

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE CLAY,

Defendant-Appellant.

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UNPUBLISHED

March 2, 2001

No. 218589

Oakland Circuit Court

LC Nos. 98-162193-FC;

98-162194-FC;

98-162195-FC;

98-162196-FC;

98-162197-FC

Before: White, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Defendant was convicted by a jury of six counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), stemming from his sexual abuse of two of his girlfriend's daughters, both of whom were under thirteen years of age. The trial court sentenced defendant as a second habitual offender, MCL 769.10; MSA 28.1082, to six concurrent terms of sixty to ninety years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court violated his right to counsel by allowing him to represent himself without a knowing and intelligent waiver of the right to counsel. We review for an abuse of discretion the trial court's determination whether self-representation was appropriate. *People v Adkins (After Remand)*, 452 Mich 702, 721 n 16; 551 NW2d 108 (1996); *People v Ahumada*, 222 Mich App 612, 617; 564 NW2d 188 (1997).

The right of self-representation is guaranteed by both the United States and the Michigan Constitutions. *People v Anderson*, 398 Mich 361, 366; 247 NW2d 857 (1976). However, that right is not absolute. *Id.* An "unavoidable tension" exists between the right to self-representation and the right to counsel. *Adkins, supra* at 720. Thus, in order to invoke the right to self-representation, a defendant must first waive the right to counsel. *Id.* at 720-721. Before a trial court may grant a defendant's request to proceed in propria persona, it must substantially comply with the requirements set forth in *Anderson, supra*, and MCR 6.005. *Adkins, supra* at 706. Under *Anderson*, the trial court must determine that (1) the defendant's request for self-representation is unequivocal, (2) the defendant's request was made knowingly, intelligently, and voluntarily, and (3) the defendant will not unduly disrupt the court while acting in propria persona. *Anderson, supra* at 367-368. In order to ensure that the defendant's choice is made

knowingly and intelligently, the trial court must advise the defendant of the dangers of self-representation. MCR 6.005(D) furthers this goal by requiring the trial court to advise the defendant of the charges, the maximum penalty upon conviction, and the risks associated with self-representation, and to offer the defendant the opportunity to consult with counsel.

Here, the trial court substantially complied with these requirements. Defendant's request for self-representation was unequivocal—defendant told the court, "I want to represent myself." Also, the court advised defendant of the dangers of self-representation and advised defendant of the charges against him and the possibility of life imprisonment. Defendant acknowledged that he understood that he would have to serve a prison term if convicted. The trial court repeatedly gave defendant the opportunity to consult with counsel, which defendant refused. The court also told defendant that it believed that he was making a mistake. The trial court substantially complied with the requirement of informing defendant of the dangers of self-representation.

Defendant argues on appeal that his uncooperative responses to the court's questions indicate that he did not knowingly and intelligently waive the right to counsel. Although defendant did not respond appropriately to most of the court's questions, he clearly expressed his desire to address the jury and then be removed from the courtroom for the remainder of the proceedings. Defendant believed that the evidence against him had been tampered with and that the witnesses had been coached, and he desired to inform the jury of this. Because of his perception that the trial would be unfair, defendant did not wish to participate in it beyond informing the jury of that unfairness. This demonstrates that defendant's choice to represent himself in order to make an opening statement was a knowing and intelligent one. Defendant insisted on being allowed to address the jury himself and then being removed from the courtroom. Defendant's repeated insistence on this strategy indicates that his choice was made knowingly and intelligently.

The trial court also substantially complied with the requirement that it determine that defendant would not unduly disrupt the proceedings. *Adkins, supra* at 722; *Anderson, supra* at 368. Defendant argues that he demonstrated an intent to disrupt the proceedings, evidenced by his non-responsive answers to the court's questions and by his threats of assaults. However, the trial court exerted great effort in attempting to discern whether defendant would behave appropriately during the trial. Defendant assured the court that he would behave appropriately if he were allowed to address the jury. When the court told defendant that it would grant his request, defendant clearly indicated that he would behave appropriately. The trial court allowed defendant to represent himself during voir dire and opening statements. At all times thereafter, defendant was represented by counsel. Under these circumstances, the trial court did not abuse its discretion by allowing defendant to represent himself during a portion of the proceedings.

Next, defendant argues that his sixty- to ninety-year sentences are disproportionately severe. We review the sentences for an abuse of discretion. *People v Cain*, 238 Mich App 95, 130; 605 NW2d 28 (1999). A sentence constitutes an abuse of discretion where it violates the principle of proportionality. *People v Rockey*, 237 Mich App 74, 79; 601 NW2d 887 (1999). A sentence within statutory limits does not constitute an abuse of discretion when the defendant is an habitual offender whose underlying felony, in the context of his or her criminal history, demonstrates an inability to conform his or her conduct to the law. *People v Hansford (After*

*Remand*), 454 Mich 320, 326; 562 NW2d 460 (1997). We conclude that the trial court did not abuse its discretion.

The principle of proportionality “requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender.” *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The sentences imposed in this case are proportionate. Defendant argues that, although his crimes were undeniably serious, they are “typical” of CSC I offenses involving child victims of the same household as the offender. However, defendant’s sentences adequately reflect the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). The evidence at trial suggested that defendant maintained a violent home environment for his girlfriend and the children, complete with daily beatings of the girlfriend in front of the children. The trial court may consider all trial evidence, not just that directly relating to the charged offenses, when fashioning a sentence. *People v Gould*, 225 Mich App 79, 89; 570 NW2d 140 (1997). Moreover, defendant sexually abused two young girls with whom he was living, thereby violating their trust and destroying their childhood. The emotional and psychological damage that sexual abuse can have on children is an appropriate factor to consider in sentencing. *People v Girardin*, 165 Mich App 264, 266-267; 418 NW2d 453 (1987).

Although defendant’s degree of sexual perversion may not have been atypical within the realm of child molesters, the violence with which he perpetrated the assaults was substantial. Defendant exhibited not only sexual perversion, but a callous, violent demeanor. For example, when the girls complained about the pain that sexual intercourse caused them, defendant slapped one of the girls and told her not to say that again, and told the other girl to put her fingers inside her vagina to get used to the pain. The record reveals other instances of defendant’s violence as well. The severity and nature of these crimes and the circumstances surrounding their commission were adequately considered by the trial court. *People v Rice (On Remand)*, 235 Mich App 429, 446; 597 NW2d 843 (1999).

Defendant contends that he is not among the worst category of offenders, because his criminal history does not include sexual assault. However, defendant was sentenced as an habitual offender with a history of assaultive behavior. Given defendant’s history of assault, the underlying offenses—which involved assaultive behavior in a new context—demonstrate that defendant is unable to conform his conduct to the law. *Hansford, supra* at 326. Therefore, his sentences within the statutory limits—life or any term of years—do not constitute an abuse of discretion. *Id.*

Defendant also argues that his sixty-year minimum terms, given his age of thirty-four years, is equivalent to a sentence of life without the possibility of parole and, therefore, are disproportionate. This argument was squarely rejected by our Supreme Court in *People v Lemons*, 454 Mich 234, 255-259; 562 NW2d 447 (1997) and *People v Merriweather*, 447 Mich 799, 808-811; 527 NW2d 460 (1994). Accordingly, we find no abuse of the court’s sentencing discretion.

Affirmed.

/s/ Helene N. White

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra