

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BENJAMIN ROBERT RAY,

Defendant-Appellant.

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UNPUBLISHED

May 18, 1999

No. 205974

Berrien Circuit Court

LC No. 96-000802 FC

Before: Kelly, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to first-degree criminal sexual conduct, MCL 750.520b(1)(f); MSA 28.788(2)(1)(f), and assault with intent to commit murder, MCL 750.83; MSA 28.278, and was sentenced to 240 to 480 months' and 160 to 240 months' imprisonment, respectively. Defendant appeals by leave. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

First, defendant contends that the trial court abused its discretion in denying his motion to withdraw his plea due to ineffective assistance of counsel. We disagree. The trial court did not abuse its discretion when it denied defendant's motion to withdraw his pleas. *People v Eloby (After Remand)*, 215 Mich App 472, 474-475; 547 NW2d 48 (1996). Our review of the record convinces us that defense counsel's advice was within the range of competence demanded of attorneys in criminal cases given the particular difficulties of this case and, therefore, that defendant's pleas were voluntarily and understandably tendered. *People v Pickens*, 446 Mich 298, 330; 521 NW2d 797 (1994); *People v Effinger*, 212 Mich App 67, 69-71; 536 NW2d 809 (1995).

Second, defendant contends that the trial court committed clear error in determining to sentence defendant as an adult. We disagree. Our review of the record ~~further~~ convinces us that defendant received the sentencing hearing to which he was entitled and that the trial court properly admitted the various reports it relied on to make a determination as to whether defendant should be sentenced as an adult. MCR 6.931(E); MCL 769.1(3); MSA 28.1072(3). Moreover, the trial court's findings of fact upon which it predicated its decision to sentence defendant as an adult are not clearly erroneous. *People v Dilling*, 222 Mich App 44, 52; 564 NW2d 56 (1997). The trial court did not abuse its

discretion when it decided to sentence defendant as an adult. *Id.*, 52-53. Finally, defendant contends that the trial court abused its discretion in sentencing defendant. We disagree. Defendant has failed to overcome the presumption that a sentence within the guidelines range is proportionate to the offense and the offender, particularly given the heinous nature of the crime and the danger defendant poses to society. *People v Eberhardt*, 205 Mich App 587, 591; 518 NW2d 511 (1994).

Affirmed.

/s/ Michael J. Kelly

/s/ Janet T. Neff

/s/ Michael R. Smolenski