

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS GEORGE ADDINGTON,

Defendant-Appellant.

UNPUBLISHED

March 25, 1997

No. 188601

Osceola Circuit Court

LC No. 95-002232-FH

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

MEMORANDUM.

Defendant pleaded nolo contendere to attempted kidnapping, MCL 750.349; MSA 28.581, and MCL 750.92; MSA 28.287, and was sentenced to thirty-five to sixty months' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant argues that the trial court abused its discretion in scoring five points for Offense Variable 7 (offender exploitation of victim vulnerability). *People v Harris*, 190 Mich App 652; 476 NW2d 767 (1991). Defendant was five feet, nine inches tall and weighed two hundred ten pounds. He was accompanied by his nineteen-year-old son when they abducted the five foot two, one hundred ten pound victim. The facts demonstrate that, on two other occasions where defendant attempted to grab the victim, she was freed only through the intervention of others. As a result, defendant knew of her vulnerability and chose on this occasion to overpower her when only her three-year-old son was present. The trial court did not abuse its discretion.

*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.

Defendant's argument that his sentence is disproportionate is not preserved for appeal. *People v Ward*, 206 Mich App 38; 520 NW2d 363 (1994).

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar