

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GERALD CHRISTOPHER SCHULTZ,

Defendant-Appellant.

UNPUBLISHED

February 13, 1998

No. 198882

St. Clair Circuit Court

LC No. 91-000198 FC

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

MEMORANDUM.

A jury convicted defendant of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), of his girlfriend's eight-month old daughter while he was baby-sitting her. On prior appeal of right, Docket No. 142263, this Court affirmed defendant's conviction but remanded for consideration of sentencing issues. On remand, a successor to the original trial judge concluded that defendant's original sentence was based on accurate information, that the sentencing guidelines had been correctly scored, and that the resulting sentence was not disproportionate to the offense or the offender. On this appeal of right, defendant contends that his twenty-five to fifty year sentence is disproportionate to the offense and the offender. We affirm.

The fact that defendant's sentence is above the guideline range of eight to fifteen years is irrelevant; the key test of proportionality is not whether the sentence departs from or adheres to the recommended guideline range but whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). Here, the offense involved defendant sexually penetrating and seriously injuring an eight-month old infant who had been entrusted to his care. The sentence imposed is proportionate to the perversity of the crime and the offender who perpetrated it. *People v Lemons*, 454 Mich 234, 260; 562 NW2d 447 (1997).

Affirmed.

/s/ Jane E. Markey

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski

