

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DERRICK LEE STEWART,

Defendant-Appellant.

---

UNPUBLISHED

May 28, 1999

No. 203585

Berrien Circuit Court

LC No. 96-003708 FH

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

MEMORANDUM.

Defendant appeals of right his sentence of six to fifteen years for his plea-based conviction of criminal sexual conduct in the third degree, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). We affirm.

Defendant pleaded guilty in exchange for dismissal of other charges, including criminal sexual conduct in the first degree, MCL 750.520b; MSA 28.788(2), criminal sexual conduct in the second degree, MCL 750.520c; MSA 28.788(3), and habitual offender, second offense, MCL 769.10; MSA 28.1082. The victim was the five-year-old daughter of defendant's former girlfriend. The court sentenced defendant on this and an unrelated criminal sexual conduct conviction simultaneously. The court considered the cases separately, and in each case sentenced defendant to six to fifteen years in prison, with credit for 213 days. The minimum term was within the guidelines.

Defendant argues that his sentence is disproportionate and was not individualized. We disagree and affirm. Sentence length is reviewed pursuant to the principle of proportionality. A sentence must be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). Defendant's minimum term was within the guidelines, and thus is presumed to be proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). The court's acknowledgment of the guidelines and imposition of a sentence within the guidelines satisfies the requirement that the court articulate its reasons for imposing sentence. *People v Bailey (On Remand)*, 218 Mich App 645, 646-647; 554 NW2d 391 (1996). The factors cited by defendant, that is, his plea of guilty, his expression of remorse, his minimal prior record, and his family support, do not overcome

the presumption that his six-year minimum term is proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ E. Thomas Fitzgerald