

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALLAN DEAN PLATO, a/k/a ALLEN DEAN
PLATO,

Defendant-Appellant.

UNPUBLISHED

June 22, 1999

No. 208970

Calhoun Circuit Court

LC No. 97-002587 FC

Before: Griffin, P.J., and Wilder and Danhof,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of first-degree criminal sexual conduct, MCL 750.520b(f)(i); MSA 28.788(2)(f)(i). The trial court sentenced defendant to eight to twenty years' imprisonment. Defendant now appeals as of right. We affirm.

The sole issue raised by defendant on appeal is the proportionality of his sentence. We review a criminal defendant's sentence for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 653; 461 NW2d 1 (1990). A trial court abuses its discretion when the sentence imposed violates the principle of proportionality. *Id.* at 636. The principle of proportionality requires that the sentence imposed be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Id.* A sentence that falls within the guidelines is presumptively proportionate. *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). A sentencing court must articulate on the record the criteria considered and the reasons supporting its decision regarding the length and nature of the sentence imposed. *People v Sandlin*, 179 Mich App 540, 542; 446 NW2d 301 (1989).

The record in this case shows that, prior to imposing sentence, the trial court properly considered the severity and nature of the crime as well as the individual circumstances surrounding this offense. The trial court noted that defendant committed a violent offense by forcing himself upon the victim and engaging in sexual relations with her against her will. In addition, although defendant did not have a prior criminal record and this was his first felony conviction, the trial court properly observed that

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

first-degree criminal sexual conduct is a serious offense and the absence of a criminal record “pales into [sic] significance when you look at the nature of the offense that is involved here.” Further, the additional factors cited by defendant, i.e., his employment history, minimum culpability, and lack of serious substance abuse, are not unusual circumstances that would overcome the presumption of proportionality. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Finally, the trial court remarked that an eight-year minimum sentence is within the guidelines and takes into account defendant’s potential for rehabilitation in conjunction with the need for punishment. On this record, we find that defendant failed to overcome the presumption that his sentence is proportionate. *Milbourn, supra*. Accordingly, the trial court did not abuse its discretion in sentencing defendant to eight to twenty years’ imprisonment for his first-degree criminal sexual conduct conviction.

Affirmed.

/s/ Richard Allen Griffin

/s/ Kurtis T. Wilder

/s/ Robert J. Danhof