STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JONATHAN DAVID DURANLEAU,

Defendant-Appellant.

UNPUBLISHED
January 30, 1998

No. 196485
Allegan Circuit Court
LC No. 95-009931 FH

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

MEMORANDUM.

Pursuant to a plea bargain, defendant pleaded guilty to one count of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b), and one count of attempted first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). In exchange for defendant's plea, two counts of first-degree criminal sexual conduct and three counts of second-degree criminal sexual conduct were dismissed. The factual basis for the plea established that defendant committed first-degree criminal sexual conduct when, at age twenty-three, he sexually penetrated an eleven-year-old female. Defendant had contemporaneous convictions in another county for third-degree criminal sexual conduct and attempted first-degree criminal sexual conduct. On June 7, 1996, defendant was sentenced to three to fifteen years' imprisonment for each conviction. He appeals as of right and we affirm.

Based on a comment made at sentencing about the possibility of psychological harm to the victim, defendant contends that the trial court violated the rule of *People v McKernan*, 185 Mich App 780; 462 NW2d 843 (1990). *McKernan* was a case in which the trial court specifically predicated its sentence on an assumption regarding the relationship between defendant's age and prospects for rehabilitation, which prompted this Court to opine that "before a sentencing judge can make such a conclusion, some scientific or psychological justification should be made part of the record and the defendant must be afforded the opportunity to challenge the court's belief at the sentencing hearing." The judge's remarks in this case do not fall within the holding of *McKernan*. Furthermore, in this case the trial court's remark does not appear to have been the basis for the 2-1/2- to 6-year sentence imposed, which is well below the guidelines' range. In contrast, in *McKernan* the defendant was

sentenced at the maximum of the guidelines' range. Also, subsequent case law development makes clear that, unless the actual sentence imposed is disproportionate to the offense or the offender, an appellate court should be reluctant to require resentencing. *People v Mitchell*, 454 Mich 145; 560 NW2d 600 (1997); *People v Hansford (After Remand)*, 454 Mich 320; 562 NW2d 460 (1997); *People v Lemons*, 454 Mich 234; 562 NW2d 447 (1997). Under the circumstances of this case, we do not find the sentences disproportionate to the offense or the offender.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Harold Hood
/s/ Joel P. Hoekstra