

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HAMILTON CHARLES GILBERT,

Defendant-Appellant.

UNPUBLISHED

May 8, 1998

No. 199808

Lenawee Circuit Court

LC No. 92-005336 FC

Before: Bandstra, P.J., and MacKenzie and N.O. Holowka*, JJ.

MEMORANDUM.

Defendant appeals by right from his sentences of 300 to 500 months' imprisonment for first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and of 120 to 180 months' imprisonment for second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), entered after remand from this Court for resentencing. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant claims that the trial court misscored OV 12. Any error in calculating the sentencing guidelines is not a basis on which an appellate court can grant relief. *People v Raby*, 456 Mich 487, 499; ___NW2d ___ (1998); *People v Mitchell*, 454 Mich 145, 176-178; 560 NW2d 600 (1997). There is a cognizable claim only where a factual predicate is wholly unsupported, a predicate is materially false, and the sentence is disproportionate. *Mitchell*, *supra* at 177.

The trial court did not abuse its discretion in discounting the affidavit of the complaining witness recanting her testimony. The court properly weighed the unreliability of recanting testimony in general, and the suspect nature of the testimony in this case. *People v Canter*, 197 Mich App 550, 559-562; 496 NW2d 336 (1992).

Defendant's sentence falls within the range established by the sentencing guidelines, and is presumptively proportionate. *People v Wybrecht*, 222 Mich App 160, 175; 564 NW2d 903 (1997).

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

Defendant has failed to overcome the presumption of proportionality. *Id.*; *People v Price*, 214 Mich App 538, 548; 543 NW2d 49 (1995).

We affirm.

/s/ Richard A. Bandstra

/s/ Barbara B. MacKenzie

/s/ Nick O. Holowka