

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID ROBERT KING,

Defendant-Appellant.

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UNPUBLISHED

December 14, 2001

No. 224088

Midland Circuit Court

LC No. 99-009162-FC

Before: Bandstra, C.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of first-degree criminal sexual conduct, MCL 750.520b, three counts of second-degree criminal sexual conduct, MCL 750.520c, and one count of fourth-degree criminal sexual conduct, MCL 750.520e. He was sentenced as an habitual offender, second offense, MCL 769.11, to prison term of fifteen to thirty years for the CSC I conviction, ten to fifteen years for each CSC II conviction, and sixteen to twenty-four months for the CSC IV. Defendant appeals as of right. We affirm.

Defendant first argues that the prosecutor improperly bolstered the victim's testimony. Defendant failed to preserve this issue at trial and, therefore, we review for plain error affecting substantial rights that resulted in manifest injustice. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

The prosecution improperly presented hearsay statements regarding the victim's allegations, including statements the victim allegedly made to police that were admitted through the testimony of third parties. *People v Jones*, 240 Mich App 704, 706; 613 NW2d 411 (2000). However, because the victim testified at trial about the same allegations, the improper testimony was merely cumulative. *People v Rodriguez (On Remand)*, 216 Mich App 329; 549 NW2d 359 (1996). After an examination of the entire cause, we conclude that the error was not outcome determinative and, therefore, that defendant's substantial rights were not affected.

Defendant also argues that he was denied effective assistance of counsel. Defendant did not make a testimonial record in the trial court in connection with a motion for a new trial or an evidentiary hearing, *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999), and therefore our

review is limited to deficiencies apparent on the already-existing record.<sup>1</sup> *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000).

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and that there is a reasonable probability that the result of trial would have been different but for counsel's error. *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000).

Defendant contends that counsel was ineffective for failing to object to the "bolstering rebuttal testimony" of a witness and for failing to "argue evidence provided by defendant's affidavit in support of his motion to remand." Defendant has not cited any authority in support of his argument and has not explained how these two alleged errors denied him the effective assistance of counsel. Because defendant failed to cite any authority to sustain or reject his position, we consider the issue abandoned. *Speaker-Hines & Thomas, Inc v Dep't of Treasury*, 207 Mich App 84, 90; 523 NW2d 826 (1994). Defendant may not simply assert positions and leave it to this Court to discover the rationale behind them. *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997).

Defendant also argues that the sentences imposed are disproportionate because mitigating circumstances were presented that warranted a downward departure from the minimum recommended sentencing guidelines range. Defendant was sentenced as an habitual offender and, therefore, the sentencing guidelines are not applicable. *People v Alexander*, 234 Mich App 665, 679; 599 NW2d 749 (1999). Nonetheless, defendant was sentenced within the presumptively proportionate guidelines range, and defendant failed to present any unusual circumstances to overcome the presumption. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). The sentence imposed is proportionate to the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1999).

Finally, defendant raises several unpreserved issues in his Standard-11 brief. We have reviewed defendant's claims of error and find that none rose to the level of plain error affecting defendant's substantial rights. *Carines, supra* at 763.

Affirmed.

/s/ Richard A. Bandstra  
/s/ E. Thomas Fitzgerald  
/s/ Hilda R. Gage

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<sup>1</sup> Defendant's motion to remand for an evidentiary hearing that was brought in this Court was denied.