

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARLAND MALONE, JR.,

Defendant-Appellant.

UNPUBLISHED

December 14, 2006

No. 264284

Wayne Circuit Court

LC No. 05-002229-01

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of third-degree criminal sexual conduct (CSC), MCL 750.520d(1)(a), and sentenced as an habitual offender, third offense, MCL 769.11, to 19 to 30 years in prison. Defendant appeals as of right. We affirm.

Defendant's sole claim on appeal relates to the scoring of ten points for offense variable (OV) 10, MCL 777.40. Because counsel stated that he had no objection to the scoring of OV 10, defendant presents the issue as one of ineffective assistance of counsel. We find no basis for relief, however, because regardless of whether OV 10 was scored at zero or ten points, it would not affect defendant's placement in the sentencing grid and he would not be entitled to resentencing. MCL 769.34(10); *People v Francisco*, 474 Mich 82, 89 n 8; 711 NW2d 44 (2006).

Third-degree CSC is a Class B felony. MCL 777.16y. Defendant's prior record variable score was 70 points and his offense variable score was 60 points. The guidelines as scored placed defendant in the E-V category. MCL 777.63. If the ten points for OV 10 were subtracted, defendant's offense variable score would be 50 points. Offense variable level V encompasses any score between 50 and 74 points. MCL 777.63. Therefore, correction of the alleged error would still result in defendant's placement in the E-V category. Because a successful challenge to the scoring of the guidelines would not have affected the guidelines range under which defendant was sentenced, counsel's alleged error was harmless. *People v Wilson*, 252 Mich App 390, 394; 652 NW2d 488 (2002).

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly