

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BENJAMIN CAULTON,

Defendant-Appellant.

UNPUBLISHED

April 18, 1997

No. 190971

Recorder's Court

LC No. 94-009158 FC

Before: Wahls, P.J., and Gage and W.J. Nykamp,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of first-degree criminal sexual conduct. MCL 750.520b(1)(f); MSA 28.788(2)(1)(f). Defendant was sentenced to a term of twenty to sixty years in prison. We affirm.

Defendant first argues that the trial court's verdict was against the great weight of the evidence. We disagree. Upon reviewing the whole body of proofs presented at trial, including the injuries inflicted to the complainant's face, the blood stains found on her clothing, the medical treatment which she sought and received, as well as both the complainant's and defendant's testimony, we conclude that defendant's conviction was not manifestly against the great weight of the evidence. See *People v Herbert*, 444 Mich 466, 475-476; 511 NW2d 654 (1993).

Defendant next argues that the trial court erred in scoring the sentencing guidelines. We disagree. Application of the guidelines states a cognizable claim on appeal only where: (1) a factual predicate is wholly unsupported; (2) a factual predicate is materially false; or (3) the sentence is disproportionate. *People v Mitchell*, ___ Mich ___, ___ NW2d ___ (Docket Nos. 98984, 98985, issued 3/25/97) slip op pp 33-34.¹

Here, defendant's argument that OV 12 should have been scored at twenty-five points is moot since that was the trial court's scoring. In addition, the evidence presented at trial showed that

* Circuit judge, sitting on the Court of Appeals by assignment.

defendant struck the complainant's eye, lip and face, and that her finger, ankle, mouth and chest also sustained injury. Also, after defendant committed the first act of forceful penetration, he carried the victim away to a second location and again forcefully penetrated the victim. Finally, the complainant stated that she believed herself to be in need of psychological treatment. Accordingly, the factual predicates for the trial court's scoring of offense variables 2, 5, and 13 were neither wholly unsupported nor materially false. *Id.*

Defendant argues that his sentence violates the principal of proportionality. We disagree. Defendant's sentence was within the sentencing guidelines range and is presumptively proportionate. *People v Dukes*, 189 Mich App 262, 266; 471 NW2d 651 (1991). In light of the severity of the crime of first-degree criminal sexual conduct, defendant's extensive criminal history, the great physical, psychological and financial impact upon the complainant, as well as defendant's refusal to accept responsibility for the commission of this crime, we find that defendant's sentence reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995).

Finally, defendant raises a number of issues alleging the ineffectiveness of trial counsel. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient, falling below an objective standard of reasonableness under prevailing professional norms, and that the representation so prejudiced him as to deny him a fair trial. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). Defendant must overcome the presumption that the challenged acts of his counsel were sound trial strategy. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). Our review is limited to errors which are apparent on the record. *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994).

Defendant argues that his trial counsel failed to render effective assistance by omitting to present the victim's medical records to the trial court. We disagree. The medical records were ultimately presented by the prosecution and admitted into evidence. In addition, the records corroborated the victim's trial testimony. Defendant has not shown that his counsel's action deprived him of a substantial defense that would have affected the outcome of the proceeding. *Daniel, supra*, p 58.

Defendant argues that his trial counsel erred by failing to call the victim's examining physician as a witness at trial. We disagree. The lower court record is devoid of any indication that the physician's testimony, if presented, would have differed from the evidence contained in the medical records. Therefore, defendant has failed to overcome the presumption of sound trial strategy. *Id.*

Defendant further argues that his trial counsel erred by permitting him to waive his right to a jury trial. We disagree. Defendant executed a written waiver of his right to a jury trial acknowledging his constitutional right to trial by jury and his voluntary relinquishment of that right. At trial, defendant stated that he understood the effect of his voluntary relinquishment of the right to a jury trial and that he had discussed the right with his counsel. Because defendant proceeded to waive the right, he has failed to overcome the presumption of sound trial strategy. *Id.*

Lastly, defendant argues that his trial counsel erred by failing to contest the manner in which defendant was arrested. We disagree. Contrary to defendant's contention, defendant was arrested pursuant to a felony arrest warrant. In executing an arrest warrant, a law enforcement officer is not bound to the county in which it is issued, but may execute a warrant in any part of the state. MCL 264.2; MSA 28.861; MCL 767.31; MSA 28.971; *People v Rowe*, 95 Mich App 204, 208; 289 NW2d 915 (1980). Therefore, defendant has failed to overcome the presumption of sound trial strategy. *Daniel, supra*, p 58.

Affirmed.

/s/ Myron H. Wahls

/s/ Hilda R. Gage

/s/ Wesley J. Nykamp

1 Decisions rendered by less than four justices who nevertheless constitute a majority of a legally constituted quorum of the Michigan Supreme Court are binding on this Court. *Negri v Slotkin*, 397 Mich 105, 106; 244 NW2d 98 (1976).