

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN KEVIN ZAKARZECKI,

Defendant-Appellant.

UNPUBLISHED

October 7, 1997

No. 200239

Kent Circuit Court

LC No. 94-003683 FC

Before: Doctoroff, P.J., and Cavanagh and Saad, J.J.

MEMORANDUM.

Following this Court's remand for resentencing, due to the trial court's decision at the original sentencing to score offense variable 12 at 50 points without supporting evidence (this Court's Docket No. 189540), the trial court conducted a hearing, at which hearsay information in support of that scoring was presented, opposed by defendant's testimony. The trial court resolved the scoring challenge in favor of the prosecution, and, noting that this of itself placed defendant in the highest offense variable guideline category, concluded that the scoring of offense variables 6 and 25 was now moot. Defendant was subsequently resentenced to the identical 5 to 15 year term he had originally received. Defendant now appeals of right. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court could properly resolve the scoring challenge on the basis of hearsay information, inasmuch as defendant was given the opportunity to rebut such derogatory information. *People v King*, 158 Mich App 672, 679; 405 NW2d 116 (1987). As there was thus some evidence to support the trial court's guideline scoring, all further issues relating to guideline scoring represent matters which are not cognizable as a basis for appellate relief. *People v Mitchell*, 454 Mich 145, 170 ff; 560 NW2d 600 (1997).

Defendant's challenge to the accuracy of the presentence report represents an issue that is not preserved. At the resentencing, defendant challenged the scoring of the SIR with respect to OV 6 and OV 25, but when the trial court noted that it had scored those variables at 0, no further objection was tendered. Accordingly, this issue is not appropriate for appellate review. *People v Bailey* (On

Remand), 218 Mich App 645; 554 NW2d 391 (1996). In any event, the presentence report is accurate; those portions which defendant seeks to challenge are the presentence investigator's explanation of his scoring recommendations, and a recitation of the information on which he relied in making that recommendation. The underlying information was never challenged by defendant as being inaccurate, and in fact the trial court adopted the finding, based on the testimony at the hearing concerning the scoring of OV 12, that defendant had sexually penetrated his victim 10 or 15 times.

Defendant's sentence, which is within the guideline range, is presumptively proportionate to the offense and the offender. Where defendant's conviction is the result of a plea bargain, pursuant to which original charges of first degree criminal sexual conduct were dismissed and defendant was allowed to plead guilty only to second degree criminal sexual conduct, and in light of the repeated nature of the offense involving a child victim, any assertion that the sentence is disproportionately harsh is without merit. *People v Vettese*, 195 Mich App 235, 247; 489 NW2d 514 (1992).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh
/s/ Henry W. Saad