

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

PUBLISHED
July 31, 2012

v

RAYMOND ERIC KING,

Defendant-Appellant.

No. 301793
Kent Circuit Court
LC No. 10-005083-FC

Advance Sheets Version

Before: METER, P.J., and FITZGERALD and MARKEY, JJ.

FITZGERALD, J. (*concurring in part and dissenting in part*).

I respectfully disagree with the majority’s conclusion that lifetime electronic monitoring does not apply to persons convicted of CSC-I unless the victim was under 13 years of age.

The CSC-I statute provides in MCL 750.520b(2)(d) that “[i]n addition to any other penalty imposed under subdivision (a) or (b), the court shall sentence the defendant to lifetime electronic monitoring under section 520n.” The CSC-II statute provides in MCL 750.520c(2)(b) that “[i]n addition to the penalty specified in subdivision (a), the court shall sentence the defendant to lifetime electronic monitoring under section 520n *if the violation involved sexual contact committed by an individual 17 years of age or older against an individual less than 13 years of age.*” (Emphasis added.) MCL 750.520n(1) then provides that a “person convicted under section 520b or 520c for criminal sexual conduct committed by an individual 17 years old or older against an individual less than 13 years of age shall be sentenced to lifetime electronic monitoring”

Clearly, the CSC-II statute provides for lifetime electronic monitoring under § 520n only if the violation involved sexual contact committed by an individual 17 years of age or older against an individual less than 13 years of age. The CSC-I statute clearly does not contain age limitations but, rather, provides that the court shall sentence the defendant to lifetime electronic monitoring under § 520n. Accordingly, it appears clear that, within the text of MCL 750.520n(1), the phrase “for criminal sexual conduct committed by an individual 17 years old or older against an individual less than 13 years of age” modifies § 520c only. I therefore agree with the analysis set forth in *People v Brantley*, 296 Mich App 546; ___ NW2d ___ (2012), and would hold that “any defendant convicted of CSC-I under MCL 750.520b, regardless of the age of the defendant or the age of the victim, must be ordered to submit to lifetime electronic monitoring.” *Id.* at 559. Consequently, I also disagree with the majority’s request that a conflict

panel be convened pursuant to MCR 7.215(J)(2) and (3). In all other respects, I concur with the majority opinion.

/s/ E. Thomas Fitzgerald