

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
February 20, 2014

v

JULIUS DSEAN WILLIAMS,
Defendant-Appellant.

No. 312398
Wayne Circuit Court
LC No. 06-013003-FC

Before: O'CONNELL, P.J., and WILDER and METER, JJ.

PER CURIAM.

Defendant appeals by right his sentence arising from jury-based convictions on two counts of third-degree criminal sexual conduct, MCL 750.520d(1)(a) (sexual intercourse and digital penetration with 13 to 15-year-old victim). The trial court sentenced defendant to concurrent terms of 10 to 15 years in prison. We affirm.

Defendant's convictions arose out of his penile and digital penetration of a girl while he was visiting her family's household. On appeal, defendant claims that his sentencing counsel was ineffective for acknowledging that offense variable (OV) 4 should be scored 10 points rather than zero. We disagree.

We review defendant's claim of ineffective assistance of counsel as a mixed question of law and fact. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). To prevail, defendant must show that counsel's performance was defective and that the deficient performance was prejudicial. *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Lloyd*, 459 Mich 433, 446; 590 NW2d 738 (1999). To show prejudice, the defendant must show that but for counsel's error, there is a reasonable likelihood that the result would have been different. *People v Shively*, 230 Mich App 626, 628, 584 NW2d 740 (1998). Defendant must show that the result that occurred was fundamentally unfair or unreliable. *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007).

In this case, defendant has not established that sentencing counsel was ineffective. First, the sentencing transcript demonstrates that defense counsel was not advocating for a higher score on OV 10, but was merely stating for the record the scoring changes that the parties had discussed. As defense counsel pointed out at sentencing, the scoring changes did not alter the guidelines range listed on the sentencing information report.

Second, the record supported the 10 point score on OV 4 for psychological injury to the victim. A sentencing court must assess 10 points if a victim incurred “[s]erious psychological injury requiring professional treatment” or if a victim incurred serious psychological injury that “may require professional treatment.” MCL 777.34(1)(a), (2). The record in this case supported a finding of serious psychological injury. The victim testified that the offenses made her feel dirty and ashamed, rendered her unable to trust men, and made it difficult to trust anyone. The victim’s older sister and their mother testified that the experience had changed the victim and affected their family. The evidence was thus sufficient to assess 10 points against defendant under OV 10.¹

Given that the record amply supported the 10-point assessment on OV 4, defense counsel cannot be deemed ineffective for acknowledging the assessment. Defense counsel is not required to advocate a meritless position. *People v Eisen*, 296 Mich App 326, 329; 820 NW2d 229 (2012).

Affirmed.

/s/ Peter D. O’Connell
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter

¹ “[T]he exercise of judicial discretion guided by the sentencing guidelines scored through judicial fact-finding does not violate due process or the Sixth Amendment’s right to a jury trial.” *People v Herron*, ___ Mich App ___; ___ NW2d ___; (Docket No. 309320; December 12, 2013) slip op p 6 (rejecting a challenge to Michigan’s sentencing scheme under *Alleyne v United States*, 570 US ___; 133 S Ct 2151; 186 L Ed 2d 314 (2013)).