

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN CHARLES TRETCHLER,

Defendant-Appellant.

---

UNPUBLISHED

March 4, 1997

No. 193822

Mecosta Circuit Court

LC No. 95-3613-FH

Before: Taylor, P.J., and McDonald and C. J. Sindt\*, JJ.

PER CURIAM.

Pursuant to a plea agreement defendant pleaded guilty to criminal sexual conduct second degree with a person under 13 years of age, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a) and received a sentence of ten to fifteen years' imprisonment. On appeal defendant claims his sentence was based upon improper scoring of his SIR and the sentence was not proportionate and an improper departure from the sentencing guidelines.

At sentencing defense counsel stated he and defendant had reviewed the presentence report and had no challenge. The defendant did not challenge the scoring of PRV 5 at sentencing or by way of timely motion before the trial court. The issue was not properly preserved for our review. *People v Daniels (Kenneth)*, 192 Mich App 658; 482 NW2d 176 (1991).

During sentencing after acknowledging the accuracy of the report, the defendant denied using his professional clown voice to gain the victim's cooperation as contended by the victim. The court found defendant abused his clown persona, whether by voice or otherwise, and considered it as a factor in departing from the guidelines. We find such a finding supported by the evidence and a result of weighing the credibility of the defendant and the victim.

Finally, we find the sentence of the court was not an abuse of discretion because it was proportionate to the circumstances surrounding the offense and the defendant's history. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). The defendant has an extensive history of alcohol and

---

\* Circuit judge, sitting on the Court of Appeals by assignment.

drug abuse. He admitted to molesting the ten-year-old victim herein at least fifteen to twenty times over the previous years. He also admitted molesting his sister-in-law ten to twelve years ago when she was approximately eight-years-old. Defendant has a history of theft and drug convictions and has failed to complete any community based rehabilitation programs. One psychologist describes defendant as a person with “a long history of antisocial behavior, substance abuse, dysfunctional relationships and physical and sexual abuse” and further states defendant’s personality profiles “reflect a variety of thought disturbances, emotional maladjustment and confusion. Despite counseling and support he (defendant) remains in a state of mental illness.” A psychiatrist found defendant “would assume the role of abused victim and mental patient to excuse a responsibility for his behaviors and avoid legal consequences.” The defendant’s twenty page hand-written report explaining his version of the events shows the defendant to be in need of extensive mental counseling.

The judge stated the following as reasons for departure from the sentencing guidelines of twenty-four to sixty months:

The reasons are: In spite of the defendant’s protestations to the contrary notwithstanding here, I believe that he abused his clown persona, whether it’s by way of voice or otherwise. I believe that that is a factor that can be considered.

We have someone who demonstrates a serious instability and, under the facts presented and the failure to respond to treatment so far, presents a poor prognosis for recovery, both from the substance abuse as well as the behavior involving this victim and another victim that he’s admitted to.

On a minor point, there are subsequent misdemeanors that are not considered by the guidelines.

Compelling, also, however, is the fact that there are contemporaneous acts that have been admitted by the defendant, some 15 to 20 times involving this victim, that are not scoreable, but cannot be ignored. They must be considered.

I recommend to the Department of Corrections that you engage there in appropriate mental health counseling, therapy for sexual offenders and substance abuse counseling.

That is your sentence.

The record fully supports the court’s reasons for departure. The need for long term incarceration and treatment is evident from the record.

Affirmed.

/s/ Clifford W. Taylor  
/s/ Gary R. McDonald  
/s/ Conrad J. Sindt