

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODERICK JENKINS,

Defendant-Appellant.

UNPUBLISHED
October 10, 1997

No. 196716
Recorder's Court
LC No. 95-011879

Before: Holbrook, Jr., P.J., and White and R.J. Danhof*

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for third-degree criminal sexual conduct (by force or coercion), MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). Defendant was sentenced to eight to fifteen years in prison to run consecutive to an unrelated sentence for defendant's attempted breaking and entering of an occupied dwelling conviction. We affirm.

Defendant's first claim on appeal is that the evidence presented was insufficient to support his conviction of third-degree criminal sexual conduct. We disagree.

"When reviewing a claim of insufficient evidence following a bench trial, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995), citing *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). When dealing with the defendant's claim that the evidence was insufficient to support the verdict, credibility issues will not be resolved anew by this Court. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). MCL 750.520d(1)(b); MSA 28.788(4)(1)(b) provides that "[a] person is guilty of criminal sexual conduct in the third-degree if the person engages in sexual penetration with another person and if . . . [f]orce or coercion is used to accomplish the sexual penetration." See *Hutner, supra* at 283.

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

Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to establish the elements of third-degree criminal sexual conduct. The complainant identified defendant as the man who penetrated her with his penis, and testified that he forcibly took her to an abandoned building, shoved her onto a mattress, threw himself on top of her, and repeatedly hit her. Also, the complainant testified that she reluctantly complied with defendant's request to remove one pant leg because she feared for her life. Upon contacting the police, the complainant gave a detailed description of the perpetrator and the interior of the abandoned building, which she said contained blankets, sheets, a mattress, and a hair braid. The complainant's description of the perpetrator was consistent with defendant who was found lying on the mattress inside the abandoned building. Likewise, the police found the interior of the abandoned building to contain blankets, sheets, a hair clasp, and a bottle of Mohawk Vodka. Furthermore, a melted candle was found within the room containing the mattress, and this was consistent with the complainant's testimony that defendant had lit a candle inside the dark and abandoned building in order to illuminate the room. In addition, the testimony of the police officer in charge of the case indicated that the mattress could not have been seen from the doorway where defendant alleged the complainant had been standing. Based on this evidence, a rational trier of fact could find that the essential elements of the crime of third-degree criminal sexual conduct had been proven beyond a reasonable doubt. *Hutner, supra* at 282.

Defendant also argues that the eight year minimum sentence for the third-degree criminal sexual conduct conviction, which fell within the sentencing guidelines range of 72 to 120 months (six to ten years), was disproportionate. We disagree.

Since defendant failed to present at sentencing unusual circumstances rendering a sentence within the guidelines range disproportionate, his claim that the eight year minimum sentence is disproportionate is not preserved for appeal. *People v Sharp*, 192 Mich App 501, 505-506; 481 NW2d 773 (1992). Further, we conclude the sentence is proportionate in light of the nature of the offense and the offender.

Defendant next claims that his eight year minimum sentence was improper because it has to be served consecutively to a prior sentence (for an unrelated offense) and that the total time was, therefore, toward the high end of the guidelines range of 72 to 120 months. We disagree. As this Court has held in *People v Feazel*, 219 Mich App 618; 558 NW2d 219 (1996), "[w]here a defendant receives consecutive sentences, this Court may not review the length of the sentences together to decide if the principle of proportionality was violated, but [rather] each sentence must be reviewed separately." *Id.*, citing *People v Warner*, 190 Mich App 734, 736; 476 NW2d 660 (1991). Defendant's sentence imposed for the prior offense has no bearing on the sentence imposed for his third-degree criminal sexual conduct conviction for purposes of determining sentencing proportionality.

Defendant finally argues that the sentencing court improperly considered defendant's refusal to admit guilt in sentencing him. We disagree. It does not appear that the sentencing court factored defendant's refusal to admit guilt into the sentencing. In *People v Wesley*, 428 Mich 708; 411 NW2d 159 (1987), the Michigan Supreme Court, in adopting this Court's three-factor test to determine whether the sentencing was improperly influenced by the defendant's refusal to admit guilt, focused on "(1) the defendant's maintenance of innocence after conviction, (2) the judge's attempt to get the

defendant to admit guilt, and (3) the appearance that had the defendant affirmatively admitted his guilt, his sentence would not have been so severe.” *Id.* at 713.

While defendant maintained his innocence after his conviction, the sentencing judge did not attempt to get defendant to admit guilt, and no indication exists that defendant’s sentence would have been less severe if he had admitted his guilt. Therefore, we hold that the sentencing court did not improperly consider defendant’s refusal to admit guilt when sentencing him to an eight year minimum sentence for his third-degree criminal sexual conduct conviction.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Helene N. White

/s/ Robert J. Danhof