STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 2, 2002
V	No. 228018 Huron Circuit Court
BRIAN ALLEN FOLLMAN, Defendant-Appellant.	LC No. 99-004090-FC

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

PER CURIAM.

Defendant appeals by right his conviction and sentence for first-degree home invasion, MCL 750.110a(2), and kidnapping, MCL 750.349. The trial court judge sentenced defendant to concurrent terms of 6½ to 20 years for home invasion, and 9 to 25 years for kidnapping. The defendant contends that there was insufficient evidence to prove intent in this case, that the sentence was disproportionate, and that the Sentencing Guidelines Act, MCL 769.31 et seq., is unconstitutional on a variety of grounds. We affirm.

I. Facts

This matter arose out of an incident beginning at the victim's home, and ending with defendant's arrest in Cheboygan, Michigan. The victim had been defendant's girlfriend on and off for about two and a half years. At the time of the incident, the victim had a Personal Protection Order against defendant. Apparently, she had been required by the Family Independence Agency to obtain the PPO as a condition of maintaining custody of her children, since defendant had physically abused one of them.

Despite the PPO defendant and the victim maintained a continuing and intimate relationship. On the day in question, defendant and the victim had arranged to meet after work. Unbeknownst to the victim, defendant wanted to confront her about whether she had been having an intimate relationship with another man. That same day, in a conversation with a friend of the victim's, defendant indicated that if the victim wished to be with the other man, he would kidnap the victim and take her to Canada, shooting anyone who got in his way. According to various witnesses, despite the PPO defendant would follow the victim and call her or a friend in order to keep track of her activities.

When the victim failed to meet with defendant as arranged, defendant went to the victim's house. The victim's mother closed and locked the front door, and therefore, defendant had a conversation about defendant's relationship with the victim and the victim's mother through the window screen. Defendant became angry when the victim denied in front of her mother that her relationship with the defendant was intimate, and he grabbed the screen to the front window, ripped it and entered the house without permission. Defendant grabbed a hammer that was on the couch near the front window and held it up in a threatening manner. The victim retreated to the back of the house seeking protection from her other boyfriend (the man whom defendant was jealous of). Defendant followed and when the victim's other boyfriend saw defendant, he shoved the victim toward defendant and fled out the back door.

Defendant forced the victim out the door and to his car. Defendant drove the victim to Detroit, then up north. During the drive defendant stopped the vehicle several times, including at several rest stops, a bar and a restaurant. The victim did not try to escape during these stops, nor did she seek help from anyone. The victim also engaged in sexual intercourse with defendant, however, the victim stated she did so only to keep defendant calm. Defendant placed two phone calls to friends that knew both him and the victim, and during one of those calls he permitted the victim to speak with one of their friends. The victim told the friend that she was alright, but that she did not want to be with defendant. Defendant also admitted to one of the friends that he had kidnapped the victim. Eventually, defendant told the friend where he was with the victim. The police were informed, and they located the defendant and the victim and arrested the defendant.

After he was arrested, defendant waived his rights and made two statements in which he admitted that he had entered the victim's house without permission, and that he had forced her to go with him. Defendant also acknowledged in one of his statements to the police that while he had told the victim on several occasions that he would let her leave, she might have agreed to stay with him only out of fear.

II. Analysis

A. Sufficiency of the Evidence

We review de novo defendant's claim that the evidence was insufficient to support his conviction. *People v Walker*, 234 Mich App 299, 302; 593 NW2d 673 (1999), habeas corpus den ___ F Supp 2d ___ (ED Mich, 2001). This Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). However, we do not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The evidence in this case was sufficient as to all the claims raised by defendant. *Johnson*, *supra* at 723. Under the version of the statute in effect at the time of defendant's offense, 1994 PA 270, the prosecution was required to prove defendant's intent to commit a felony at the time of the breaking and entering in order to sustain a conviction for first-degree home invasion. MCL 750.110a(2). The prosecution asserted defendant intended to kidnap the victim at the time he broke and entered the victim's residence, and defendant denied this was his intention. Evidence of defendant's intent may be inferred by the jury from all the facts and circumstances

in a particular case. *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143 (1987); *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Minimal circumstantial evidence is sufficient to prove an actor's state of mind. *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2001); *People v Bowers*, 136 Mich App 284, 297; 356 NW2d 618 (1984). In this case, the evidence established that prior to the incident, defendant had stalked the victim and stated to one of the victim's friends that he would kidnap her from her home. This evidence was more than sufficient to prove both defendant's intent to kidnap the victim at the time of the breaking and entering, and his intent to commit home invasion. MCL 750.110a(2); *Safiedine*, *supra* at 29; *Bowers*, *supra* at 297; *Carines*, *supra* at 757.

