

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK J. SEMKIW,

Defendant-Appellant.

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UNPUBLISHED

November 15, 2005

No. 255016

Wayne Circuit Court

LC No. 03-012193

Before: Gage, P.J., and Hoekstra and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right his plea-based conviction of criminal sexual conduct in the first degree (CSC I), MCL 750.520b(1)(c). We affirm.

In October 2003 defendant was charged with CSC I and breaking and entering an occupied dwelling with intent to commit sexual assault or larceny, MCL 750.110, for an incident that occurred on September 1, 1986. In the trial court, defendant moved to dismiss the case on the ground that the statute of limitations for a CSC offense in effect at the time the charged offense was committed had expired. The trial court denied the motion.

Defendant entered an unconditional plea of guilty to the charge of CSC I in return for the dismissal of the breaking and entering charge, an agreement by the prosecution to forego charging him for any offense that occurred in or prior to 1986, and an agreement that he serve two to five years in prison. Defendant also agreed to waive any defense based on the statute of limitations. The trial court sentenced defendant to two to five years in prison.

A statute of limitations defense in a criminal case is a nonjurisdictional, waivable affirmative defense. Pleading guilty or nolo contendere waives a statute of limitations claim. *People v Bulger*, 462 Mich 495, 517 n 7; 614 NW2d 103 (2000), overruled in part on other grounds in *Halbert v Michigan*, \_\_\_ US \_\_\_; 125 S Ct 2582; 162 L Ed 2d 552 (2005); *People v Burns*, 250 Mich App 436, 439-440; 647 NW2d 515 (2002).

Defendant asserts that his plea-based conviction of CSC I must be vacated. He contends that the six-year statute of limitations in effect at the time the offense was committed in 1986 had

long expired when he was charged, and that pursuant to *Stogner v California*, 539 US 607, 611; 123 S Ct 2446; 156 L Ed 2d 544 (2003), the amended version of MCL 767.24(2)<sup>1</sup> could not be utilized to support charging him in 2003.

We disagree and affirm defendant's conviction. Defendant entered an unconditional plea of guilty to the charge of CSC I, and unequivocally waived a defense based on the statute of limitations. Under the circumstances, *Stogner, supra*, is inapplicable, and defendant's argument is without merit. *Bulger, supra; Burns, supra*.

Affirmed.

/s/ Hilda R. Gage  
/s/ Joel P. Hoekstra  
/s/ Christopher M. Murray

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<sup>1</sup> Effective April 22, 2002, MCL 767.24(2) was amended to provide that an indictment against an individual could be brought at any time within ten years after the individual was identified from DNA evidence as the perpetrator of an offense.