

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY LYNN NOBLE,

Defendant-Appellant.

UNPUBLISHED

June 8, 2004

No. 246555

Washtenaw Circuit Court

LC No. 01-000242-FC

Before: Markey, P.J., and Wilder and Meter, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted his plea-based conviction for first-degree criminal sexual conduct, MCL 750.520b. We affirm.

Defendant first asserts that his sentence exceeded the applicable guidelines range and was disproportionately severe. Because the offense occurred in 1985, the judicial sentencing guidelines apply. MCL 769.34. The judicial guidelines did not have the force of law, so the trial court was not required to find substantial and compelling reasons for departing from the guidelines. *People v Milbourn*, 435 Mich 630, 657; 461 NW2d 1 (1990). Whether a sentence is proportionate is not determined by whether it falls within the guidelines range, but whether it reflects the seriousness of the offense and the offender. *People v Lemons*, 454 Mich 234, 260; 562 NW2d 447 (1997). There is no showing that defendant's sentence is disproportionate given the seriousness of his assault on his four-year-old son, his extensive criminal record, and the evidence that he engaged in other sexual misconduct.

Defendant also argues that the court erroneously scored OV 5. This Court will uphold the scoring of the sentencing guidelines if there is evidence to support the score. *People v Hernandez*, 443 Mich 1, 16; 503 NW2d 629 (1993). Defendant's action of taking the victim home and away from the presence of others, so they were alone constituted moving him to a place of greater danger. *People v Piotrowski*, 211 Mich App 527, 529; 536 NW2d 293 (1995). The trial court did not err in scoring the guidelines variables.

We affirm.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter