

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK HENRY MILES,

Defendant-Appellant.

UNPUBLISHED

December 7, 1999

No. 215680

Muskegon Circuit Court

LC No. 98-041504 FC

Before: Jansen, P.J., and Hoekstra and J. R. Cooper*, JJ.

MEMORANDUM.

Defendant appeals as of right from his sentence of eighteen to thirty-five years in prison for his plea-based conviction of criminal sexual conduct in the first degree (CSC I), MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). We affirm.

The instant offense occurred in 1991, when the victim was eleven years of age. Prosecution was delayed because defendant left the state. After defendant was arrested, a forensic evaluation revealed that he was not mentally ill, but was mildly mentally retarded.

Defendant pleaded nolo contendere to one count of CSC I in exchange for dismissal of a second count. The factual basis was provided by reference to the police report, a polygraph waiver report, and a handwritten statement. The trial court accepted the plea.

The trial court sentenced defendant to eighteen to thirty-five years in prison, with credit for 288 days. The minimum sentence was within the guidelines. In imposing sentence, the court noted that one factor that it had considered was the victim's unchallenged statement that defendant had threatened to kill her if she told anyone about his actions.

Defendant argues that his sentence is disproportionate and was not individualized. In particular, defendant asserts that the trial court failed to consider his mental limitations and abusive upbringing. We disagree and affirm. Sentence length is reviewed pursuant to the principle of proportionality. A

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

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 Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *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 evidence showed that defendant repeatedly engaged in forced vaginal and anal intercourse with the victim. No evidence showed that defendant’s condition prevented him from understanding the nature of his actions or the nature of the proceedings. The factors cited by defendant, i.e., his lack of a prior record, his mental retardation, and his abusive upbringing, do not overcome the presumption that his minimum term is proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Affirmed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper