STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED June 25, 1999
v	No. 215469 Kalamazoo Circuit Court
ANDREW WILLIAM SULLIVAN, Defendant-Appellee.	LC No. 98-000760 FH

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

PER CURIAM.

Plaintiff appeals by leave granted defendant's sentence of one to two years' imprisonment for his conviction on a plea of no contest to fourth-degree criminal sexual conduct (CSC), MCL 750.520e; MSA 28.788(5). We affirm.

In an earlier case, defendant was charged with three counts of CSC. He was subsequently charged in the instant case with one count of second-degree CSC, MCL 750.520c(1)(f); MSA 28.788(3)(1)(f), for a separate offense committed after the earlier crimes but before disposition of the charges resulting from them. In a joint plea pursuant to an agreement, defendant pleaded guilty to first-degree CSC in the first case in return for dismissal of the remaining counts, and no contest to fourth-degree CSC in the instant case. He was sentenced to concurrent prison terms of five to ten years for first-degree CSC and to one to two years for fourth-degree CSC. This Court denied plaintiff's application for leave to appeal defendant's sentence in the first case, but granted plaintiff's similar application in the case at bar. We therefore review only defendant's sentence for the fourth-degree CSC conviction.

Plaintiff claims that the trial court abused its discretion by sentencing defendant to concurrent rather than consecutive prison terms. We disagree. In circumstances like those existing here, MCL 768.7b; MSA 28.1030(2) grants the court discretion to impose either concurrent or consecutive sentences, and we review for an abuse of discretion the trial court's decision. *People v Ware*, 97 Mich

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

App 728, 731; 296 NW2d 164 (1980). There is "no requirement that the judge specifically recognize his discretion on the record." *People v Gjidoda*, 140 Mich App 294, 300; 364 NW2d 698 (1985).

At sentencing, the prosecutor explicitly recognized that the decision to impose consecutive or concurrent sentences was discretionary with the court. The court indicated its belief that the five-year minimum sentence for defendant's first offense effectively met the sentencing goals of punishment and deterrence, satisfied the concern of the danger to society posed by defendant, and was compatible with defendant's prospects for rehabilitation. The court also noted that the possibility of jail-time and probation instead of prison for defendant's first offense was dismissed in view of his second offense. Under these facts, the court did not abuse its discretion in imposing concurrent prison terms.

Next, plaintiff contends that defendant's sentence of one to two years' imprisonment is disproportionate, constituting an abuse of discretion. We disagree. Because fourth-degree criminal sexual conduct is a misdemeanor that carries a maximum sentence of two years' imprisonment, MCL 750.520e(2); MSA 28.788(5)(2), under the two-thirds rule of *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972), the longest minimum sentence the court could have imposed was sixteen months. We find no abuse of discretion regarding the sentence of one to two years. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder
/s/ Robert J. Danhof