

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES JOSEPH MOORE,

Defendant-Appellant.

---

UNPUBLISHED

March 14, 2006

No. 258739

Calhoun Circuit Court

LC No. 04-001501-FC

Before: Neff, P.J., and Saad and Bandstra, JJ.

MEMORANDUM.

Defendant appeals as of right his sentences of ten to fifteen years in prison for three plea-based convictions of criminal sexual conduct in the third degree (CSC III), MCL 750.520d. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant engaged in repeated nonconsensual sexual acts with his three minor daughters. The acts allegedly occurred from 1991 to 2003. Defendant pleaded no contest to the charges of CSC III in return for dismissal of other charges and the prosecutor's recommendation that he be sentenced within the guidelines.

At sentencing, defense counsel indicated that she had read the presentence investigation report (PSIR) and sentencing information report.<sup>1</sup> The trial court utilized the legislative sentencing guidelines, which apply to crimes committed after January 1, 1999. MCL 769.34(1) and (2); *People v Oliver*, 242 Mich App 92, 99; 617 NW2d 721 (2000). Counsel stated that defendant had "no additions or corrections to the guidelines themselves," and that he requested a sentence within the lower end of the guidelines. The trial court sentenced defendant to the recommended sentence of ten to fifteen years in prison. The trial court indicated that it was constrained from imposing a more severe sentence by the two-thirds rule given the fifteen-year statutory maximum for defendant's convictions.

---

<sup>1</sup> The guidelines were scored at ninety-nine to 160 months for two of the CSC III convictions and eighty-seven to 145 months for the remaining conviction. The Department of Corrections sought a sentence of ten to fifteen years in prison.

On appeal, defendant maintains that the trial court's use of the legislative sentencing guidelines was improper because the factual basis for the convictions indicated that the offenses occurred between 1991 and 2003. He also argues, without further discussion, that the old sentencing guidelines would have provided a different sentencing range and that he would have been entitled to disciplinary credit.

We affirm. The legislative sentencing guidelines were used with the specific agreement of defense counsel. Because defense counsel approved the use of the legislative guidelines, and specifically argued that defendant be sentenced within those guidelines, the issue is waived for appeal. Waiver is the "intentional relinquishment or abandonment of a known right." *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). It is available in a broad array of constitutional and statutory provisions. *Id.* at 217-218. Waiver extinguishes any error. *Id.* at 215. Accordingly, there is no error to review. *Id.* at 219. Defendant may not base his appeal on action taken or requested by counsel in the lower court. *People v Rodriguez*, 251 Mich App 10, 32; 650 NW2d 96 (2002).

Affirmed.

/s/ Janet T. Neff

/s/ Henry William Saad

/s/ Richard A. Bandstra