

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL EDWARD MCDONALD,

Defendant-Appellant.

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UNPUBLISHED

August 24, 2001

No. 222470

Clinton Circuit Court

LC No. 99-006623-FH

Before: Wilder, P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Defendant appeals as of right from his sentences imposed for his convictions of criminal sexual conduct in the third degree (CSC III), MCL 750.520d(1)(d), and criminal sexual conduct in the fourth degree (CSC IV), MCL 750.520e(1)(d), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Complainant, defendant's 17-year-old daughter, testified that defendant overcame her attempted resistance and penetrated her vagina with his tongue and penis. Defendant denied engaging in any inappropriate contact with his daughter, and theorized that she accused him because she feared that he would reveal that she had engaged in intercourse with her brother.

The parties agreed that because defendant had a prior conviction for attempted criminal sexual conduct in the second degree (CSC II), MCL 750.520c; MCL 750.92, the trial court was required to impose a minimum term of at least five years' for the conviction of CSC III. MCL 750.520f(1). The trial court imposed concurrent terms of ten to fifteen years' for the conviction of CSC III, and one year, four months' to two years' for the conviction of CSC IV. In imposing sentence, the court noted that defendant's actions caused serious psychological damage to complainant, that defendant displayed no remorse for his actions, that he preyed on children, and that his prospects for rehabilitation were not good. Defendant's minimum term of ten years for the conviction of CSC III was the maximum allowed. *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972).

Defendant argues that this minimum term of ten years' is disproportionate to his circumstances and to those of the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree and affirm defendant's sentences. 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 of ten years' for the conviction of CSC III, was within the applicable judicial sentencing guidelines, and thus is presumptively proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). The evidence showed that defendant penetrated complainant's vagina with his tongue and penis. Defendant had a prior record that included a conviction for attempted CSC II in which the victim was a four-year-old child. Defendant's assertion that complainant could have avoided being in his room is an attempt to blame the victim. In light of defendant's own circumstances and those of the offense, the factors cited by defendant, i.e., his work history and his lack of a serious prior record, do not overcome the presumption that his minimum term of ten years' is proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin