

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEWIS FREDERICK LAKE,

Defendant-Appellant.

UNPUBLISHED

February 22, 2005

No. 251403

Wayne Circuit Court

LC No. 03-002304

Before: Fort Hood, P.J. and Griffin and Donofrio, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of six counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a), and three counts of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a). He was sentenced to concurrent terms of life imprisonment for each CSC I conviction and ten to fifteen years' imprisonment for each CSC II conviction. He appeals as of right. Because the evidence presented was sufficient to conclude guilt beyond a reasonable doubt and defendant's sentence was proportionate, we affirm.

Defendant first argues that there was insufficient evidence at trial to support his convictions. We disagree.

We review an insufficiency of evidence claim from a bench trial de novo. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). In so reviewing, this Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Conflicting evidence must be resolved in favor of the prosecution. *Id.* To obtain a criminal conviction, the prosecution has the burden of proving the essential elements of the crime beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 465-466; 502 NW2d 177 (1993). The essential elements of CSC I as charged against defendant are (1) sexual penetration and (2) the victim being under thirteen years of age. *In re Hawley*, 238 Mich App 509, 511; 606 NW2d 50 (1999), quoting MCL 750.520b(1)(a). "Sexual penetration" is defined in relevant part as "sexual intercourse . . . or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body" MCL 750.520a(o).

Having reviewed the trial record, we conclude that there was sufficient evidence to support defendant's convictions. The victim testified that she was seven or eight years old when the sexual assaults occurred and that defendant had vaginal intercourse with her and inserted his fingers into her vagina maybe five times. Thus, the victim's testimony reflects that she was sexually penetrated by defendant at least six times. Contrary to the implication of defendant's argument, the victim's testimony itself was sufficient evidence to support his CSC I convictions because, in considering the sufficiency of the evidence, we will not decide the credibility of a witness. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004). Accordingly, the victim's testimony that defendant sexually penetrated her at least six times when she was under thirteen-years-old is sufficient evidence to support his CSC I convictions.

Regarding defendant's CSC II convictions, the essential elements of CSC II as charged against defendant are (1) sexual contact and (2) the victim being under thirteen years of age. MCL 750.520c(1)(a). "Sexual contact' includes the intentional touching of the victim's or actor's intimate parts . . ." MCL 750.520a(n). The victim testified at trial that she was seven or eight years old at the time defendant sexually assaulted her and that defendant made her touch his penis around three times. Thus, there was sufficient evidence to support defendant's convictions of three counts of CSC II.

Next, defendant argues that his sentences of life imprisonment for each CSC I conviction are disproportionate to the conviction offenses. While the Supreme Court's guidelines are superseded for crimes committed on or after January 1, 1999, they remain applicable to crimes, like the instant ones, that were committed before that date. See MCL 769.34. To preserve a challenge to the proportionality of a sentence falling within the judicial guidelines range, a defendant must present unusual circumstances to the sentencing court indicating that a sentence within the guidelines would not be proportionate before the sentence is imposed or else the issue is waived. *People v Sharp*, 192 Mich App 501, 505-506; 481 NW2d 773 (1992). Although defendant stated a blanket objection following sentencing for purposes of appeal, defendant did not argue below that there were any unusual circumstances indicating that a sentence within the guidelines should not be imposed. Thus, defendant has waived his right to challenge the proportionality of the life sentences.

Nevertheless, even if this issue were not waived by defendant, his challenge would fail because the sentences are proportionate. We review a trial court's sentencing for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). More specifically, our review is guided by the principle of proportionality, which takes into account the seriousness of the offense and the offender. *Id.* A sentence that falls within the judicial guidelines range is presumptively proportionate. *People v Wilson*, 196 Mich App 604, 610; 493 NW2d 471 (1992). Thus, because it is undisputed that defendant's life sentences were within the guidelines range, they are presumptively proportionate.

While it is not inconceivable that a sentence within the judicial guidelines recommended range for a particular offense could be disproportionate, *Milbourn, supra* at 661, we conclude that defendant has not shown any unusual circumstances rendering his life sentence disproportionate. Defendant's conduct with regard to the underlying crimes as described in the victim's testimony was extremely severe. She testified that she lived with defendant, who is her stepfather, when the sexual assaults occurred over a substantial period of time. Specifically regarding the sexual assaults that occurred at her grandmother's house, the victim stated that

defendant had vaginal intercourse with her once, inserted his fingers into her vagina “maybe five times” and made her touch his penis around three times. She was also only seven or eight years old when the sexual assaults occurred. Given the seriousness of the offenses, the life sentences are proportionate to the severity of defendant’s crimes.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio