

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD ALTON RUGGLES,

Defendant-Appellant.

UNPUBLISHED

September 14, 2004

No. 247144

Jackson Circuit Court

LC No. 02-005990-FH

Before: Donofrio, P.J., and White and Talbot, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction of second-degree criminal sexual conduct, MCL 750.520c. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant first argues that the court erred in instructing the jury on the cognate offense of second-degree criminal sexual conduct when he was charged with first-degree criminal sexual conduct. However, defendant requested that the jury receive the instruction. He cannot now argue on appeal that the trial court erred in granting his request. *People v Piotrowski*, 211 Mich App 527, 530; 536 NW2d 293 (1995).

Defendant also asserts that he was denied the effective assistance of counsel when his trial attorney failed to object to evidence of prior consistent statements. To establish ineffective assistance of counsel, defendant must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms and that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Defense counsel made effective use of the inconsistencies between the earlier statements and the testimony of the two children, and obtained an acquittal of the first-degree criminal sexual conduct charge. Where defendant admitted that complainant touched his penis and that he took photographs of complainant and her brother while they were naked, it is highly unlikely that the outcome of the trial would have been different had the evidence of prior statements been excluded.

Finally, defendant argues that he was improperly sentenced because the court did not mention the habitual offender enhancement at sentencing. The information contained notice of

the habitual offender supplement. The presentence report indicates that defendant was supplemented as a fourth habitual offender, and the guidelines were computed on that basis. The judgment of sentence states that defendant was sentenced as a fourth habitual offender. Where there were no statements on the record indicating that the court did not intend to sentence defendant as a habitual offender, there is no basis for contesting the written order of the court.

Affirmed.

/s/ Pat M. Donofrio
/s/ Helene N. White
/s/ Michael J. Talbot