

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLARENCE McKINNEY,

Defendant-Appellant.

UNPUBLISHED

April 19, 2002

No. 228549

Oakland Circuit Court

LC No. 98-161130-FH

Before: K.F. Kelly, P.J., and Doctoroff and Cavanagh, JJ.

MEMORANDUM.

Defendant was convicted by a jury trial of two counts of indecent exposure, MCL 750.335a, and pleaded guilty to being a sexually delinquent person, MCL 750.10a, with regard to both counts. He was sentenced to two concurrent terms of one day to life imprisonment with credit for 682 days served. Defendant appeals as of right. We affirm.

Defendant raises three arguments on appeal: (1) that the circuit court erred by failing to conduct a hearing regarding his sexual delinquency status as required by MCL 767.61a; (2) that the circuit court failed to recognize that it had discretion to sentence defendant to a jail term or fine rather than the prison term set for sexual delinquents by MCL 750.335a; and (3) that the court failed to articulate its reasons for the sentences imposed.

Defendant did not raise the lack of a sexual delinquency hearing before the circuit court. Defendant's status as a sexual delinquent was firmly established by his plea and the court's review of defendant's extensive criminal record. Since any error did not affect the outcome this issue cannot be considered for the first time on appeal. *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994).

The record does not support defendant's argument that the circuit court was unaware of the discretion it could exercise in sentencing defendant. Statements on the record at defendant's two sentencing hearings show that the court was aware of all sentencing options. *People v Kelly*, 186 Mich App 524, 531; 465 NW2d 569 (1990).

At sentencing the court cited defendant's status as a sexual delinquent, his long history of involvement with the criminal justice system, and his continued commission of similar crimes despite repeated efforts to treat him. The circuit court did not fail to articulate its reasons for the

sentence imposed. *People v Coles*, 417 Mich 523, 549; 339 NW2d 440 (1983).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh