

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUSSELL LEE EDWARDS,

Defendant-Appellant.

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UNPUBLISHED

November 30, 1999

No. 214101

Saginaw Circuit Court

LC No. 97-014090 FC

Before: Jansen, P.J., and Hoekstra and J. R. Cooper\*, JJ.

MEMORANDUM.

Defendant claims an appeal from his plea-based conviction of criminal sexual conduct in the third degree, MCL 750.520d; MSA 28.788(4). We affirm.

Defendant was charged with one count of criminal sexual conduct in the first degree, MCL 750.520b; MSA 28.788(2), two counts of criminal sexual conduct in the second degree, MCL 750.520c; MSA 28.788(3), and habitual offender, third offense, MCL 769.11; MSA 28.1083. The offenses occurred in 1985. The trial court evaluated the case and concluded that an eight-year minimum prison term would be appropriate. *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993). Defendant agreed to plead nolo contendere to one count of criminal sexual conduct in the third degree in exchange for dismissal of the other criminal sexual conduct charges. During the plea hearing, the court informed defendant that while the maximum sentence for criminal sexual conduct was fifteen years, because he was an habitual offender, the maximum term could be increased to thirty years. Defendant tendered and the court accepted the nolo contendere plea. The court sentenced defendant to eight to thirty years in prison, with credit for 322 days.

Defendant argues that his eight-year minimum term is disproportionate to his circumstances and to those of the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree. A defendant who pleads guilty or nolo contendere with knowledge of the sentence demonstrates his agreement that the sentence is proportionate. *Cobbs, supra*, p 285.

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

Furthermore, defendant argues that counsel rendered ineffective assistance by failing to obtain the court's evaluation of both the minimum and the maximum term to be imposed. Defendant asserts that knowledge of both terms would have allowed him to make an informed decision as to whether he should enter a plea. We disagree. When ineffective assistance of counsel is claimed in the context of a plea, the relevant inquiry is whether the defendant tendered the plea voluntarily and understandingly. *People v Swirles (After Remand)*, 218 Mich App 133, 138; 553 NW2d 357 (1996). Absent a motion for new trial or evidentiary hearing, appellate review is limited to the existing record. *People v Thew*, 201 Mich App 78, 90; 506 NW2d 547 (1993). The record demonstrates that during the plea hearing, the court informed defendant that because he was charged as a third habitual offender, the statutory maximum term of fifteen years for a conviction of criminal sexual conduct in the third degree could be increased to thirty years. Defendant indicated that he understood, and proceeded to enter a plea. Nothing on the record indicates that defendant's plea was not voluntary or understanding. Defendant was not prejudiced. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

Affirmed.

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra

/s/ Jessica R. Cooper