

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY WAYNE BUSZEK,

Defendant-Appellant.

UNPUBLISHED

July 30, 1999

No. 208335

Iosco Circuit Court

LC No. 97-003489 FC

Before: Markey, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of third-degree criminal sexual conduct (CSC III), MCL 750.520d(1)(a); MSA 28.788(4)(1)(a). The trial court sentenced defendant to six to fifteen years' imprisonment. Defendant appeals as of right. We affirm.

Defendant argues the evidence was insufficient to support his conviction. We disagree. In determining whether sufficient evidence was presented to sustain a conviction, this Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

The elements of CSC III are set forth by statute. "A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if . . . [t]hat other person is at least 13 years of age and under 16 years of age." MCL 750.520d(1)(a); MSA 28.788(4)(1)(a). The definition of sexual penetration includes sexual intercourse. MCL 750.520a(1); MSA 28.788(1)(l). The victim testified that defendant had sexual intercourse with her on an almost everyday basis for approximately one year. She was fourteen years old when the incidents began and fifteen years old when she reported defendant's conduct and was removed from his home. The prosecutor also introduced evidence that defendant's DNA was present in stains from a blanket and sleeping bag taken from the victim's bed. This evidence proved every element of the offense of CSC III.

Defendant's claim that the evidence was insufficient is in essence based on a challenge to the credibility of the victim's testimony. Defendant claims the victim's past conduct demonstrated that her mental condition was questionable, and that contradictions between the victim's testimony and that of defendant's wife rendered the victim's testimony insufficiently credible to support defendant's conviction. However, this Court, in reviewing the sufficiency of the evidence at trial, must avoid interfering with the jury's role of weighing the evidence and determining the credibility of testimony. *Wolfe, supra* at 514-515. We do not determine which testimony to believe, and instead resolve all conflicts in favor of the prosecutor. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). "Credibility is a matter for the trier of fact to ascertain. We will not resolve it anew." *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990).

Defendant also challenges the proportionality of his sentence of six to fifteen years' imprisonment. This Court's review of a sentence "is limited to determining whether the sentencing court abused its discretion by violating the principle of proportionality." *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998). This principle requires sentences "to 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). Here, defendant's sentence was within the sentencing guidelines recommendation and is therefore presumptively proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Defendant argues that his lack of prior felony convictions, his strong employment history, and his lack of substance abuse merited a shorter sentence than that imposed. However, these are not unusual circumstances that would overcome the presumption of proportionality. *Id.* The trial court stated it was sentencing defendant to the maximum allowed under the guidelines because it found defendant's conduct reprehensible. We find no abuse of discretion.

Affirmed.

/s/ Jane E. Markey

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald