

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN DEVON HILL,

Defendant-Appellant.

UNPUBLISHED

December 19, 1997

No. 198414

Kalamazoo Circuit Court

LC No. 95-000639 FC

Before: Griffin, P.J., and Markman and Whitbeck, JJ.

MEMORANDUM.

Defendant appeals by right his seven to fifteen year sentence. Defendant pleaded guilty to probation violation, based on an underlying offense of second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3). Defendant was convicted of the underlying offense on plea of nolo contendere, as a part of a plea bargain in exchange for which a related charge of first-degree criminal sexual conduct, and a supplemental information charging him as a fourth offender, were dismissed, and the prosecution agreed to recommend a five-year probationary sentence. Defendant in fact received this probationary sentence. Defendant's prior criminal record of four felonies and eleven misdemeanors was initially viewed by the trial court as militating against such an arrangement. The trial court reluctantly agreed to this agreement only because the victim, a four-year old boy, could thus be spared the psychological trauma that would be involved in a trial.

Despite the fact that the underlying offense was committed while defendant was on parole under a tether program, defendant contends that his sentence is disproportionate to the offense and the offender. Defendant's reference to the sentence guidelines for the underlying offense is misplaced. The sentencing guidelines are wholly irrelevant. *People v Williams*, 223 Mich App 409; 566 NW2d 649 (1997). In any event, defendant's sentence is within the guidelines, well below the upper end of the range. Contrary to defendant's argument on appeal, the sentence is not evaluated in terms of the nature of the probation violation. Rather, the evaluation is of the offense of which defendant stands convicted, his prior criminal record, and other pertinent factors. As the guidelines do not apply, this Court reviews defendant's sentence for abuse of sentencing

discretion. On the record, defendant demonstrates no such abuse. *People v Hansford (After Remand)*, 454 Mich 320; 562 NW2d 460 (1997).

Affirmed.

/s/ Richard Allen Griffin
/s/ Stephen J. Markman
/s/ William C. Whitbeck