

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ANDREW PEARSON,

Defendant-Appellant.

UNPUBLISHED

April 29, 2004

No. 241663

St. Clair Circuit Court

LC No. 00-002622-FC

Before: Gage, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

This case was remanded to us by the Supreme Court to consider as on leave granted. *People v Pearson*, 466 Mich 865; 645 NW2d 662 (2002). Defendant pleaded no contest to first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a), and child sexually abusive activity, MCL 750.145c(2). The trial court sentenced defendant to 180 to 420 months' imprisonment for the CSC I conviction, and 84 to 240 months' imprisonment for the child sexually abusive activity conviction. Defendant appeals his sentence. We affirm.

Defendant's sole issue in this appeal concerns the trial court's scoring of the sentencing guidelines. Defendant argues that the trial court improperly scored twenty-five points for offense variable 12 (OV 12) when it should have scored only one point. The sentencing guidelines as scored by the trial court resulted in a recommended range of 126 to 210 months' imprisonment. With a score of one point for OV 12, as defendant suggests, the recommended range is 108 to 180 months' imprisonment. The trial court sentenced defendant to 180 to 420 months' imprisonment.

Defendant concedes on appeal that even if OV 12 were scored as he argues it should be, the minimum sentence imposed by the trial court would still fall within the adjusted guidelines range. Thus, even assuming the existence of a scoring error, we conclude that because defendant's sentence falls within the adjusted guidelines range, the assumed error is harmless. *People v Davis*, 468 Mich 77, 83; 658 NW2d 800 (2003); *People v Johnson*, 202 Mich App 281, 290; 508 NW2d 509 (1993). Defendant argues that the error cannot be harmless because the trial court already once changed the sentence based on a reduction in the guidelines. The trial court stated the following at sentencing:

The incident itself, I think, is beyond the pail in terms of our normal experience with criminal sexual offenders. A four year old victim, a victim who's

reduced to tears while she's performing fellatio in an environment that's fantasized to be romantic somehow by candlelight and then who is degraded by having photographs taken of the experience. This demonstrates a mind that is very difficult to understand, and it makes me very fearful of his ability to control this in the future. That's especially concerning given his admissions to the investigator that he has a propensity for sexual attraction towards five or six year olds, and that is the group of individuals that he finds to be sexually attractive. This is not a mindset that's going to be changed over night, especially given the fact that he has acknowledged that that's been clearly his preference understood by him as a preference since early puberty.

The guidelines as modified change the range from 204 months to 420 to – strike that – from 135 months to 225 months to 26 [sic] months to 210 months. I believe a portion or proportional reduction imposed since it is appropriate given the fact that there has been a reduction in scoring the guidelines. But I firmly believe that under the circumstances that have presented themselves here despite the fact there is no prior record of convictions, despite the fact that there hasn't been an established pattern of this activity occurring with other children, that scoring of the high end of the guidelines is penalty appropriate. It's the only responsible way to deal with the situation presented.

A review of this record does not necessitate remand for resentencing. The assumed scoring error was harmless.

Affirmed.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood