

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

JERRY BROWN JENNINGS,

Defendant-Appellant.

UNPUBLISHED

December 14, 2001

No. 226564

Kent Circuit Court

LC No. 98-013322-FH

Before: White, P.J., and Talbot and E.R. Post*, JJ.

MEMORANDUM.

Defendant appeals as of right his sentence of five to twenty-two and one-half years in prison for his conviction of criminal sexual conduct in the third degree (CSC III), MCL 750.520d(1)(b), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with one count of criminal sexual conduct in the first degree (CSC I), MCL 750.520b(1)(a), and one count of CSC III. The victim, who was fifteen years old at the time of the charged offenses, testified that defendant, a family friend, forced her to have sexual intercourse, and that she became pregnant as a result. Defendant, who was thirty years old at the time of the charged offenses, testified that he and the victim had consensual sexual intercourse. The jury acquitted defendant of CSC I, but convicted him of CSC III. The court sentenced defendant as a second habitual offender to five to twenty-two and one-half years in prison, with credit for fourteen days.

Defendant argues that both his minimum and maximum terms are disproportionate to his circumstances and those of the offense. *People v Milbourn*, 435 Mich 630 Mich 636; 461 NW2d 1 (1990). He acknowledges that the judicial sentencing guidelines were inapplicable due to his status as an habitual offender, but contends that nevertheless he was entitled to the ameliorative effects of the statutory sentencing guidelines, which would have recommended a minimum term range of five to twenty-one months.

We disagree and affirm defendant's sentence. Because the offense of which defendant was convicted was committed before January 1, 1999, the legislative guidelines do not apply to

* Circuit judge, sitting on the Court of Appeals by assignment.

this case. MCL 769.34(2). The legislative guidelines are not to be applied retroactively. *People v Reynolds*, 240 Mich App 250, 253-254; 611 NW2d 316 (2000).

The standard of review for a sentence imposed on an habitual offender is abuse of discretion. If an habitual offender's underlying criminal history demonstrates that he is unable to conform his conduct to the requirements of the law, a sentence within the statutory limits does not constitute an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997). Here, defendant had a prior felony conviction for a narcotics offense. Defendant was found guilty of engaging in sexual intercourse with a fifteen-year-old girl, who became pregnant as a result of the act. His assertion that the victim was not physically harmed is an attempt to minimize the seriousness of his conduct, and his contention that he thought that the victim was older is an attempt to blame the victim. Neither defendant's minimum term nor his maximum term, which is within statutory limits, MCL 769.10(1)(a), constitutes an abuse of discretion under the circumstances. *Reynolds, supra*, 252.

Affirmed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Edward R. Post