

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK PERKINS,

Defendant-Appellant.

UNPUBLISHED

September 28, 2006

No. 262568

Wayne Circuit Court

LC No. 05-000165-01

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his conviction for criminal sexual conduct in the first degree involving a weapon, MCL 750.520b(1)(e) (CSC I). This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant is a barber. The victim is a 13-year-old boy whose mother brought him to defendant's hair salon for a haircut. The victim testified that defendant had been a family friend for about two years. After his mother dropped him off, the victim waited for his haircut in a room in the back, watching television. The room had two glass walls, but no light other than from the television and an adjoining room. The victim stated that defendant came into the room and took a gun out of a bag. Defendant put the gun on the victim's hip and told him to take out his penis. The victim refused. Defendant reached inside the victim's sweat pants and touched his penis for approximately two minutes. Defendant then put his mouth on the victim's penis. Soon after, a noise was heard from an adjoining room, and defendant stopped.

Following a jury trial, defendant was convicted of one count of criminal sexual conduct in the first degree involving a weapon, MCL 750.520b(1)(e) (CSC I), and one count of criminal sexual conduct in the second degree involving a weapon, MCL 750.520c(1)(e) (CSC II). He was sentenced to 42 to 63 months in prison for CSC I, and to 28 days served for CSC II. Defendant moved for a new trial, arguing that convictions for both offenses violated his right against double jeopardy because both offenses arose from a single transaction. The trial court agreed that the touching and the completed sex act constituted a single transaction, and that conviction for both violated double jeopardy. Accordingly, the trial court vacated the CSC II conviction. The prosecutor did not appeal that decision, so the question of whether the trial court correctly found a double jeopardy violation is not before this Court. Defendant argues on appeal only that the appropriate remedy would have been to vacate both convictions, claiming his CSC I conviction

violates the Double Jeopardy clauses of the United States and Michigan Constitutions, US Const, Am V, and Mich Const 1963, art 1, § 15. We disagree.

Defendant acknowledges that the remedy for a double jeopardy violation is generally to vacate the lesser offense.¹ However, defendant argues that this remedy is insufficient in his case because he has already served his 28-day sentence for the CSC II offense. Defendant cites no authority, nor even a logical argument, to support the proposition that this remedy is inadequate where a sentence has already been served, especially when it was served concurrently with the sentence on the higher charge. We find no basis for reversing the trial court's decision.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper

¹ See *People v Herron*, 464 Mich 593, 609; 628 NW2d 528 (2001):

[I]n cases in which no successive prosecutions problem arises, but in which a defendant has been punished doubly “for offenses arising out of a single transaction but that could not have been exacted in a single proceeding,” it is an appropriate remedy in a multiple punishment double jeopardy violation to affirm the conviction of the higher charge and to vacate the lower conviction.