

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEROME EDMONDSON,

Defendant-Appellant.

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UNPUBLISHED

March 24, 1998

No. 196959

Livingston Circuit Court

LC No. 95-9102-FH

Before: Fitzgerald, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

Defendant was convicted of one count of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b), and of habitual offender, third offense, MCL 769.11; MSA 28.1083. He was sentenced as an habitual offender to six to thirty years' imprisonment, and appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence presented at trial to sustain his conviction. He argues that the victim's testimony and that of the prosecution's rebuttal witnesses was not reliable and that because there was no physical evidence of rape or assault, his conviction should be vacated. We disagree.

We review challenges to the sufficiency of evidence to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748, amended 441 Mich 1201 (1992). The evidence is viewed in the light most favorable to the prosecution and we will not interfere with the fact finder's role of determining the weight of evidence or the credibility of witnesses. *Id.*

In order to convict defendant, the prosecution needed to prove that defendant engaged in forced or coerced sexual penetration of the victim. MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). Defendant admitted that sexual penetration occurred, but denied that there was force or coercion. The victim, however, testified that there was force in that defendant held her around her shoulders and waist, pushed and held her down, put a pillow over her head, and put his hands around her neck. The trier of fact determined that the victim's testimony was more credible than defendant's testimony. We will not

interfere with that determination. Based on the record, there was sufficient evidence for the trier of fact to determine that there was force or coercion beyond a reasonable doubt. In so holding, we note that the fact that there was no physical evidence of rape or trauma is not conclusive that force did not occur. The physician who examined the victim following the rape testified that lack of physical evidence of trauma to the body does not necessarily indicate a lack of force.

Defendant also argues on appeal that his sentence was disproportionate. We disagree. A sentence must be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). It is therefore appropriate for the sentencing court to review the nature of the offense and the background of the offender. *Id.* at 651. In addition, because defendant was sentenced as an habitual offender, the sentencing guidelines are irrelevant and will not be considered by this Court in reviewing defendant's sentence. *People v Edgett*, 220 Mich App 686, 694; 560 NW2d 360 (1996). Under the circumstances, we find that the sentence imposed was proportionate to the offense and the offender. *Milbourn*, *supra* at 636.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Harold Hood

/s/ David H. Sawyer