

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCELINO ARENAS GOMEZ,

Defendant-Appellant.

UNPUBLISHED
October 31, 1997

No. 192319
Montcalm Circuit Court
LC No. 95-000262 FC

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Defendant appeals by right from his jury convictions of two counts of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b), and concurrent prison terms of 10 to 15 years on each count. We affirm.

Defendant first contends that the prosecutor violated his Fifth Amendment right not to testify in his own defense by contending during closing argument that the fact that defendant was with the victim at the time of the charged offenses was not denied by defendant and could not be disputed. Indeed, defendant had conceded being with the victim, but claimed that any sexual activity was consensual. The prosecutor's argument was not improper and defendant's Fifth Amendment rights were not implicated. *People v Perry*, 218 Mich App 520; 554 NW2d 362 (1996).

Defendant next argues that his sentences are disproportionate to the offenses and the offender. However, the sentences are within the guidelines, and given the violent nature of the offenses, defendant has failed to overcome the presumption that a sentence within the guidelines is proportionate to the offense and the offender. *People v Eberhardt*, 205 Mich App 587; 518 NW2d 511 (1994).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly
/s/ Roman S. Gribbs