

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT ALLEN SNYDER,

Defendant-Appellant.

---

UNPUBLISHED

May 28, 1999

No. 208450

Jackson Circuit Court

LC No. 97-079490 FH

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

PER CURIAM.

Defendant appeals of right from the sentence of five to fifteen years in prison imposed following his plea-based conviction of one count of criminal sexual conduct in the second degree, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded nolo contendere. The victim was his stepdaughter. The factual basis was provided via testimony from State Trooper Flohr. He stated that the victim told him that between 1990 and 1995, when she was between the ages of five and ten, defendant touched her vaginal area with his finger and foot, and penetrated her vagina with his finger. Flohr testified that defendant admitted touching the victim, but denied any penetration. The court accepted the plea. The court rejected defendant's objection to the scoring of twenty-five points on Offense Variable (OV) 12, criminal sexual penetrations, finding that the score was supported by the testimony of Trooper Flohr. The court sentenced defendant to five to fifteen years in prison, with credit for thirty-eight days. The sentence was within the guidelines as calculated by the court.

Defendant argues that he is entitled to resentencing because the trial court's misscoring of OV 12 resulted in the imposition of a disproportionate sentence, *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), and because the trial court failed to properly respond to his claim of inaccuracies in the presentence report. We affirm. Application of the guidelines presents a cognizable claim only if (1) a factual predicate is wholly unsupported; (2) a factual predicate is materially false; and (3) the sentence is disproportionate. *People v Mitchell*, 454 Mich 145, 177; 560 NW2d 600 (1997). If the sentence is proportionate, an error in the calculation of the guidelines provides no basis for relief. *People v*

*Raby*, 456 Mich 487, 496; 572 NW2d 644 (1998). 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). Even assuming arguendo that the guidelines scoring was erroneous, defendant is not entitled to relief because the minimum term is not disproportionate. Defendant victimized his young stepdaughter repeatedly. Defendant has not stated a cognizable issue for review. *Mitchell, supra*.

Finally, contrary to defendant's assertion, the trial court resolved the dispute over the claimed inaccuracy of certain information regarding alleged penetration in the presentence report by finding that Flohr's testimony, provided as the factual basis for a nolo contendere plea, supported a conclusion that the information was accurate. Defendant is entitled to no further relief. MCR 6.425(D)(3).

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ E. Thomas Fitzgerald