

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE DOLAN HAMILTON,

Defendant-Appellant.

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UNPUBLISHED

May 25, 2004

No. 246793

Wayne Circuit Court

LC No. 02-005698

Before: Schuette, P.J., and Bandstra and Cooper, JJ.

PER CURIAM.

Defendant Maurice Dolan Hamilton appeals as of right his jury trial convictions of two counts of first-degree criminal sexual conduct<sup>1</sup> and one count of second-degree criminal sexual conduct.<sup>2</sup> Defendant was sentenced to forty-two months to ten years' imprisonment for each conviction to be served concurrently. We affirm.

I. Facts

The circumstances surrounding defendant's convictions arose from his relationship with eleven-year-old Ashante Snowden. When defendant met Ms. Snowden, she informed him that she was seventeen years old. During several phone conversations following their first meeting, Ms. Snowden again told defendant that she was seventeen and that she had lived with a previous boyfriend. On the evening of April 4, 2002, Ms. Snowden accompanied defendant to his home. Defendant asked Ms. Snowden for identification to prove her age at that time, but Ms. Snowden indicated that she left her identification at home.

Ms. Snowden and defendant watched a movie and engaged in intercourse. Defendant testified that the intercourse was Ms. Snowden's idea and that she waited while he went to the store to buy condoms. At some point, Ms. Snowden called a friend who informed the police of her location. Ms. Snowden's grandparents had already reported her missing. The police found Ms. Snowden in defendant's home and he was placed under arrest.

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<sup>1</sup> MCL 750.520b(1)(a) (victim under thirteen years of age).

<sup>2</sup> MCL 750.520c(1)(a) (victim under thirteen years of age).

## II. Reasonable Mistake of Age

Defendant contends that the trial court erred in denying his motion to raise the defense of reasonable mistake of age as he has a due process right to present a full defense. Defendant argues that the underlying purpose of Michigan's statutory rape laws—to protect minor children—is invalidated by the circumstances of this case. Defendant also argues that this Court should interpret the statutory rape laws to include a criminal intent element. We disagree. We review questions of statutory interpretation<sup>3</sup> and challenges to the constitutionality of a statute de novo.<sup>4</sup>

Defendant argues that the trial court's denial of his motion for a reasonable mistake of age defense deprived him of his due process right to present a complete defense. However, it is well established that mistake of age is not a defense in statutory rape cases under the Michigan Constitution or Michigan law.<sup>5</sup>

Michigan's policy behind the statutory rape laws is to protect minors. It is presumed that minors are incapable of making decisions and appreciating the consequences of their choices regarding sexual intercourse.<sup>6</sup> Thus, the statutory rape laws presume that the sexual act took place against the victim's will if the conduct occurred while the victim was below the statutory age of consent.<sup>7</sup> The perceived maturity or experience of a victim under the statutory age of consent does not negate the strict liability nature of this offense.<sup>8</sup> Therefore, defendant is not entitled to raise mistake of age as a defense.

We also disagree with defendant's contention that we should construe the statutory rape laws to include an element of criminal intent. Michigan law comports with the majority of states that favor strict liability for statutory rape without proof of criminal intent as a matter of public policy.<sup>9</sup> Based on the plain language and current interpretation of Michigan's statutory rape statutes, we find that the trial court did not err in denying defendant's motion for a mistake of age defense.

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<sup>3</sup> *People v Denio*, 454 Mich 691, 698; 564 NW2d 13 (1997).

<sup>4</sup> *People v White*, 212 Mich App 298, 304-305; 536 NW2d 876 (1995).

<sup>5</sup> *People v Cash*, 419 Mich 230, 237, 240, 245; 351 NW2d 822 (1984), citing *People v Gengels*, 218 Mich 632; 188 NW 398 (1922), *People v Doyle*, 16 Mich App 242, 243; 167 NW2d 907 (1969).

<sup>6</sup> *In re Hildebrant*, 216 Mich App 384, 386; 548 NW2d 715 (1996).

<sup>7</sup> *People v McGillen #2*, 392 Mich 278, 284; 220 NW2d 689 (1974).

<sup>8</sup> *Doyle, supra*, 16 Mich App 243.

<sup>9</sup> *Cash, supra*, 419 Mich 240. See also 46 ALR5th 499.

### III. Sentencing

Defendant also asserts that the trial court improperly scored OV 11 at twenty-five points. Defendant argues that the score was inaccurate because the trial court included defendant's second conviction involving penetration in scoring OV 11. He contends that each conviction involving penetration should be scored on a separate Sentencing Information Report (SIR) and should reflect an OV 11 score of zero points. We disagree. The sentencing court has discretion in determining the number of points to be scored provided that there is evidence on the record that adequately supports a particular score.<sup>10</sup>

MCL 777.41 provides for the scoring of OV 11 as follows:

(1) Offense variable 11 is criminal sexual penetration. Score offense variable 11 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

\* \* \*

(b) One criminal sexual penetration occurred . . . . . 25 points

\* \* \*

(2) All of the following apply to scoring offense variable 11:

(a) Score all sexual penetrations of the victim by the offender arising out of the sentencing offense.

(b) Multiple sexual penetrations of the victim by the offender extending beyond the sentencing offense may be scored in offense variables 12 or 13.

(c) Do not score points for the 1 penetration that forms the basis of a first- or third-degree criminal sexual conduct offense.<sup>[11]</sup>

While points for the one, single penetration that forms the basis of a first- or third-degree conviction should be excluded, points should be included for all other penetrations arising out of the sentencing offense.<sup>12</sup> We find that the trial court properly scored OV 11 by excluding points for defendant's one penetration offense that formed the basis of his conviction, and properly included twenty-five points for defendant's additional penetration, which did not form the basis of his conviction.

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<sup>10</sup> *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

<sup>11</sup> MCL 777.41.

<sup>12</sup> *People v McLaughlin*, 258 Mich App 635, 676-677; 672 NW2d 860 (2003).

Moreover, convictions with concurrent sentences are to be calculated based on the sentencing guidelines for the offense having the highest crime class.<sup>13</sup> The trial court properly completed one SIR for defendant's concurrent sentences based on defendant's conviction of the Class "A" crime of first-degree CSC. As the record evidence adequately supports defendant's score of twenty-five points for OV 11 and defendant's sentence is within the minimum sentencing guidelines range, we must affirm.<sup>14</sup>

Affirmed.

/s/ Bill Schuette  
/s/ Richard A. Bandstra  
/s/ Jessica R. Cooper

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<sup>13</sup> MCL 771.14(2)(e)(iii). See also *People v Hill*, 221 Mich App 391, 396; 561 NW2d 862 (1997) (there is no need for separate scoring of concurrent sentences because such sentences are served at the same time and the lesser offenses will be included in the sentencing of the highest offense).

<sup>14</sup> See MCL 769.34(10).