

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RALLUND LEE OTTLINGER,

Defendant-Appellant.

UNPUBLISHED

January 23, 2001

No. 227975

Dickinson Circuit Court

LC No. 99-002486-FH

Before: Collins, P.J., and Doctoroff and White, JJ.

MEMORANDUM.

Defendant appeals as of right from his sentence of forty to sixty months in prison imposed on his plea-based conviction of assault with intent to commit criminal sexual conduct in the second degree, MCL 750.520g(2); MSA 28.788(7)(2). We affirm.

In 1987, defendant, then eighteen years old, was charged with assault with intent to commit criminal sexual conduct in the second degree in connection with an incident in complainant's residence. After being charged, defendant absconded on bond and absented himself from Michigan for twelve years.

In 1999, defendant was paroled from prison in Wisconsin, returned to Michigan, and was convicted of unlawful use of a motor vehicle, MCL 750.414; MSA 28.646, and habitual offender, fourth offense, MCL 769.12; MSA 28.1084. He was sentenced to two and one-half to seven years in prison for those offenses. In March 2000, defendant pleaded nolo contendere to the assault charge and guilty to a charge of absconding on bond, MCL 750.199a; MSA 28.396(1), in exchange for dismissal of a charge of habitual offender, fourth offense. The court imposed a sentence of forty to sixty months in prison, with credit for 327 days, for the assault conviction. That sentence was to run concurrently with the sentence defendant was serving and consecutively to a term of sixteen to twenty-four months in prison for the absconding conviction. On appeal, defendant challenges only the sentence for the assault conviction.

Defendant argues that he is entitled to resentencing for the reason that his minimum term of forty months is disproportionate to his circumstances and to those of the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). He asserts that the sentence is excessive given that the offense occurred when he was young and naïve, and that the circumstances in which he found himself at the time of the offense were confusing.

We disagree and affirm defendant's sentence. Defendant's minimum term of forty months' was within the guidelines, and thus is presumptively proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). 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). The evidence showed that defendant and complainant met in a bar, and then adjourned to complainant's apartment. Defendant rubbed complainant's back, and requested sexual intercourse. He attacked complainant and choked her after she refused his request. Defendant had an extensive prior record, including a conviction of sexual assault in Wisconsin. The factors cited by defendant, i.e., the passage of time since the incident, his youthful age at the time of the incident, and his confusion over the circumstances, 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/ Jeffrey G. Collins
/s/ Martin M. Doctoroff
/s/ Helene N. White