

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH E. BROWN,

Defendant-Appellant.

UNPUBLISHED

April 21, 2000

No. 210702

Recorder's Court

LC No. 97-004712

Before: Collins, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction for first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), entered after a jury trial. We affirm.

Defendant's conviction arose out of the sexual penetration of a sleeping twelve-year-old girl. The sentencing guidelines were scored at 180 to 360 months. Defendant was sentenced within the guidelines to 22 to 50 years' imprisonment. On appeal, he argues that the sentence is disproportionate because he did not cause serious physical injury to his victim.

This Court's review is limited to determining whether the sentencing court abused its discretion by violating the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990); *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998). A sentence within the guidelines range is presumptively neither excessively severe nor unfairly disparate. *People v Broden*, 428 Mich 343, 354; 408 NW2d 789 (1987). Defendant has failed to present unusual circumstances that would overcome the presumption of proportionality. The degree of injury was already considered by the guidelines and the trial court. This factor is insufficient to establish that the sentence was disproportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski