

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEON T. GRADY,

Defendant-Appellant.

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UNPUBLISHED

December 1, 1998

No. 202996

Oakland Circuit Court

LC No. 93-127951 FC

Before: Sawyer, P.J., and Wahls and Hoekstra, JJ.

MEMORANDUM.

Defendant appeals by right his conviction for third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was originally charged with two counts of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2). Complainant, defendant's former girlfriend, testified that defendant possessed what she believed to be a gun, that he used physical force to accomplish penetration, and that he inflicted injury by striking her. The court found that while defendant did not use a weapon or inflict injury on complainant, he used force consistent with that necessary for criminal sexual conduct in the third degree. The court convicted defendant of one count of that offense and sentenced him to three to fifteen years in prison.

On appeal, defendant takes issue only with the sentence entered by the lower court. Appellate review is limited to whether the sentencing court abused its discretion. *People v Milbourn*, 435 Mich 630, 635-636, 654; 461 NW2d 1 (1990). A sentencing court abuses its discretion when it violates the principle of proportionality. *Id.* at 636. A sentence must be proportionate "to the seriousness of the circumstances surrounding the offense and the offender." *Id.* Here, the minimum term of defendant's sentence was within the guidelines as calculated either by the court or by defendant. A sentence that falls within the guidelines is presumed to be proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). The factors cited by defendant, i.e., his minimal record, his age, his work history and family support, etc., do not overcome that presumption. *People v Daniel*, 207 Mich App

47, 54; 523 NW2d 830 (1994). Defendant's further assertion that the guidelines were improperly scored cannot be a basis for

relief. See *People v Mitchell*, 454 Mich 145, 177-178; 560 NW2d 600 (1997) (“application of the guidelines states a cognizable claim on appeal only where (1) a factual predicate is wholly unsupported, (2) a factual predicate is materially false, and (3) the sentence is disproportionate”).

Affirmed.

/s/ David H. Sawyer

/s/ Myron H. Wahls

/s/ Joel P. Hoekstra