

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BENNIE RAY MCDANIEL,

Defendant-Appellant.

UNPUBLISHED

May 21, 1999

No. 208012

Ingham Circuit Court

LC No. 97-072418 FH

Before: Griffin, P.J., and Cavanagh and Fitzgerald, JJ.

MEMORANDUM.

Defendant appeals by right his guilty plea based conviction for two counts of third-degree criminal sexual conduct, MCL 750.520d(1); MSA 28.788(4)(1). We affirm.

On appeal, defendant asserts that the factual basis was insufficient to support his plea and that the trial court abused its discretion in denying defendant's motion to withdraw the plea after sentencing. We disagree.

In reviewing the adequacy of the factual basis for a plea, this Court will examine whether the factfinder could properly convict on the facts elicited from the defendant at the plea proceeding. *People v Hogan*, 225 Mich App 431, 433; 571 NW2d 737 (1997). While defendant was originally charged under subsection (b) of the statute alleging force or coercion, at the plea proceedings the parties agreed to amend the charge to subsection (c), that defendant knew the victim was mentally incapable or mentally incapacitated. Defendant testified that he engaged in sexual penetration of the victim and that he knew she was mentally defective or mentally incapacitated. The factual basis was sufficient to support the plea and the trial court did not abuse its discretion in denying defendant's motion to withdraw his plea. *People v Haynes (After Remand)*, 221 Mich App 551, 558; 562 NW2d 241 (1997).

Affirmed.

/s/ Richard Allen Griffin
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald