S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD LEE McMILLON,

Defendant-Appellant.

UNPUBLISHED
August 20, 1996

No. 174273; 174274;174424
LC No. 93-7276-FC
93-7277-FC
93-7278-FC

Before: Hood, P.J., and Markman and A. T. Davis,* JJ.

PER CURIAM.

In No. 174273, defendant was convicted following a jury trial of assault with intent to commit robbery while armed. MCL 750.529; MSA 28.797. In No. 174424, defendant was convicted following a jury trial of two counts of first-degree criminal sexual conduct involving a weapon. MCL 750.520(b); MSA 28.788(2)(1)(e). In No. 174274, defendant entered a plea of guilty to a third and separate charge of CSC-I involving a third victim. Defendant was sentenced to concurrent terms of ten to fifty years in No. 174273, twenty-five to fifty years in No. 174424 and twenty to fifty years in No. 174424. Defendant appeals as of right from his convictions as well as the judgments of sentence. We affirm.

Defendant's principal argument on appeal is that the trial court abused its discretion in sentencing defendant, who was sixteen years old at the time that the offenses were committed, as an adult. However, the court carefully considered the statutorily mandated criteria in MCL 769.1(3); MSA 28.1703 in determining whether to sentence defendant as an adult and made specific findings of fact which were not clearly erroneous. Specifically, the court noted that defendant's offenses were part of a repetitive pattern of conduct and led to its conclusion that defendant was not amenable to treatment. The court further noted that defendant had earlier been disruptive at a Juvenile Detention Center where he had been placed and that his offenses were "some of the most serious offenses that the state recognizes and the circumstances of the offenses were brutal and vicious and have scarred these

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* Circuit judge, sitting on the Court of Appeals by assignment.

various victims that were involved." Additionally, the court determined that the nature of defendant's behavior was likely to render him dangerous to the public if released before his twenty-first birthday. Moreover, the court expressed doubt that a juvenile facility would be capable of treating an individual with defendant's problems and that, if he was capable of rehabilitation, it would have to be done with the type of services available at an adult facility. Finally, the court concluded that "it is in the best interest of the public and in the protection of the public to sentence defendant as an adult." Based upon the testimony available to the court, we do not find any clear error on its part in sentencing defendant as an adult. *People v Passeno*, 195 Mich App 91; 489 NW2d 152 (1992). Nor are we left with a definite and firm conviction that a mistake has been made in this determination. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

Defendant next argues that he was denied his due process rights to a fair trial by prosecutorial misconduct. However, defendant has failed to identify any such misconduct by reference to the record below in No. 174273 and we may, therefore, disregard this issue on appeal. *Continental Paper v Detroit*, 205 Mich App 404, 406; 521 NW2d 844 (1994). In No. 174424, defendant has also failed to make reference to the record although it appears that he is arguing that the prosecutor erred in suggesting that conscientious police work was done in this case based upon the officer's and the prosecutor's belief that the charges against defendant were credible. He also objects to remarks by the prosecutor concerning the defendant's physical growth from the time of the alleged offense until the time of trial (an approximate two years period). No objection was made at trial to either of these suggested improprieties. After review of the record, we are persuaded that no manifest injustice would result from this Court's refusal to reverse defendant's conviction on the basis of this alleged misconduct. In both instances, the prosecutor's remarks were made in direct response to statements made by defendant's counsel and do not appear to be improper in any respect.

Defendant finally argues that his sentences were disproportionate. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We disagree. Defendant's guideline range was recalculated at sentencing at 120 months to 300 months. Accordingly, his highest sentence--twenty-five to fifty years for two counts of CSC-I involving a weapon for the forcible rape of a sixteen year old girl--falls within the guideline range and is presumptively proportionate. *People v Broden,* 428 Mich 343, 354-55; 408 NW2d 789 (1987). Defendant has not presented any "unusual circumstances" that might be sufficient to overcome this presumption. His lack of juvenile convictions was considered by the guidelines and, once the court has determined that defendant should be charged as an adult, his age is not a sufficiently "unusual circumstance" to overcome the guideline presumption. In No. 174273--the assault with intent to rob while armed conviction --the court noted that defendant's sentence exceeded the guideline range of eighteen to sixty months but stated that this departure was justified by the fact that the guidelines did not adequately reflect the terror that defendant caused his victim whose "life has not been the same since." The court also articulated its belief that defendant represented an extremely serious danger to the community and that a sentence within the guideline range would not adequately protect the community. In No. 174274--the second conviction for rape involving a weapon--the court again acknowledged that its sentence exceeded the guideline range but observed that it did not exceed the plea bargain cap and that such a sentence again was necessary for the protection of

the community. We find no abuse of discretion in the court's sentencing determinations. *People v Coles*, 417 Mich 523, 550; 339 NW2d 440 (1983).

Affirmed in No. 174273, No. 174424 and No. 174274.

/s/ Harold Hood
/s/ Stephen J. Markman
/s/ Alton T. Davis