

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE W. PARRISH,

Defendant-Appellant.

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UNPUBLISHED

January 7, 2000

No. 210562

Oakland Circuit Court

LC No. 97-153232 FC

Before: Wilder, P.J., and Bandstra and Cavanagh, JJ.

PER CURIAM.

Defendant was convicted of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2). Defendant was sentenced, as a fourth habitual offender pursuant to MCL 769.12; MSA 28.1084, to eight to twenty-five years in prison for the first-degree criminal sexual conduct conviction. Defendant appeals as of right. We affirm.

Defendant's first argument on appeal is that there was insufficient evidence to support his conviction. We disagree. "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Defendant argues on appeal that the prosecution did not present sufficient evidence to prove that the victim was suffering "mental anguish," and therefore, there was insufficient evidence to prove that defendant committed first-degree criminal sexual conduct. In order to be convicted of first-degree criminal sexual conduct, the person accused of the criminal sexual conduct must have engaged in sexual penetration with another person, accompanied by one of seven aggravating circumstances. MCL 750.520b; MSA 28.788(2); *People v Petrella*, 424 Mich 221, 238-239; 380 NW2d 11 (1985). One such circumstance is where "[t]he actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration." MCL 750.520b(1)(f); MSA 28.788(2)(1)(f); *Petrella*, *supra* at 239. Personal injury includes "mental anguish." MCL 750.520a(j); MSA 28.788(1)(j);

*Petrella, supra*. Mental anguish is defined as “extreme or excruciating pain, distress, or suffering of the mind.” *Petrella, supra* at 271.

In *Petrella, supra* at 272, the Court held that there was sufficient evidence of mental anguish where the victim was crying, hysterical, frightened, and experienced lack of sleep after the incident. *Id.* Furthermore, the victim was absent from her workplace and never stayed another night in the apartment where the rape took place. *Id.* In comparison, the Court in *People v Simpson*, the companion case to *Petrella*, held that insufficient evidence of mental anguish was presented where the victim was crying after the rape, but went back to her apartment, took a couple of aspirins, and went to bed. *Petrella, supra* at 272-274. The victim testified that she did not report it to the police because she “just never really gave it too much thought.” *Id.* at 272.

In the instant case, there is ample evidence that the victim suffered mental anguish. Both the victim and Angela testified that, immediately after the incident, the victim was screaming and hysterical. The victim and Angela also testified that the victim tried to call 911 before she left the house, but defendant would not let her. The victim testified that she drove herself to the hospital after she left the house. Dr. Hakem testified that the victim was visibly upset, very distraught, very tearful, and crying throughout the examination. Officer Wilson also testified that the victim was very upset and crying when she met the victim at the hospital.

According to the victim, she suffered long-term effects from the incident. As a result of the incident, she has trouble sleeping because she thinks someone is always standing behind her. She has gained a lot of weight since the incident, and she feels ashamed. She is terrified of getting AIDS. Because the victim was visibly upset and hysterical, and because there was evidence that she suffered long-term effects from the incident, the prosecution presented sufficient evidence of mental anguish to convict defendant of first-degree criminal sexual conduct.

Defendant’s second argument on appeal is that he was denied effective assistance of counsel. We disagree. To establish ineffective assistance of counsel, a defendant must show (1) that counsel’s performance was below an objective standard of reasonableness under prevailing professional norms, (2) that there is a reasonable probability that, but for counsel’s error, the result of the proceeding would have been different, and (3) that the result of the proceeding was fundamentally unfair or unreliable. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994); *People v Poole*, 218 Mich App 702, 717-718; 555 NW2d 485 (1996). “This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel’s competence with the benefit of hindsight.” *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999).

Defendant argues that trial counsel failed to object when the prosecutor asked leading questions on direct examination. According to defendant, the prosecutor was able to elicit damaging testimony through the use of leading questions. In order to succeed with an ineffective assistance of counsel claim, defendant has to overcome the presumption that the failure to object was not sound trial strategy. *Stanaway, supra* at 687. Without the benefit of an evidentiary hearing, it is impossible to determine whether counsel deliberately failed to object to the prosecutor’s questioning. However, in any event, defendant has not shown that there was a reasonable probability that, but for counsel’s error, the result

of the proceeding would have been different and that the result was unreliable or fundamentally unfair. *Poole, supra*. Further, as pointed out by the prosecutor, even if counsel had objected to the form of the question asked by the prosecutor, the prosecutor could have simply rephrased the question to elicit the same testimony. Moreover, there was ample evidence that defendant penetrated the victim without her consent.

Next, defendant argues that trial counsel failed to object when the prosecutor read preliminary examination testimony. However, the prosecutor read preliminary examination testimony only after defense counsel tried to impeach the victim using inconsistent preliminary examination testimony regarding whether she was asleep when defendant penetrated her. Under MRE 106, the prosecutor could introduce sections or the victim's entire testimony from the preliminary examination because defendant used sections of it to impeach the victim's trial testimony. Therefore, counsel's failure to object did not qualify as unreasonable under prevailing professional norms. *Stanaway, supra*.

Finally, defendant argues that counsel improperly failed to object to the reading of a police report. Defendant claims that Officer Wilson read extensively from her notes with no foundation for doing so. However, there is no evidence in the record to suggest that Officer Wilson read from her notes while testifying. No mention was made regarding Officer Wilson's reliance on her notes. Therefore, counsel's failure to object cannot be considered improper given that this Court has no evidence that Officer Wilson read from her notes.

Defendant's final argument on appeal is that his sentence violated the principle of proportionality. We disagree. This Court reviews a trial court's imposition of sentence for an abuse of discretion. *People v Houston*, 448 Mich 312, 319; 532 NW2d 508 (1995). A trial court abuses its discretion when it violates the principle of proportionality. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). This principle is violated when the sentence is not proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Id.*

Defendant was sentenced to eight to twenty-five years in prison as a fourth habitual offender. The sentencing guidelines do not apply to habitual offenders. *People v Gatewood*, 450 Mich 1025; 546 NW2d 252 (1996). Defendant argues on appeal that a long prison term would be harmful to him and would not give him a chance to be rehabilitated. However, given the nature and seriousness of the crime and defendant's past criminal history, defendant's sentence was proportionate. In this case, the victim was sleeping on her stomach when she awoke because defendant was on top of her with his penis in her vagina. Her pants and underwear were down to her knees. The victim testified that she thought it was her boyfriend, Scott. The victim said, "I love you, Scott." Defendant replied, "This ain't Scott, baby." The victim testified that she was terrified. She jumped up, pushed defendant off of her, and began screaming. According to the victim, defendant ejaculated in the victim's vagina before she could push him off of her. The victim was hysterical, screaming, shaking, and yelling at defendant. Defendant also tried to prevent the victim from calling the police. The victim testified that she suffered long-term effects from the incident such as weight gain, loss of sleep, and shame. Furthermore, at the time of the offense, defendant had absconded from bond on a felony charge. Defendant's criminal history consisted of three felony and four misdemeanor convictions. Given the seriousness of the crime and defendant's background, defendant's sentence was proportionate.

We affirm.

/s/ Kurtis T. Wilder  
/s/ Richard A. Bandstra  
/s/ Mark J. Cavanagh