

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRYL L. THOMAS,

Defendant-Appellant.

UNPUBLISHED

July 24, 2001

No. 222682

Wayne Circuit Court

LC No. 98-007491

Before: White, P.J., and Sawyer and Saad, JJ.

PER CURIAM.

Defendant was convicted following a bench trial of two counts of first-degree criminal sexual conduct (weapon used), in violation of MCL 750.520b(1)(e). The trial court sentenced defendant to 30 to 80 years' imprisonment. Defendant now appeals as of right. We affirm.

Defendant asserts that there was insufficient evidence to sustain his conviction on the two counts of criminal sexual conduct. We disagree.

We review the evidence presented at trial de novo to determine whether, when it is considered in the light most favorable to plaintiff, the trial court could have found all the elements of the crimes to have been proven beyond a reasonable doubt. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000).

Here, the evidence to support a finding of guilt beyond a reasonable doubt was not only sufficient, but overwhelming. There was detailed evidence from the victim, internally consistent, and supported, with respect to all relevant details, by corroborating evidence from the police officer who investigated the crime scene, the doctor who treated the victim at the hospital, the victim's brother and two neighbors who saw her just after the assaults, and one of the neighbors who heard the assaults in progress, though she did not realize at the time what was going on. There was DNA evidence showing that the probability that defendant was the perpetrator of the sexual assaults was overwhelming. The medical evidence was also overwhelming as to the use of force, and it fully corroborated the victim's testimony regarding the use of a belt as a weapon of strangulation, as did the testimony of the persons who saw her just after the assaults. Considered in the light most favorable to the prosecution, the evidence was more than sufficient to show guilt on both counts beyond a reasonable doubt.

Defendant also asserts that he did not receive effective assistance of counsel at trial. Again, we disagree. We note first that there was no hearing on this issue as required by *People v Ginther*, 390 Mich 436, 442-443; 212 NW2d 922 (1973), so the issue was not preserved. We may nevertheless consider an ineffective assistance of counsel claim “where the details relating to the alleged deficiencies of the defendant’s trial counsel are sufficiently contained in the record to permit this Court to reach and decide the issue.” *People v Kenneth Johnson*, 144 Mich App 125, 129-130; 373 NW2d 263 (1985). Here, not only are there no details as to the alleged deficiencies, defendant has not even asserted what the deficiencies are, making only the bare conclusory assertion that “counsel’s actions in this case failed to adequately protect the interests of his client and constituted ineffective assistance of counsel, below the objective standard of reasonableness, and were serious mistakes.” There is no assertion of what these alleged mistakes were, or to what actions of counsel defendant is referring. There is thus nothing for us to review. As far as the record indicates, counsel at trial did a commendable job, obtaining an acquittal on three of the five charged counts, and in light of the overwhelming evidence of guilt as to the two counts on which defendant was convicted, he cannot be faulted in any way for failing to procure an acquittal on these counts as well.

Finally, defendant claims that his sentence was excessive. We review sentences imposed for abuse of discretion. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). An abuse of discretion occurs where a sentence is not proportionate to the seriousness of the crime and the defendant’s prior record. *Id.* Defendant was sentenced as a repeat felony offender having two prior felony convictions. Further, defendant was on probation at the time of the current offenses. Considering those facts along with the particularly vicious circumstances of the current offenses, we conclude that the sentence imposed was proportionate.

Affirmed.

/s/ Helene N. White
/s/ David H. Sawyer
/s/ Henry William Saad