

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TOMMY LEE CURRY,

Defendant-Appellant.

UNPUBLISHED

December 23, 1997

No. 197379

Kent Circuit Court

LC No. 96-004049 FC

Before: Griffin, P.J., and Markman and Whitbeck, JJ.

MEMORANDUM.

Defendant appeals by right his guilty plea-based conviction of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), and consequent fifteen to sixty year term of imprisonment, contending that the sentence imposed is disproportionate to the offense and the offender. This case is being decided without oral argument pursuant to MCR 7.214(E).

The plea was the result of a bargain, pursuant to which a second first-degree criminal sexual conduct charge was dismissed, as was a supplemental information, charging defendant as a fourth offender. Defendant's prior criminal record consists of three armed robberies, so this is his fourth conviction on capital felony charges. The victim was defendant's sister, who was under the age of thirteen, at least twenty-one years his junior.

Defendant's sentence is within the guideline range, which extended to twenty-five years on the minimum. On the record, defendant has failed to overcome the presumption that a sentence within the guideline range is proportionate to the offense and the offender. *People v Eberhardt*, 205 Mich App 587; 518 NW2d 511 (1995).

Affirmed.

/s/ Richard Allen Griffin

/s/ Stephen J. Markman

/s/ William C. Whitbeck