

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES E. KLIBER,

Defendant-Appellant.

UNPUBLISHED

September 18, 1998

No. 201502

Houghton Circuit Court

LC No. 96-001431 FC

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES E. KLIBER,

Defendant-Appellant.

UNPUBLISHED

No. 201804

Keweenaw Circuit Court

LC No. 96-000063 FC

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Before: Hood, P.J., and Griffin and O'Connell, JJ.

MEMORANDUM.

In these consolidated appeals, defendant appeals by leave granted from his plea-based convictions of two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(b); MSA 28.788(2)(1)(b), and his concurrent sentences of twenty to forty years' imprisonment. We affirm. These cases are being decided without oral argument pursuant to MCR 7.214(E).

Defendant seeks resentencing in these cases on the ground that the trial court erroneously scored Offense Variable 12 by scoring the variable consistent with a retroactive application of *People v Raby*, 218 Mich App 78; 554 NW2d 25 (1996), aff'd 456 Mich 487; 572 NW2d 644 (1998). Defendant's challenge does not state a cognizable claim for relief because the challenge is directed at an alleged misinterpretation of how to score the variable. *People v Mitchell*, 454 Mich 145, 176-177;

560 NW2d 600 (1997). Additionally, to the extent that defendant asserts that OV 12 was scored in violation of the terms of the plea agreement, defendant's claim lacks record support, there being no mention of OV 12 in the terms of the agreement as placed on the record.

Defendant's remaining issue is moot. *Raby, supra*, 456 Mich 487.

Affirmed.

/s/ Harold Hood

/s/ Richard Allen Griffin

/s/ Peter D. O'Connell