

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID AARON VANATTA,

Defendant-Appellant.

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UNPUBLISHED

September 20, 2002

No. 234748

Schoolcraft Circuit Court

LC No. 01-006259-FH

Before: Whitbeck, C.J., and Sawyer and Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right his sentence of one and one-half to fifteen years in prison imposed on his conviction of criminal sexual conduct in the third degree, MCL 750.520d(1)(a), entered after a jury trial. We affirm.

Defendant was convicted after a trial in which complainant, the daughter of his stepdaughter, testified that when she was thirteen years old defendant kissed her, touched her breasts, and inserted his finger into her vagina. The applicable statutory sentencing guidelines recommended a minimum term of twelve to twenty-four months. Defendant requested that the court impose a jail term rather than send him to prison. The court rejected that request, and sentenced defendant to 18 months to 15 years in prison, with credit for 141 days.

Under the sentencing guidelines act, MCL 769.31 *et seq.*, a court must impose a sentence in accordance with the appropriate sentence range. MCL 769.34(2). If the upper limit of the recommended minimum term exceeds eighteen months and the lower limit is twelve months or less, the court may sentence the defendant either to a prison term within the range, or to an intermediate sanction that may include a term of imprisonment not exceeding twelve months. MCL 769.34(4)(d). An intermediate sanction consists of probation or any sanction other than imprisonment in a state prison that may lawfully be imposed and specifically includes a jail term. MCL 769.31(c)(viii). A minimum sentence within the guidelines is not reviewable pursuant to the principle of proportionality set out in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). *People v Babcock (After Remand)*, 250 Mich App 463; 648 NW2d 221 (2002).

Defendant argues that the trial court abused its discretion by sentencing him to a prison term instead of a jail term. We disagree and affirm defendant's sentence. Defendant's minimum term of eighteen months was within the recommended guidelines range of twelve to twenty-four months, and the imposition of a prison term was specifically authorized by statute. MCL

769.31(4)(d). Defendant's argument that the trial court should have imposed an intermediate sanction consisting of a jail term is based on the fact that he is in his sixties and must take medications for various health problems. He has not established that his condition is such that he would be in an inordinate amount of danger or that he could not receive the needed medications in prison.

If a sentence is within the guidelines range, this Court must affirm and may not remand for resentencing absent either an error in the scoring of the guidelines or inaccurate information relied on by the trial court in formulating the sentence. *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000). The trial court did not err in scoring the guidelines and did not rely on inaccurate information. Defendant's sentence comports with the guidelines and other requirements of the law; no further review of its proportionality is authorized. *Babcock, supra*.

Affirmed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Kirsten Frank Kelly