

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY DAVID NICHOLS,

Defendant-Appellant.

UNPUBLISHED

April 4, 1997

No. 192121

Berrien Circuit Court

LC No. 95-003239-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty to attempted second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a) and MCL 750.92; MSA 28.287, and was sentenced to five years' probation, with the first 365 days to be served in jail. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant's jail sentence is within the recommended range of the sentencing guidelines and is therefore presumptively proportionate. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990); *People v Blount*, 197 Mich App 174, 175; 494 NW2d 829 (1992). Defendant's lack of criminal history and employment are not unusual circumstances that would overcome the presumption of proportionality. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). The trial court properly considered that the prosecution agreed to dismiss the original charge of second-degree criminal sexual conduct and not to charge defendant with any other sexual misconduct which had been reported

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

in exchange for defendant's plea. *People v Duprey*, 186 Mich App 313, 318; 463 NW2d 240 (1990).

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar