

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLARENCE WILLIAM BRADDOCK,

Defendant-Appellant.

UNPUBLISHED

May 25, 1999

No. 209009

Ottawa Circuit Court

LC No. 96-020002 FC

Before: Gage, P.J., and White and Markey, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted on two counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a); MSA 28.788(2)(1)(a) (victim under thirteen years of age). The trial court sentenced defendant to concurrent terms of six to twelve years' imprisonment for each conviction. Defendant appeals as of right. This case arises from an incident at defendant's apartment in which defendant performed fellatio on his twelve-year-old great-grandson and his great-grandson's ten-year-old friend. We affirm.

Defendant first contends that the prosecutor improperly elicited unfairly prejudicial evidence of other sexual acts defendant engaged in with his great-grandson. Defendant did not object to this evidence at trial; therefore, this issue is unpreserved. *People v Dunham*, 220 Mich App 268, 273; 559 NW2d 360 (1996). Furthermore, defendant has failed to establish the prejudice necessary to avoid forfeiture of this unpreserved issue. *Id.* In this case, uncontroverted testimony from three witnesses established that defendant committed the acts of criminal sexual conduct charged. This testimony included admissions made by defendant to the investigating officer. We also note that defendant was convicted following a bench trial. Unlike a jury, a judge possesses an understanding of the law which allows him to ignore errors and to decide the case solely on properly admitted evidence. *People v Jones*, 168 Mich App 191, 194; 423 NW2d 614 (1988). We therefore conclude that even if we were to determine that the prior acts evidence was inadmissible, any alleged error would be harmless under the circumstances of this case.

Second, defendant claims that the trial court did not sufficiently explain its findings of fact and conclusions of law. In actions tried without a jury, a trial court must find the facts and state separately

its conclusions of law on contested matters. MCR 2.517(A)(1), MCR 6.403; *People v Feldmann*, 181 Mich App 523, 534; 449 NW2d 692 (1989). Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). After the brief trial during which three witnesses testified, the trial court found as follows:

The Court finds that in the early morning hours of June 22 of 1996, in the City of Coopersville, the defendant . . . engaged in sexual conduct with [his great-grandson], who at that time was age 12, and with [his great-grandson's friend], who was at that time age 10. The sexual conduct included placing [his great-grandson's] penis in the defendant's mouth and [the friend's] penis in the defendant's mouth, that is, did include penetration.

The Court, therefore, finds the defendant guilty of [CSC I]

Although the court's findings were brief, they were sufficient. MCR 2.517(A)(2) ("Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without over elaboration of detail or particularization of facts."); *People v Lewis*, 168 Mich App 255, 268; 423 NW2d 637 (1988). The court made findings with respect to the required elements of CSC I. MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). Thus, it is clear that the trial court was aware of the relevant issues and correctly applied the law, and a remand for additional findings is not required. *Lewis, supra* at 268-269. Although defendant additionally argues that the trial court improperly failed to explain its resolution of credibility issues, where, as in the instant case, it is obvious from the result reached which testimony the court chose to credit, the trial court need not review in detail the witnesses' testimony and specify whose testimony and which portions thereof the court found most credible. *People v Darden*, 132 Mich App 154, 164; 346 NW2d 915 (1984).¹

Third, defendant argues that he was denied the effective assistance of counsel. Defendant did not advance this claim before the trial court. Failure to move for a new trial or an evidentiary hearing on this basis before the trial court forecloses appellate review unless the record contains sufficient detail to support defendant's claims, and, if so, review is limited to the record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995). To find that a defendant's right to effective assistance of counsel was so undermined that it justifies reversal of an otherwise valid conviction, a defendant must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

Defendant's primary claim of ineffective assistance is that defense counsel failed to interview certain witnesses or otherwise investigate any type of defense. Contrary to defendant's claim, however, the record reveals that defense counsel pursued the intended defense that the victims were not credible by cross-examining the prosecution witnesses to highlight conflicts in the victims' stories. Regarding defendant's contention that defense counsel failed to pursue the great-grandson's motivation to fabricate allegations against defendant, specifically that the great-grandson's mother sought to obtain defendant's money and vehicle and thus urged her son to create a story of sexual abuse involving defendant, defense

counsel did inquire of the great-grandson whether his mother had spoken of acquiring defendant's vehicle and money or had told him what to allege against defendant. Although defense counsel did not pursue this line of questioning at length, in light of the uncontradicted testimony of all three trial witnesses indicating that defendant had committed the charged crimes, some of which testimony included defendant's own admissions, we conclude that defendant was not deprived of a substantial defense. *People v Hyland*, 212 Mich App 701, 710; 538 NW2d 465 (1995) (alleged failure to present evidence constitutes ineffective assistance only where defendant is deprived of a substantial defense), modified on other grounds 453 Mich 902 (1996).

