

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CESPREGI POINDEXTER,

Defendant-Appellant.

UNPUBLISHED

November 15, 2002

No. 229096

Calhoun Circuit Court

LC No. 00-001218-FH

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

PER CURIAM.

Defendant appeals as of right his jury trial convictions of two counts of third-degree criminal sexual conduct (CSC), MCL 750.520d(1)(b) (force or coercion), assault with intent to do great bodily harm less than murder, MCL 750.84, and extortion, MCL 750.213.¹ The trial court sentenced defendant, as a second habitual offender, MCL 769.10, to concurrent terms of 107 to 270 months in prison for each of the third-degree CSC convictions, 71 to 180 months in prison for the assault conviction, and 118 to 360 months in prison for the extortion conviction. We affirm.

I. Basic Facts and Procedural History

Teresa Poindexter and defendant were married and living with defendant's three children. On February 17, 2000 at approximately 4:30 p.m., defendant picked Poindexter up from her place of employment. Poindexter smelled alcohol on defendant's breath and saw that he appeared angry. Defendant accused Poindexter of adultery, grabbed her hair, and threatened to beat her when they got home. Defendant told her that they were going to be locked up in the house for a couple of days.

The home was enclosed by a wire fence with a padlocked gate. When they arrived home, defendant locked the gate. Poindexter did not have access to the key. Inside the house, defendant hit Poindexter on her back and head with his fists until she fell. Later, as Poindexter

¹ Defendant was originally charged with two counts of third-degree CSC, MCL 750.520d(1)(b) (force or coercion), assault with intent to do great bodily harm less than murder, MCL 750.84, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, two counts of assault with a dangerous weapon, MCL 750.82, and extortion, MCL 750.213.

prepared dinner, defendant resumed his accusations of adultery. Defendant struck Poindexter until she fell down, then he kicked her several times. After dinner, defendant continued the accusations. Although Poindexter told defendant that she was not committing adultery with anyone, defendant repeatedly struck her head with his fists.

Defendant also retrieved a twelve-gauge rifle from the closet. He told Poindexter that if she did not reveal the identity of her lover, he would shoot her. Defendant also hit Poindexter across her face with the barrel end of the rifle. Later that evening, Poindexter announced that she needed to go to the hospital, but defendant refused to take her. Instead, defendant demanded with threats that Poindexter remove her clothing. While penetrating Poindexter multiple times, defendant continued to hit her. During this attack, the shotgun remained under the bed.

The following morning, defendant instructed Poindexter to call her supervisor at the hospital where she was employed and to lie regarding her absence from work. Defendant stood watch threatening Poindexter with harm if she said anything wrong. Later that day, defendant approached Poindexter with a knife in hand. He threw the knife down and struck her in the head.

Similar attacks continued for two days. When defendant left the home, he took all the telephones with him. However, on the fifth and final day, defendant left the home without taking the telephones permitting Poindexter to notify police.

II. Sufficiency of Evidence

Defendant first argues that the evidence was insufficient to support his convictions for extortion and assault with intent to commit great bodily harm less than murder. We disagree.

This Court views the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the elements were proven beyond a reasonable doubt. *People v Mass*, 464 Mich 615, 622; 628 NW2d 540 (2001), citing *People v Hampton*, 407 Mich 354, 365-368; 285 NW2d 284 (1979).

In this case, Poindexter testified that, after a night during which defendant repeatedly and viciously assaulted her with his fists and a loaded rifle, threatened to kill her, and committed sexual assaults, he demanded that she telephone her employer and conjure a lie regarding her absence from work that day. Defendant stood watch as Poindexter made the call and threatened her with harm if she said anything wrong. Viewed in a light most favorable to the prosecution, the evidence was sufficient to allow the jury to find beyond a reasonable doubt that Poindexter made the telephone call against her will, under a threat of immediate, continuing, or future harm. MCL 750.213; *People v Hubbard (After Remand)*, 217 Mich App 459, 485; 552 NW2d 493 (1996). The evidence was also sufficient to allow the jury to find that defendant assaulted Poindexter with the requisite intent to do great bodily harm. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997).

III. Choice of Counsel

Next, defendant argues that reversal is required because he was denied his constitutional right to counsel. We disagree. A trial court's decision regarding substitution of counsel will not be disturbed absent an abuse of discretion. *People v Traylor*, 245 Mich App 460, 462; 628

NW2d 120 (2001). Appointment of substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. *Id.*, quoting *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991).

We note that none of the letters that defendant has attached to his brief on appeal in support of this argument are contained in the lower court record. A defendant may not enlarge the record² on appeal. *People v Warren*, 228 Mich App 336, 356; 578 NW2d 692 (1998), *aff'd* in part and *rev'd* in part on other grounds 462 Mich 415 (2000).

However, if we were to consider the enlarged record, we would find no error on the part of the trial court. According to the letters attached to defendant's brief on appeal, defendant sent the trial court a letter stating that he was "not happy" with his lawyer and would like him dismissed "due to ineffective assistance of counsel." Defendant's letter did not identify why he was not happy with his lawyer or why defendant believed he was ineffective. The trial court clerk advised defendant in two separate letters that his letter would be forwarded to his attorney of record. The trial court clerk also advised defendant of the proper procedure to follow in requesting substitute counsel. There is no indication in the record, or even in defendant's brief on appeal, that defendant ever made a proper request for substitute counsel to the trial court. Therefore, even if we were to consider the enlarged record, we would find no error.

IV. Ineffective Assistance of Counsel

Defendant also argues that he was denied the effective assistance of counsel. We disagree. In the absence of an evidentiary hearing on this issue, our review is limited to mistakes apparent from the record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995). On appeal, defendant merely presents a laundry list of ways in which counsel allegedly was ineffective. However, defendant fails to provide supporting argument for his claims. Further, although defendant asserts, "the merit of these issues is clear on the existing record," he does not provide citations to the record or provide the factual basis for his claims. Accordingly, we conclude that this issue has not been properly presented and we decline to consider it. MCR. 7.212(C)(7); *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001).

V. Sentencing

Defendant also argues that several errors occurred at sentencing.³ Upon review of the record, we find no merit to defendant's claims of sentencing error.

First, the trial court did not abuse its discretion in scoring fifteen points for offense variable 1 (aggravated use of weapon), MCL 777.31, and five points for offense variable 2 (lethal potential of weapon possessed), MCL 777.32. The evidence supported the trial court's

² The record consists of papers filed in the lower court, the transcript of any proceedings, and exhibits introduced. MCR 7.210(A)(1).

³ The statutory sentencing guidelines apply to this case because the crimes were committed after January 1, 1999. MCL 769.34(1); *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000).

scoring of these offense variables. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

Next, defendant asserts that the presentence report was inaccurate. However, because he does not explain how it was inaccurate, we deem this issue abandoned. *Watson, supra*.

Finally, because defendant was sentenced within the recommended range of the sentencing guidelines, and because defendant has failed to show that the guidelines were improperly scored or that the trial court relied on inaccurate information, we are required to affirm his sentences. MCL 769.34(10); *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000).

Affirmed.

/s/ William C. Whitbeck
/s/ Harold Hood
/s/ Kirsten Frank Kelly