

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY LEE CADY,

Defendant-Appellant.

UNPUBLISHED

April 1, 1997

No. 186665

Branch Circuit Court

LC No. 93-125689-FH

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

MEMORANDUM.

Defendant pleaded guilty of assault with intent to commit criminal sexual conduct involving penetration, MCL 750.520g(1); MSA 28.788(7)(1), and was ultimately sentenced to 3-1/3 to 10 years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

The trial court did not abuse its discretion in scoring fifty points for Offense Variable 12. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993); *People v Daniels*, 192 Mich App 658, 674; 482 NW2d 176 (1992). Defendant waived his objection to the scoring of OV 12 at the time of sentencing in exchange for the prosecution's agreement not to address the court at sentencing. As such, defendant may not claim error from the scoring of that variable. *People v Piotrowski*, 211 Mich App 527, 530; 536 NW2d 293 (1995). Moreover, the trial court was permitted to take into consideration other incidents of sexual penetration between defendant and the victim so long as the acts occurred in a continuous time sequence and displayed a single intent or goal. *People v Raby*, 218 Mich App 78; 554 NW2d 25 (1996). The facts of this case showed that defendant engaged in sexual intercourse on six to eight separate occasions from December 1992 to April 1993 when the victim was

*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.

at his home to clean. Thus, the facts showed a continuous time sequence and a single intent or goal. Furthermore, there was uncontroverted evidence in the presentence investigation report that defendant engaged in two separate acts of penetration in one incident with the victim. The victim told police that she had oral sex with defendant and that he digitally penetrated her vagina at the same time. Thus, based upon two separate penetrations occurring on one occasion, OV 12 was properly scored at fifty points. *People v Armstrong*, 212 Mich App 121, 131; 536 NW2d 789 (1995).

Next, the trial court also did not abuse its discretion in scoring fifteen points for OV 7. *Hernandez, supra*, 443 Mich 16; *Daniels, supra*, 192 Mich App 674. There was evidence that defendant exploited the victim's age and abused his position of authority to commit this crime. *Armstrong, supra*, 212 Mich App 131.

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar