

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BILLY ALEXANDER,

Defendant-Appellant.

UNPUBLISHED

July 7, 2000

No. 213641

Oakland Circuit Court

LC No. 98-158087-FC

Before: Jansen, P.J., and Hood and Saad, JJ.

MEMORANDUM.

Defendant appeals as of right from his convictions of armed robbery, MCL 750.529; MSA 28.797, and second-degree criminal sexual conduct, MCL 750.520c(1)(c); MSA 28.788(3)(1)(c), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that he was given a vindictively harsh sentence due to his assertion of his right to a jury trial. At the start of the trial, the court made a preliminary sentence evaluation of twelve years' imprisonment for plea discussion purposes, as authorized by *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993). Defendant elected to proceed to trial, and was convicted and sentenced as a fourth offense habitual offender to 20 to 40 years on the armed robbery conviction, and 10 to 22½ years on the criminal sexual conduct conviction. In passing sentence, the court noted that the lengthy sentence was necessary for the protection of society, given the nature of defendant's crimes, his extensive prior record, and his multiple parole violations.

A court in passing sentence may not consider factors that violate a defendant's constitutional rights. *People v Godbold*, 230 Mich App 508; 585 NW2d 13 (1998). To avoid the potential for coercion, a court must not state or imply alternative sentencing possibilities based on future procedural choices, such as an exercise of the right to a trial by jury or by the court. *Cobbs*, *supra*, p 283.

Cobbs authorizes a trial court to participate in sentencing discussions in the court of plea arrangements. The judge's preliminary evaluation does not bind the judge's sentencing discretion, since

additional facts may emerge during later proceedings, in the presentence report, or from other sources. *Id.*, p 283.

Defendant has failed to show that the trial court vindictively increased his sentence based on his refusal to plead guilty. At sentencing, the court gave a reasoned basis for its decision, independent from defendant's failure to plead guilty. Defendant has failed to present any evidence that the length of his sentence was a result of his failure to plead guilty. *People v Hogan*, 105 Mich App 473, 486; 307 NW2d 72 (1981).

Affirmed.

/s/ Kathleen Jansen

/s/ Harold Hood

/s/ Henry William Saad