

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRANDON ARTHUR CHANEY,
Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

BRANDON ARTHUR CHANEY,

Respondent-Appellant.

UNPUBLISHED
December 20, 2002

No. 232062
Oakland Circuit Court
Juvenile Division
LC No. 99-616609-DL

Before: Kelly, P.J., and Jansen and Donofrio, JJ.

PER CURIAM.

Respondent was charged with first-degree criminal sexual conduct, MCL 750.520b, and first-degree home invasion, MCL 750.110a(2). After a jury trial, he was found guilty of the lesser offense of third-degree CSC, MCL 750.520d, and acquitted of home invasion. He was sentenced to the Oakland County Children's Village. Respondent appeals as of right. We affirm.

This case arises out of the sexual assault of a fifteen-year-old girl. She was babysitting her siblings when respondent and his friend came to her house uninvited. She told them to leave. They left beer for her to drink, and then left. The complainant fell asleep face-down on the couch and was later awakened when respondent or his friend pulled her pants down while the two were sitting on her back and feet. Respondent and his friend each digitally penetrated the complainant's vagina.

Respondent first argues that the Sex Offenders Registration Act, MCL 28.721 *et seq.*, violates state and federal protections against cruel and unusual punishment. Const 1963, art 1, § 16; US Const, Am VIII. Respondent did not preserve this constitutional issue by raising it below. Therefore, we review the issue for plain error affecting respondent's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Registration as a sex offender is not "punishment" and, therefore, is not subject to analysis under the Eighth Amendment or its counterpart in the Michigan Constitution. *In re Ayres*, 239 Mich App 8; 608 NW2d 132 (1999); but see *Otte v Doe*, 259 F3d 979 (CA 9, 2001)(classifying the Alaska Sex Offender Registration Act as punitive for purposes of the Ex Post Facto Clause), cert gtd 534 US 1126; 122 S Ct 1062;

151 L Ed 2d 966 (2002). Although the registration statute was amended after *Ayres* was decided, the amendments do not affect respondent's circumstances. Accordingly, respondent has not demonstrated a plain error affecting his substantial rights.

Respondent argues that the trial court erred by allowing hearsay evidence of the complainant's statements. We conclude that this issue was affirmatively waived when respondent stated at trial that he was withdrawing his objections to the challenged testimony. *People v Riley*, 465 Mich 442; 636 NW2d 514 (2001); *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000). Respondent also argues that counsel was ineffective for not objecting to the complainant's hearsay statements. Because respondent did not raise this issue in a motion for a new trial or evidentiary hearing, our review is limited to mistakes apparent from the record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Juarez*, 158 Mich App 66, 73; 404 NW2d 222 (1987). It is not apparent from the record that counsel's decision to withdraw his objection to the testimony in question fell below an objective standard of reasonableness. *Strickland v Washington*, 466 US 668, 688; 104 S Ct 2052, 2065; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994); *People v Tommolino*, 187 Mich App 14; 466 NW2d 315 (1991).

Respondent also argues that counsel was ineffective for failing to file a witness list, which respondent alleges resulted in the trial court denying him an opportunity to call certain witnesses in his defense. We are not persuaded that the trial court ruled against respondent as alleged. Respondent has not provided a record citation showing where the trial court ruled on this issue, and our review of the record has failed to uncover such a ruling. Moreover, respondent does not identify the witnesses who allegedly were precluded from testifying or their proposed testimony. As such, we are left with no basis for concluding that counsel was ineffective. *People v Hyland*, 212 Mich App 701, 711; 538 NW2d 465 (1995).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ Pat M. Donofrio