Defendant's claim that defense counsel failed to call witnesses who could substantiate an intoxication defense is likewise without merit. We note that a defense of voluntary intoxication would have been irrelevant because CSC I is not a specific intent crime.² *People v Langworthy*, 416 Mich 630, 636-638, 642-645, 653; 331 NW2d 171 (1982). Because the failure to call witnesses can constitute ineffective assistance of counsel only when it deprives the defendant of a substantial defense, *Hyland, supra*, we conclude that defendant's claim of ineffective assistance must fail.

Defendant also suggests that he could not hear the trial proceedings, he suffered from other age-related disabilities, he consequently could not assist in his defense, and that defense counsel was therefore ineffective in failing to request a mental competency examination. Defendant does not contend that he communicated these impairments to counsel, but instead states that they were "painfully obvious." Because the record contains no indication that defendant lacked mental competency, however, we cannot conclude that defense counsel was ineffective in this respect.³

Fourth, defendant contends that the prosecutor knowingly presented false and prejudicial testimony. Defendant did not object at trial to any allegedly improper conduct by the prosecutor. Therefore, review is foreclosed unless no curative instruction could have removed any undue prejudice to defendant or manifest injustice would result from failure to review the alleged misconduct. *People v Reid*, 233 Mich App 457, 466; ___ NW2d ___ (1999). Defendant now suggests that "the prosecutor *knew without any doubt at all that the testimony* given by this witness *was not true*," and that the prosecutor "*committed misconduct* in numerous ways and manners" (emphasis in original), but fails to identify the witness to whom his argument refers or to any specific testimony. Presumably, defendant refers to the prosecutor's elicitation from the great-grandson that, on one occasion prior to the date of the crimes charged, defendant placed his penis in the great-grandson's mouth, to which defendant refers in his pro se appellate brief's statement of facts. Although the great-grandson's testimony to this effect at trial was inconsistent with his testimony at the preliminary examination, the record does not reflect that the prosecutor had any knowledge that the great-grandson's trial testimony was untrue. *People v Parker*, 230 Mich App 677, 690; 584 NW2d 753 (1998). In light of defendant's failure to object at trial and the fact that defense counsel had the opportunity to question the great-grandson with respect to the discrepancies between his trial testimony and prior statements, *id.*, we conclude that our failure to further review this issue will not result in manifest injustice. *Reid, supra*.

Lastly, defendant maintains that his six- to twelve-year sentence constitutes cruel and unusual punishment because the term imposed effectively represents a death sentence, given defendant's age of eighty-one years and resulting health problems. Defendant has waived our review of this issue by failing

to provide a copy of his presentence investigation report. MCR 7.212(C)(7), *People v Rodriguez*, 212 Mich App 351, 355; 538 NW2d 42 (1995). Moreover, defendant's argument lacks merit. The Supreme Court has explained that no requirement exists that a trial judge tailor every defendant's sentence in relationship to the defendant's age. *People v Lemons*, 454 Mich 234, 258; 562 NW2d 447 (1997). The sentence is lawful as long as it meets the requirements of proportionality under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). *Lemons*, *supra*. The principle of proportionality requires that sentences imposed by the trial court be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Milbourn*, *supra* at 636. While the trial court need not consider the defendant's age, the court may consider it in determining an appropriate sentence. *Lemons*, *supra* at 259. A review of the sentencing hearing transcript reveals that the trial court did consider defendant's age in imposing minimum terms below the recommended sentencing guidelines. Because defendant does not allege any additional unusual circumstances that would indicate further reduction of defendant's sentences below the recommended guidelines, *Milbourn*, *supra* at 661, our review of the available record reveals no abuse of discretion by the trial court in fashioning defendant's sentences. *Id.* at 635-636.

Affirmed.

/s/ Hilda R. Gage

/s/ Helene N. White

/s/ Jane E. Markey

¹ Although defendant further claims that the trial court in this case had a special responsibility to address the credibility of the two complaining witnesses because of their age and the charged offenses, he cites no authority for this contention. Argument must be supported by citation to appropriate authority or policy. *People v Sowders*, 164 Mich App 36, 49; 417 NW2d 78 (1987). Therefore, this argument is abandoned.

² In any event, the record shows that defense counsel did elicit before the trial court that defendant had been drinking and appeared drunk on the night in question.

³ Defendant further asserts that his trial violated the "American Disabilities Act," but again fails to provide any support for his contention. Therefore, we will not consider this claim. *Sowders*, note 1 *supra*.