

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC NIELS JENSEN,

Defendant-Appellant.

UNPUBLISHED

September 16, 2008

No. 279437

Shiawassee Circuit Court

LC No. 06-004384-FH

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of fourth-degree criminal sexual conduct, MCL 750.520e(1)(a), and sentenced to three years' probation, with the first six months to be served in jail. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that the trial court erred in scoring OV 8 of the sentencing guidelines. MCL 777.38. Because the record indicates that defense counsel conceded at sentencing that the guidelines were correctly scored, any error was waived. *People v Carter*, 462 Mich 206, 215-216, 220; 612 NW2d 144 (2000); *People v Witherspoon*, 257 Mich App 329, 333-334; 670 NW2d 434 (2003). Even were defendant's claim of error not waived, however, it plainly lacks merit.

A sentencing court's scoring decision is reviewed for an abuse of discretion and it will be upheld if there is any evidence in the record to support it. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Where, as here, the alleged error is unpreserved, it is reviewed for plain error affecting defendant's substantial rights. *People v Kimble*, 470 Mich 305, 311-312; 684 NW2d 669 (2004); *People v Carines*, 460 Mich 750, 763; 597 NW2d 30 (1999).

OV 8 is to be scored at 15 points where a victim "was asported to another place of greater danger or to a situation of greater danger or was held captive beyond the time necessary to commit the offense." MCL 777.38(1)(a). Defendant's score of 15 points was premised on his asportation of the victim to an abandoned second floor store used as an employee break area. A finding of asportation does not require that the victim be forcibly abducted; it is sufficient that the victim was moved, or even moved voluntarily at defendant's invitation, "to another place or situation of greater danger" which facilitates the commission of the offense, such as where the victim is moved to a location "secreted from observation by others." *People v Spanke*, 254 Mich

App 642, 647-648; 658 NW2d 504 (2003). Testimony clearly established that defendant took the victim and her friend away from the public game area where defendant worked to the secluded employee break area where the criminal sexual conduct occurred. Thus, the victim was, “without doubt asported to another place or situation of greater danger, because the crime[] could not have occurred as [it] did without the movement” of defendant and the victim to the secluded break room away from public observation. *Id.* at 648. Consequently, the trial court did not plainly err by scoring OV 8 at 15 points.

We affirm.

/s/ William C. Whitbeck

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio