

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JAY PERSAILS,

Defendant-Appellant.

UNPUBLISHED

December 14, 2001

No. 224535

Branch Circuit Court

LC No. 99-066826-FC

Before: Wilder, P.J., and Griffin and Smolenski, JJ.

PER CURIAM.

Defendant was convicted following a jury trial of one count of first-degree criminal sexual conduct (CSC I), in violation of MCL 750.520b(1)(a), and two counts of second-degree criminal sexual conduct (CSC II), in violation of MCL 750.520c(1)(a). The trial court sentenced defendant as an habitual offender, MCL 769.11, to 360 to 540 months' imprisonment for the CSC I conviction and 204 to 360 months' for each CSC II conviction, the terms to be served concurrently. Defendant now appeals as of right. We affirm.

The first issue raised on appeal is that insufficient evidence was offered at trial in order to convict defendant. We disagree.

We review sufficiency of evidence claims de novo to determine whether, viewed in a light most favorable to the prosecutor, a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999).

Here, considering the information in the light most favorable to plaintiff, there was more than sufficient evidence to sustain the convictions for criminal sexual conduct. Under MCL 750.520b(1)(a), "[a] person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists: (a) that other person is under 13 years of age." Similarly, a person may be convicted of CSC II for sexual contact under the same circumstances. MCL 750.520c(1)(a).

The victim testified that defendant put his hand on her backside, put his finger in her vagina and put his penis in her vagina, all on the night in question. Additionally, she testified defendant had made similar contact with her on four or five occasions in the past. A friend of the victim testified she witnessed one of the occasions when defendant had touched the victim's

backside. She also confirmed that the victim told her she had been “raped” on the night in question. Finally, the victim stated at trial that at the time of the incident she was twelve years old, falling within the purview of MCL 750.520b(1)(a) and MCL 750.520c(1)(a).

Defendant questions the victim’s credibility due to her consumption of alcohol on the night and her motive to lie, in order to reunite her parents. However, as this Court has long established, credibility is a matter for the trier of fact to decide. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). In addition, defendant asserts that there was no physical evidence to support the victim’s story. However, a victim’s testimony need not be corroborated for prosecution of the crimes of which defendant was convicted. MCL 750.520(h). Considered in the light most favorable to the prosecution, the evidence was more than sufficient to show guilt on all counts beyond a reasonable doubt.

The second issue raised by defendant is that his sentence was excessive. We will not reverse a trial court’s decision regarding sentencing absent an abuse of discretion. *People v Milbourn*, 435 Mich 630, 665-66; 461 NW2d 1 (1990). An abuse of discretion occurs when a sentence is not proportionate to the seriousness of the crime and defendant’s prior record.

The Supreme Court’s sentencing guidelines were superseded by guidelines developed by the Sentencing Commission pursuant to MCL 769.31 *et seq.* The Supreme Court’s sentencing guidelines apply to offenses committed before January 1, 1999, MCL 769.34(1), *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000), while the statutory guidelines apply to offenses committed on or after January 1, 1999, MCL 769.34(2), *People v Greaux*, 461 Mich 339, 342 n 5; 604 NW2d 327 (2000). Because defendant’s crimes were committed on December 31, 1998, the judicial guidelines apply.

Still, in situations where a defendant is sentenced as an habitual offender, review is conducted without regard to the guidelines. Instead, review is limited to consideration of whether the sentence is proportionate to the circumstances surrounding the crime and defendant. *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996).

Defendant was sentenced as a third habitual offender. His prior convictions included, but are not limited to, a conviction for CSC II, and sexual delinquency; the presentence investigation report also shows that at one point defendant escaped from prison. Defendant’s prior record combined with the nature of the current circumstances, involving the twelve-year-old daughter of defendant’s girlfriend, demonstrate that defendant’s sentence was proportionate.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard Allen Griffin
/s/ Michael R. Smolenski