

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLARENCE RAY SHIVLIE,

Defendant-Appellant.

UNPUBLISHED

May 7, 1999

No. 201899

Muskegon Circuit Court

LC No. 96-139298 FC

Before: Gage, P.J., and Gribbs and Hoekstra, JJ.

MEMORANDUM.

Defendant appeals by right his plea based conviction for third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4). We affirm.

On appeal, defendant asserts that the trial court erroneously scored OV 12 at fifty points based on multiple criminal sexual penetrations in the same transaction. This identical issue was raised in *People v Raby*, 456 Mich 487, 496; 572 NW2d 644 (1998). The Supreme Court held that a challenge to such a guidelines scoring issue did not present grounds for resentencing because the guidelines do not have the force of law. *People v Mitchell*, 454 Mich 145, 147-148; 560 NW2d 600 (1997). A putative error in the scoring of the sentencing guidelines is not a basis upon which an appellate court can grant relief. *Raby, supra*, 499.

Affirmed.

/s/ Hilda R. Gage

/s/ Roman S. Gribbs

/s/ Joel P. Hoekstra