

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWAYNE A. SMITH,

Defendant-Appellant.

UNPUBLISHED

July 12, 2002

No. 230891

Wayne Circuit Court

LC No. 00-001100

Before: Hood, P.J., Saad and E. M. Thomas*, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial conviction for third-degree criminal sexual conduct, MCL 750.520d. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court improperly expanded the record when it relied on a letter that was excluded from evidence in determining defendant's guilt. A judge in a bench trial must arrive at his or her decision based upon the evidence in the case. *People v Simon*, 189 Mich App 565, 568; 473 NW2d 785 (1991). The judge may not go outside the record in determining guilt. *Id.* When the fact-finder relies on extraneous evidence, the defendant is denied his constitutional right to confront all the witnesses against him and to get all the evidence on the record. *Id.*; *People v Ramsey*, 385 Mich 221, 224-225; 187 NW2d 887 (1971).

Complainant testified about a letter she wrote to her mother, informing her of defendant's actions. The trial court sustained defendant's objection to the admission of the letter itself because it had not been produced in discovery. The trial court expressly stated that it had not reviewed the letter, and it was not relying on the content of the letter in its findings of fact. Where the information contained in the letter was introduced in complainant's testimony, there is no showing that the court went outside the record to reach its findings.

Affirmed.

/s/ Harold Hood

/s/ Henry William Saad

/s/ Edward M. Thomas

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