

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN FREDERICK PLASS, II,

Defendant-Appellant.

UNPUBLISHED

February 28, 1997

No. 173929

Calhoun Circuit

LC No. 93-001243-FC

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant tendered a conditional plea of nolo contendere to first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), and was sentenced to fifteen to thirty years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant has not established a basis for vacating his plea due to any of the trial court's pre-plea rulings. The trial court properly denied the motion to quash because defendant could lawfully be convicted of first-degree criminal sexual conduct under the facts of this case, notwithstanding the children's ages. *People v Hack*, 219 Mich App 299; ___ NW2d ___ (1996), lv pending. Further, the trial court did not abuse its discretion in denying the motion to suppress evidence because an adequate foundation for introducing the videotape was established under MRE 901. Defendant did not show any other evidentiary bar to this evidence. *People v Jenkins*, 450 Mich 249, 259-260; 537 NW2d 828 (1995); *Hack, supra*.

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

Nor has defendant established a basis for resentencing. There was evidence to support the trial court's scoring of fifteen points for Offense Variable 5. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993); *Hack, supra*. Because any error in scoring Offense Variable 2 and Offense Variable 13 would not affect the recommended guidelines' range, it is not necessary to decide whether these two variables were correctly scored. *Hack, supra*; *People v Johnson*, 202 Mich App 281, 290; 508 NW2d 509 (1993).

Further, our review of the record reveals that the trial court complied with its duty to consider the criteria in MCL 769.1(3); MSA 28.1072(3) and MCR 6.931(E)(3), giving each weight as appropriate to the circumstances. The trial court's findings were not clearly erroneous, and its ultimate decision to sentence defendant as an adult was not an abuse of discretion. *People v Lyons (On Remand)*, 203 Mich App 465, 468-469; 513 NW2d 170 (1994); *People v Passeno*, 195 Mich App 91, 103-104; 489 NW2d 152 (1992).

Affirmed.

/s/ Daniel F. Walsh
/s/ Robert P. Griffin
/s/ Walter P. Cynar