

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEDRIK RONYEAL TAYLOR, a/k/a
LEDRIK R. TAYLOR,

Defendant-Appellant.

UNPUBLISHED

August 23, 2002

No. 237427

Livingston Circuit Court

LC No. 00-011736-FH

Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his plea-based convictions of criminal sexual conduct in the fourth degree (CSC IV), MCL 750.520e(1)(b), and indecent exposure, MCL 750.335a. We affirm defendant's convictions and remand for correction of the presentence report.

Defendant pleaded nolo contendere to the charges of CSC IV and indecent exposure in return for dismissal of the supplemental charge of habitual offender, second offense, MCL 769.10. With the consent of the parties, the trial court attached the police report to the plea form. The police report stated that complainant, defendant's co-worker, reported that defendant repeatedly made brazen sexual comments to her, and that on several occasions he intentionally backed into her and bumped his shoulder and arm against her breast. Defendant continued to engage in this action even after she moved away from him. Complainant also reported that defendant exposed himself to her in the workplace. The trial court accepted the plea.

Prior to sentencing, defendant moved to withdraw his plea on the grounds that he was innocent of the charges, and that he only accepted the plea bargain in order to avoid consecutive sentencing based on his parole status. The trial court denied the motion on the ground that withdrawal of the plea would substantially prejudice the prosecution due to its inability to contact a necessary witness.

The applicable statutory sentencing guidelines recommended a minimum term range of zero to eleven months for the offense of CSC IV. The trial court sentenced defendant to sixteen to twenty-four months in prison for the conviction of CSC IV, and to one year in the county jail for the conviction of indecent exposure. Defendant's prison term was to be consecutive to the sentence he was serving on parole when he committed the instant offenses. The trial court stated

that it exceeded the guidelines on the grounds that the guidelines did not adequately account for the seriousness of defendant's repeated harassment of complainant, or for the rapidity with which defendant committed new offenses after being paroled.

When moving to withdraw a plea before sentence is imposed, a defendant must show that withdrawal of the plea is in the interest of justice. To do so, he must articulate a fair and just reason for withdrawal of the plea. *People v Wilhite*, 240 Mich App 587, 594; 618 NW2d 386 (2000). If the defendant carries his burden, the prosecutor must show that withdrawal of the plea would result in substantial prejudice. To make such a showing, the prosecutor must establish that its ability to prosecute the case would be hampered. A showing of mere inconvenience is not sufficient. *People v Thew*, 201 Mich App 78, 81; 506 NW2d 547 (1993). We review a trial court's decision on a motion to withdraw a plea for an abuse of discretion. *People v Kennebrew*, 220 Mich App 601, 605; 560 NW2d 354 (1996).

A person who engages in sexual contact that is accomplished by force or coercion is guilty of CSC IV. MCL 750.520e(1)(b). "Sexual contact" includes the intentional touching of the victim's intimate parts, or the clothing covering those parts, if the touching can reasonably be construed as being for the purpose of sexual arousal or gratification. MCL 750.520a(k).

Defendant argues the trial court abused its discretion by denying his motion to withdraw his plea. He asserts the record did not contain sufficient evidence of a factual basis for the plea; without such a basis, the trial court could not determine that the elements of the charged offenses had been established.

Defendant's arguments are without merit, and we affirm his convictions. At the plea hearing, the trial court secured the consent of both parties to attach the police report to the plea form. The police report was intended to serve as the factual basis for the plea. The report contained complainant's statements that defendant intentionally pressed his shoulder and arm against her breast, and that he repeated this action on several occasions even as she attempted to move away from him.

The existence of force sufficient to support a charge of CSC IV is not limited to acts of physical violence. The actual application of force through physical pressure is sufficient to support a charge of CSC IV. *People v Premo*, 213 Mich App 406, 409-410; 540 NW2d 715 (1995). The police report contained a sufficient factual basis from which the trial court could conclude that defendant committed the offense of CSC IV, MCL 750.520e(1)(b); *Premo, supra*, as well as the offense of indecent exposure. MCL 750.335a; *People v Vronko*, 228 Mich App 649, 655-657; 579 NW2d 138 (1998).

The record contained a sufficient factual basis to allow the trial court to determine that defendant committed the charged offenses. Defendant has not demonstrated that the interests of justice would be served by withdrawal of his plea of nolo contendere to those charges. *Wilhite, supra*.

Defendant's argument that even assuming *arguendo* that his plea should stand he is entitled to resentencing because the trial court was unduly influenced by the unfavorable but inadmissible results of a polygraph examination is without merit. The trial court remarked that it wished that defendant had produced more favorable results on the polygraph examination;

however, nothing in the record supports defendant's assertion that the polygraph examination results influenced the trial court's ultimate sentencing decision. Nevertheless, we remand for production of a corrected presentence report and removal of any reference to defendant's polygraph examination. *People v Allen*, 49 Mich App 148, 152; 211 NW2d 533 (1973).

Affirmed and remanded for correction of the presentence report. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Janet T. Neff

/s/ Kathleen Jansen