

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALAN HAHN,

Defendant-Appellant.

---

UNPUBLISHED

March 13, 1998

No. 198121

Clinton Circuit Court

LC No. 96-005976 FC

Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison\*, JJ.

MEMORANDUM.

Following a jury trial, defendant was acquitted of the original charge of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), but convicted of second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3). In sentencing defendant above the guideline range to eight to fifteen years' imprisonment, the trial judge remarked that he was surprised at the jury's verdict, since he viewed the evidence as unitary. Either the victim told the truth, in which case defendant was guilty of the original charge, or defendant, who denied any sexual contact with the victim, told the truth and was guilty of no offense whatsoever. The court stated that it was of the opinion that defendant had not told the truth in his testimony at trial, and that the victim did tell the truth and that the victim's testimony was convincing beyond a reasonable doubt. We affirm.

Defendant first contends that his sentence is disproportionate to the offense and to the offender. The fact that defendant's sentence is above the guideline range is not determinative of this question, as the issue for this Court is whether the sentence imposed properly reflects the seriousness of the matter. This Court concludes that the sentence imposed is proportionate to the perversity of defendant's actions and is therefore proper. *People v Lemons*, 454 Mich 234, 260; 562 NW2d 447 (1997).

In a supplemental brief filed by substitute counsel, defendant contends that the trial judge erred by in effect sentencing him for a crime of which he was acquitted, first-degree criminal sexual conduct. We disagree, finding this issue controlled by *People v Shavers*, 448 Mich 389, 393-394; 531 NW2d 165 (1995).

---

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

Affirmed.

/s/ Michael J. Kelly

/s/ E. Thomas Fitzgerald

/s/ Michael G. Harrison