

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND JOSEPH EBEL,

Defendant-Appellant.

UNPUBLISHED

May 29, 2008

No. 278170

Berrien Circuit Court

LC No. 2001-412041-FC

Before: Davis, P.J., and Murray and Beckering, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of two counts of first-degree criminal sexual conduct, MCL 750.520(b)(1), and breaking and entering with intent to commit larceny, MCL 750.110. He was sentenced to concurrent terms of life imprisonment for one of the CSC convictions, 480 months to life for the other CSC conviction, and 120 to 270 months' imprisonment for the breaking and entering conviction. In a prior appeal, this Court affirmed defendant's convictions, but held that defendant was improperly sentenced to a term of years sentence for which the maximum penalty was life imprisonment for one of the CSC convictions, and remanded for resentencing on that offense. *People v Ebel*, unpublished opinion per curiam of the Court of Appeals, issued December 16, 2004 (Docket No. 249862). On remand, the trial court resentenced defendant to a prison term of 40 to 120 years for the CSC conviction. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's convictions arise from offenses committed in May 1992, when defendant broke into the complainant's apartment, forced the complainant to engage in intercourse in the presence of her daughter upon threat of death, and stole money.

On appeal, defendant argues that his sentences for all three convictions are disproportionate. However, this Court's prior decision remanded for resentencing only on one count of CSC, because the trial court's sentence of 480 months to life for that count was invalid under MCL 769.9(2). The scope of this appeal is limited by the scope of the remand. *People v Jones*, 394 Mich 434, 435; 231 NW2d 649 (1975). Therefore, our review is limited to an assessment of the proportionality of defendant's new sentence of 40 to 120 years for one count of CSC.

Because the offense was committed before January 1, 1999, the former judicial sentencing guidelines, rather than the legislative sentencing guidelines, are applicable. *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000); MCL 769.34(2).

Defendant was sentenced within the sentencing guidelines range of 240 to 480 months. To preserve a challenge to the proportionality of a sentence falling within the judicial guidelines range, a defendant must present to the sentencing court unusual circumstances indicating that a sentence within the guidelines range would not be proportionate before the sentence is imposed, otherwise the issue is waived. *People v Sharp*, 192 Mich App 501, 505-506; 481 NW2d 773 (1992). Defendant did not present any unusual circumstances to the trial court and did not argue that a sentence within the guidelines range should not be imposed. Therefore, he waived his right to challenge the proportionality of the sentence. *Id.* Even if the issue were not waived, in light of defendant's lengthy criminal record and the circumstances of the offense, defendant's sentence is not disproportionate. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

Affirmed.

/s/ Alton T. Davis
/s/ Christopher M. Murray
/s/ Jane M. Beckering