

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GORDON BYRON SOULLIERE,

Defendant-Appellant.

UNPUBLISHED

September 19, 1997

No. 194298

Kalkaska Circuit Court

LC No. 89-000940 FC

Before: O’Connell, P.J., and White and C. F. Youngblood*, JJ.

MEMORANDUM.

On this appeal of right, after second remand, defendant challenges only the propriety of the twenty- to thirty-year sentence imposed with respect to his conviction of first-degree criminal sexual conduct. MCL 750.520b; MSA 28.788(2). This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the trial court, despite having conducted a sentencing hearing to determine the accuracy of allegations of uncharged offenses referenced in the presentence report, considered inaccurate information when imposing sentence. The ostensible inaccuracies concern the number of prior occasions on which defendant molested one of his daughters, whether defendant’s act of intercourse with an adult female against her will was “rape” or merely, as defendant puts it, “miscommunication” between consenting adults, and whether an offense involving an unrelated minor female was sexual in nature. This Court’s review establishes that any discrepancy between the proofs adduced at the sentencing hearing on second remand and findings of fact thereby supported by a preponderance of the evidence on the one hand, and the trial court’s findings of fact on the other, are insufficient as a basis for appellate relief. On this record, these are distinctions without a difference and do not rise to the level of an extensively and materially false foundation necessary for appellate relief based on inaccurate information at sentencing. *People v Mitchell*, 454 Mich 145, 173; ___ NW2d ___ (1997).

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

As to the proportionality of defendant's sentence, the fact that it represents a departure from the guideline range is only one factor to be considered. The key test of proportionality is whether the sentence reflects the seriousness of the matter, whether or not it departs from or adheres to the recommended guideline range. *People v Granderson*, 212 Mich App 673; 538 NW2d 471 (1995). In *People v Lemons*, 454 Mich 234, 260; ___ NW2d ___ (1997), the Supreme Court upheld a combination of a life sentence and sixty- to ninety-year sentence for a series of sexual predations against the defendant's child and stepchild. Here, defendant has likewise been shown to have sexually abused his children and perhaps others over a period of years. The record fails to suggest that the twenty- to thirty-year sentence imposed on defendant does not properly reflect the seriousness of his offense.

Affirmed.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Carole F. Youngblood