We reject defendant's claim that the evidence fails to establish the required element of asportation in the kidnapping charge. Defendant admitted that he forced the victim from her home and drove away with her in the car, and this testimony was corroborated by the victim and two other witnesses. The movement of the victim from her home and away from the residence satisfies the asportation requirement because it was not incidental to any underlying crime, including home invasion, and the movement did subject the victim to further risk of harm. *People v Adams*, 389 Mich 222, 238; 205 NW2d 415 (1973); *People v Green*, 228 Mich App 684, 696-697; 580 NW2d 444 (1998); *People v Stapf*, 155 Mich App 491, 494-495; 400 NW2d 656 (1986).

B. Sentence Proportionality

Defendant also contends that his sentence is disproportionate. However, absent an alleged error in the scoring of the sentencing guidelines or inaccurate information relied on in the determination of sentence, review of this issue is foreclosed by the legislative guidelines in MCL 777.21, *et seq*. MCL 769.34(10); *People v Harmon*, 248 Mich App 522, 530; 640 NW2d 314 (2001); *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000).

C. Constitutionality of the Sentencing Guidelines

Finally, defendant contends that the legislative mandate that we affirm sentences within the guidelines is unconstitutional on a variety of grounds: the right to appeal, separation of powers, procedural and substantive due process, and the vested rights doctrine. Const 1963, art 1, § 20, § 17, and art 3, § 2; US Const, art I-III, and amend XIV; *Sherwin v State Hwy Comm'r*, 364 Mich 188, 200; 111 NW2d 56 (1961). Whether a statute is constitutional is a question of law reviewable de novo. *People v Herndon*, 246 Mich App 371, 382-383; 633 NW2d 376 (2001). These claims will be discussed together.

Each argument fails because limiting the right to appeal a sentence is within the province of the Legislature. The sentencing guidelines act, MCL 769.31 *et seq*., created a sentencing commission and charged it with the duty of developing sentencing guidelines. MCL 769.32, 769.33. Statutes are presumed constitutional, and courts must construe a statute as constitutional if at all possible. *People v Hubbard (After Remand)*, 217 Mich App 459, 483-384; 552 NW2d 493 (1996). Arguments concerning whether the law is undesirable, unfair, unjust, or inhumane should be addressed to the Legislature. *People v Kirby*, 440 Mich 485, 493-494; 487 NW2d 404 (1992).

Even before the present guidelines were enacted, in *People v Coles*, 417 Mich 523, 533, 542; 339 NW2d 440 (1983), our Supreme Court held:

> [T]he right to appeal is strictly a matter of legislative prerogative, and it is solely within the Legislature's province to determine in what cases [and] under what circumstances . . . appeals may be taken. . . . The jurisdiction of a court to entertain an appeal in a certain matter is thus established by the constitution or by statute, and this Court may not, by rule or otherwise, enlarge or diminish such jurisdiction. . . .
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> We do not agree that the constitutionally guaranteed right of appeal mandates review of the trial court's exercise of discretion in sentencing in order to comport with due process of law. The expansion of the scope of appellate review of sentencing is a matter of public policy within this Court's power to adopt; it is not constitutionally required.

Thus, the right to a sentence of a particular range or term of years is not constitutionally protected, apart from the general prohibition of cruel and unusual punishment. *Id*.

And, as we held in *People v Babcock*, 244 Mich App 64, 71-72; 624 NW2d 479 (2000), there has never been any legitimate dispute that the Legislature holds ultimate authority for determining the appropriate sentencing scheme for our state. Const 1963, art 4, § 45; *People v Hegwood*, 465 Mich 432, 436; 636 NW2d 127 (2001). For that reason, our Supreme Court determined that it was "not prepared to require adherence" to the judicially created sentencing guidelines because of their lack of legislative mandate. *People v Milbourn*, 435 Mich 630, 656-657; 461 NW2d 1 (1990). The Legislature has reasserted its constitutional authority over the sentencing process by enacting MCL 769.31 et seq.

Finally, there is no vested right in an existing law or defense, *Ramsey v MUSTFA Policy Bd*, 210 Mich App 267, 270; 533 NW2d 4 (1995), or a particular procedure or remedy, *Detroit v Walker*, 445 Mich 682, 699; 520 NW2d 135 (1994). Therefore, defendant's vested rights have not been violated by a sentence at the lower end of the legislative guidelines range. *Id*.; *Ramsey*, *supra* at 270.

Affirmed.

/s/ Michael J. Talbot
/s/ Hilda R. Gage
/s/ Kurtis T. Wilder