

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK A. NASH,

Defendant-Appellant.

UNPUBLISHED

March 16, 1999

No. 208828

Recorder's Court

LC No. 97-005259

Before: Neff, P.J., and Kelly and Hood, JJ.

PER CURIAM.

Defendant was charged with three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), two counts of assault with intent to commit sexual conduct involving penetration, MCL 750.520g(1); MSA 28.788(7)(1), one count of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), and one count of furnishing alcohol to a minor, MCL 436.33(1); MSA 18.1004(1). Following a jury trial, defendant was convicted of second-degree criminal sexual conduct and sentenced to five to fifteen years' imprisonment. Defendant appeals as of right. We affirm, but remand for the administrative task of preparing a written sentencing information report (SIR).

Defendant contends that the trial court coerced a verdict by ignoring the jury's deadlock. We disagree.

After the trial court received a note from the jury indicating that it had deadlocked on three counts, the trial court asked the jury to take a lunch break then resume deliberations. The jury had only deliberated for approximately three and one half hours, but had to examine seven counts with which defendant was charged. This course of action was not objected to by the parties. Accordingly, any error is waived. *People v Pollick*, 448 Mich 376, 386; 531 NW2d 159 (1995).

Defendant also asserts that his five- to fifteen-year sentence constitutes an abuse of discretion. Specifically, defendant alleges that the sentencing court failed to consider that defendant was a first-time offender with the potential for rehabilitation, or that he was allegedly manipulated by the victim's mother, who used him for sexual purposes.

We review a sentence for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). “A sentence constitutes an abuse of discretion if it violates the principle of proportionality by being disproportionate to the seriousness of the circumstances surrounding the offense and the offender.” *People v Paquette*, 214 Mich App 336, 344-345; 543 NW2d 342 (1996). Although the sentencing court departed from the sentencing guidelines range, our review of the record does not reveal an abuse of discretion. Defendant’s conduct was reprehensible as he occupied a position of trust over the victim and preyed on the eleven year old girl in her own home. In light of the seriousness of the circumstances surrounding defendant’s conduct, the sentencing court did not abuse its discretion. *Id.*

We note that although the sentencing court stated its reasons for departure on the record, the sentencing court failed to fill out a written SIR form explaining the departure as required by MCR 6.425(D)(1). Accordingly, we remand for the completion of the administrative task of providing a written explanation of the reasons for the departure from the sentencing guidelines. *People v Zinn*, 217 Mich App 340, 349; 551 NW2d 704 (1996).

Affirmed, but remanded for preparation of an SIR. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Michael J. Kelly

/s/ Harold Hood