

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS EUGENE RUCKER, III,

Defendant-Appellant.

UNPUBLISHED

April 28, 2000

No. 208671

Washtenaw Circuit Court

LC No. 97-008402-FC

Before: Holbrook, Jr., P.J., and Smolenski and Collins, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his sentence of life imprisonment following his nolo contendere plea to first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). We affirm.

Defendant's sentence is not disproportionate contrary to *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). The key test of proportionality is not whether the sentence departs from or adheres to the recommended range, but whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). Although defendant's sentence exceeds the sentencing guidelines' recommended minimum sentence range of 96 to 180 months, and is "one of the most severe penalties a defendant may receive," *People v Carson*, 220 Mich App 662, 677; 560 NW2d 657 (1996), the trial court concluded that a severe sentence was necessary in light of defendant's low potential for rehabilitation and the need to protect society. An individual's low potential for rehabilitation is a legitimate consideration not already encompassed by the sentencing guidelines. *Houston, supra* at 323. Moreover, defendant's conviction stemmed from a plea bargain, pursuant to which the prosecution dismissed other charges involving the same victim and agreed not to bring other charges concerning another victim. See *People v Williams*, 223 Mich App 409, 411; 566 NW2d 649 (1997).

We note that defendant has failed to provide to this Court the police reports that were entered into evidence and which formed the factual basis for defendant's plea. By failing to provide information necessary to evaluate the nature of the offense and the offender, defendant has impeded this Court's

review of the proportionality of his sentence. In any event, given the nature of the sexual penetrations involved, as stated on the record by the trial court, and defendant's use of his employment at a nursery school to sexually exploit children, as noted in defendant's presentence investigation report, we are satisfied that the sentence properly reflects the seriousness of the matter. While we do not necessarily agree with the sentencing court's remarks regarding the ability of the Michigan prison system to rehabilitate criminals like defendant, we nonetheless conclude that defendant's sentence is not disproportionate.

We also reject defendant's claim that resentencing is required because the court did not explicitly state its reasons for departing from the guidelines, either on the record or on the SIR departure form. Because the sentence is proportionate, resentencing is not appropriate. *People v Mitchell*, 454 Mich 145, 176; 560 NW2d 600 (1997). Also, where, as here, the record indicates that the trial court was aware of the guidelines and the sentence is proportionate, remanding to the trial court to explicitly articulate the reasons for the departure would be a waste of judicial resources. *People v Kreger*, 214 Mich App 549, 554-555; 543 NW2d 55 (1995).

Affirmed.

/s/ Michael R. Smolenski

/s/ Jeffrey G. Collins