STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 19, 2002
v	No. 231216 St. Clair Circuit Court
PINKNEY LEE McCOY, Defendant-Appellant.	LC No. 99-003013-FC

Before: Gage, P.J., and Cavanagh and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of three counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a) (sexual penetration with a person under the age of thirteen), and one count of furnishing obscene material to a minor, MCL 750.142. Defendant was sentenced to concurrent terms of fifteen to thirty years' imprisonment for each CSC I conviction, and ninety days in jail for the furnishing obscene material to a minor conviction. We affirm.

On appeal, defendant first argues that the trial court abused its discretion in admitting the testimony of Sharon Johnston, a registered nurse and nurse practitioner specializing in pediatrics including child sexual trauma, who testified as an expert witness for plaintiff. In particular, defendant argues that Johnston was not qualified to render an expert opinion regarding the significance of her finding that the victim's hymen was lacerated at the six o'clock position. We disagree. The trial court's determination that a witness was qualified to render an expert opinion will not be reversed on appeal absent an abuse of discretion. *People v Beckley*, 434 Mich 691, 711; 456 NW2d 391 (1990); *People v Pebbles*, 216 Mich App 661, 667; 550 NW2d 589 (1996).

Expert testimony is admissible under MRE 702 if (1) the witness is qualified by knowledge, skill, experience, training, or education, (2) the testimony is relevant, i.e., "assist[s] the trier of fact to understand the evidence or to determine a fact in issue," and (3) the testimony is derived from "recognized scientific, technical, or other specialized knowledge . . . ." MRE 702; *Beckley*, *supra* at 710-719. Here, defendant argues on appeal that the first element was not met and, in the trial court, defendant also argued that Johnston was not qualified to "give testimony on medical issues."

Johnston's qualifications included that she: (a) was a registered nurse and a nurse practitioner at Childrens' Healthcare in Port Huron since graduating in 1981, (b) examined about

twenty to thirty children a day—five to six days a week, (c) had three years of post-graduate work in children's nursing, (d) attended numerous seminars on evaluating, interviewing, and examining children for sexual trauma, and (e) had testified in court four to five times a year since 1982. In qualifying Johnston, the trial court noted that it was familiar with her because she had appeared on many previous occasions and the court was satisfied that Johnston was qualified. Although defendant does not appear to contest that Johnston was qualified to perform the physical examination of the victim, he contends that she was not qualified to testify that the hymen laceration that she saw at the six o'clock position was consistent with penetration by an object or penis into the vagina. However, it is clear from the record evidence that Johnston possessed extensive "knowledge, skill, experience, training, or education" regarding child sexual trauma, including examining for, and recognizing, physical manifestations of vaginal penetration. Accordingly, the trial court did not abuse its discretion in qualifying Johnston as an expert.

Defendant also appears to challenge the admissibility of Johnston's testimony on the ground that it was not derived from recognized scientific knowledge and that a *Davis-Frye*[1] hearing should have been conducted regarding Johnston's characterization of the victim's hymen laceration as consistent with penetration. However, defendant failed to object to Johnston's testimony on that basis and did not request a *Davis-Frye* hearing. An objection raised on one ground at trial is insufficient to preserve appellate review on a different ground. See MRE 103(a)(1); *People v Cain*, 238 Mich App 95, 115; 605 NW2d 28 (1999). Here, because defendant failed to demonstrate manifest injustice, we decline to review this issue. See *People v Burton*, 219 Mich App 278, 292; 556 NW2d 201 (1996).

Next, defendant argues that the trial court abused its discretion in denying his motion for resentencing, which followed this Court's remand directive to permit such motion. In particular, defendant argues that the trial court erroneously continued to adopt the probation department's sentencing recommendation although it was based on a miscalculation of the guidelines. We disagree.

The legislative sentencing guidelines apply to offenses committed on or after January 1, 1999.[2] MCL 769.34(2). Under the sentencing guidelines, in most instances a court must impose a sentence in accordance with the appropriate sentence range. See *id*.; *People v Babcock*, 244 Mich App 64, 72; 624 NW2d 479 (2000). This Court must affirm minimum sentences within the guidelines sentence range unless there was an error in scoring the guidelines or inaccurate information relied on in determining the sentence. MCL 769.34(10); *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000).

Here, the presentence investigation report (PSIR) originally indicated that defendant's prior record variable (PRV) score totaled twenty points, placing him in PRV level C, and the offense variable (OV) score totaled eighty-five points, placing him in OV level V; therefore, the

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[1] *People v Davis*, 343 Mich 348; 72 NW2d 269 (1955); *Frye v United States*, 293 F 1013 (CA DC, 1923).

[2] In this case, at the sentencing hearing, the parties and the trial court agreed that the CSC offenses occurred in 1999 and that the legislative sentencing guidelines were applicable.

minimum sentence range, pursuant to MCL 777.62, was 126-210 months. Thereafter, the trial court sentenced defendant to a minimum sentence of fifteen to thirty years' imprisonment.

On appeal, defendant filed a motion for remand, MCL 769.34(10), and argued that the OV score was miscalculated because the allotted points only totaled seventy-five, not eighty-five, which placed defendant in OV level IV; accordingly, the minimum sentence range was 108-180 months. This Court granted the motion to remand "to the extent that the defendant may file a motion for resentencing on the basis that the guidelines were not correctly calculated," and retained jurisdiction. *People v McCoy*, unpublished order of the Court of Appeals, entered August 22, 2001 (Docket No. 231216).

Defendant then filed a motion for resentencing in the trial court and argued that, in light of the correction to the PSIR, defendant's sentence was at the uppermost of the guidelines range, contrary to the trial court's apparent intention. The trial court disagreed and denied defendant's motion, holding that the original fifteen year sentence imposed was within the guidelines sentence range and was appropriate then, and remained appropriate in light of the "outrageous set of circumstances" of the criminal acts.

In his supplemental brief on appeal following remand, defendant argues that the trial court abused its discretion in denying his motion for resentencing because the trial court adopted the sentencing recommendation of the probation department although the recommendation was based on a miscalculation of the guidelines. However, the trial court expressly noted that it was aware that the recalculation changed the guidelines minimum sentence range but that the fifteen year minimum sentence originally imposed, which was within the guidelines, remained appropriate. Accordingly, defendant has not established any basis for vacating his sentence. See MCL 769.34(10); *Babcock*, *supra* at 73; *Leversee*, *supra*.

Affirmed.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder