

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SCOTT ALLEN WEAVER,

Defendant-Appellee.

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UNPUBLISHED

January 14, 2000

No. 213501

Washtenaw Circuit Court

LC No. 96-007189 FH

Before: Talbot, P.J., and Gribbs and Meter, JJ.

PER CURIAM.

This is a prosecutor's appeal. Defendant was convicted by a jury of three counts of third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4), involving a minor. The sentencing guidelines were scored to reflect a minimum recommended sentence of seven to ten years. Defendant was sentenced to three concurrent one-year terms of imprisonment in county jail, to be served consecutively to defendant's sentences in two other matters. We vacate defendant's sentence and remand for resentencing.

The trial court's one-year jail term for defendant's felony convictions is invalid because an indeterminate sentence is required for a CSC conviction. See MCL 769.8; MSA 28.1080; *People v Frank*, 155 Mich App 789, 791; 400 NW2d 718 (1986). In addition, it was improper for the trial court to mandate that defendant serve his three concurrent one-year terms in county jail. Because the maximum penalty required by law for CSC-3 is fifteen years, defendant was required to serve his sentence in a state prison. *Id.*

The trial court also erred by using inappropriate factors to deviate from the recommended sentencing guidelines. The trial court noted that the victim was nearly sixteen years old, and commented on her "obvious maturity and aggressiveness." By legislative dictate, a fifteen year old girl is presumptively *not* mature. Further, the record in this case suggests an exceedingly immature victim, in the grips of a turbulent adolescence, and particularly vulnerable to the twenty-five year old defendant. Nor does the record support the trial court's finding of the victim's "aggressiveness." Indeed, the record indicates that defendant took advantage of the fact that he was living in the victim's household, that the victim tried not to be alone with defendant, that defendant wrote the victim several emotionally

manipulative letters, and that defendant came to the victim's home uninvited after he had been asked to leave. Defendant was told repeatedly that the victim was only fifteen years old and that there was to be no contact between them.

The trial court also inexplicably considered it to defendant's credit in this case that, pending these proceedings, defendant had "actually been confined on parole hold" in another felony matter "for which no technical credit can be granted." Clearly, departure from the guidelines range in this matter was not warranted by the fact that defendant, who had two prior felony convictions and a history of parole violations, was in custody as a result of an unrelated case. Nor did the trial court take into consideration defendant's major misconducts while in custody. The trial court abused its discretion in this case by sentencing defendant to three concurrent one-year terms in the county jail.

Defendant's conviction is affirmed; defendant's sentence is vacated and this matter is remanded for resentencing. To preserve the appearance of justice, *People v Hill*, 221 Mich App 391, 398; 561 NW2d 862 (1997), resentencing shall be before a different judge. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ Roman S. Gibbs

/s/ Patrick M. Meter