencing was therefore properly within the circuit court's authority. *People v Miles*, 454 Mich 90; 559 NW2d 299 (1997).

Finally, defendant contends that his 20 to 40 year sentence is disproportionate to the offense and the offender. Habitual offender sentences are reviewed for abuse of discretion. Here, the victim was an 8-year old female, entrusted to defendant's care by her mother, a trust relationship which defendant grossly violated. Defendant could have been sentenced to life imprisonment or any term of years, even as a first offender, and the sentence imposed does not exceed the proper bounds of sentencing discretion given the seriousness of the offense. *People v Hansford* (After Remand), 454 Mich 320; 562 NW2d 460 (1997).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh
/s/ Henry W. Saad