STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ALLEN MORRIS,

Defendant-Appellant.

UNPUBLISHED
September 09, 2026
9:56 AM

No. 372662
Chippewa Circuit Court
LC No. 2022-005627-FC

Before: GADOLA, C.J., and BOONSTRA and CAMERON, JJ.

PER CURIAM.

Defendant appeals as of right his jury-trial conviction of, and sentence for, first-degree criminal sexual conduct (CSC-I), MCL 750.520b(2)(b), along with his convictions of assault with intent to commit sexual penetration, MCL 750.520g(1), and three counts of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(2)(b). The trial court sentenced defendant, as a fourth habitual offender, MCL 769.12, to serve terms of imprisonment of 37 to 60 years for the CSC-I conviction, 10 to 15 years for each CSC-II conviction, and 6 to 10 years for the assault conviction.[1] We affirm.

I. FACTS

On appeal, defendant does not contest the underlying facts as the victim (BS) described them, but rather challenges the admission of certain evidence.

The offenses occurred in 2012, when BS was five years old. BS lived with her aunt and would come to know defendant as a "family friend" who lived "a duplex over" from BS's home. Defendant began acting inappropriately around BS, including by showing her pornography. This progressed to touching BS's vagina and breasts, along with an incident in which defendant was "trying to put his penis in between [her] butt cheeks." BS recalled other times when defendant

[1] Additionally, defendant was required to register as a sex offender and submit to lifetime electronic monitoring.

would have her touch his penis while he watched pornography, as well as several other incidents of sexual abuse. BS did not report the abuse to her aunt until "many years later." A school social worker eventually learned of the abuse and reported it to authorities.

Defendant challenges testimony from two witnesses at trial—another CSC victim (LY), and a police detective.

A. CHALLENGED WITNESS TESTIMONY FROM LY (PRIOR BAD ACTS)

LY, the daughter of the woman defendant lived with at the time he sexually abused BS, provided testimony of multiple incidents when defendant had sexually abused her when she was between the ages of 8 and 18. LY explained that she learned of the charges against defendant in this case for the criminal sexual conduct against BS from a "most wanted" post on the "Chippewa County Sheriff's App." LY contacted Detective Jeffrey Erickson, and, as part of the investigation for the criminal sexual conduct against BS, she came forward with her own disclosures. She then testified to the information she provided the investigation.

LY testified that she was born in Chippewa County in 1995 but moved to Georgia when she was about six months old. During a turbulent time in LY's parents' relationship, when LY was five or six years old, she, her siblings, and her mother moved to Michigan to stay with LY's grandmother. LY's grandmother lived in one half of a duplex, and defendant lived in the other half. In time, LY's mother began a romantic relationship with defendant.

LY testified that she thought defendant must have been a "safe person" because she "thought any adult [her] mom would bring . . . around was a safe person." LY testified, however, that defendant "tried touching" her when she was eight years old. LY described an incident when she had her head resting in defendant's lap and he began caressing her thighs and feeling "in between where my butt cheek meets my genital area." LY stated that she did not tell her mother about the incident, but that she moved away to live with her father and tried to distance herself from defendant. LY's mother continued to live in Michigan and later began living with defendant.

According to LY, she continued to visit her mother about once a year, and during a visit when she was 12 years old, she ended up alone in the house with defendant. LY testified that she was taking a shower and noticed a quarter-sized hole above the faucet; looking into the hole, she saw defendant "knelt down right in front of there looking through the hole." LY then made sure the door was closed and covered the hole with a washcloth. However, upon feeling a breeze, LY looked out from the shower and saw that defendant had cracked the door and was watching her from the doorway. LY confronted defendant and told him that she was going to tell her mother when she returned home. According to LY, defendant denied the allegations, and LY's mother took defendant's side. LY added that her mother was unwilling to believe allegations from LY or her siblings, some of whom also reported abuse by defendant.

LY reported a final incident that occurred in Georgia, when she was 18. At the time, LY and her one-year-old child were staying with LY's father, for whom defendant was to do some roofing work. Defendant asked if he could stay in the house while he completed the project. One afternoon while LY and the baby were napping in a bedroom, LY awoke to find defendant "hovering over" her, and he then attempted to pull LY's pants off. LY stated that she "kicked" defendant off of her, retreated into an attached bathroom, and called a friend for assistance. This led to a confrontation between defendant, LY, and LY's father.

Defendant argues LY's testimony about the prior sexual abuse should not have been admitted under MCL 768.27b(4), because it occurred more than ten years before the trial occurred. Defendant also asserts that LY's testimony was not relevant.

B. CHALLENGED WITNESS TESTIMONY FROM DETECTIVE ERICKSON (EXPERT TESTIMONY)

Defendant believes that the testimony provided by Detective Erikson about delayed disclosures was improper expert-opinion testimony and should have been excluded. During the trial Detective Erickson provided the following testimony on delayed disclosures:

> *Q*. I guess, in your experience, what predominantly or what type of disclosures are made do you think? Is it more delayed reports or immediate reports?
>
> *A*. So I can speak for what my experience is . . . as a deputy and a detective and . . . would say that the great majority of the . . . sexual assault reports that we get are delayed disclosures. There's a variety of different reasons of why people wait to disclose, but I would say the small majority is actually immediate reports. . . . Those are much less common than the delayed disclosures.
>
> *Q*. Especially when you take reports from children, I guess, are you seeing immediate reports or delayed reports?
>
> *A*. In most cases, reports of children tend to be delayed. And, again, a number of varieties, sometimes . . . it can be because the child is sexualized at a young age. They don't even realize that that is abnormal until they grow up and have more life experience and find out that is not a normal instance. Sometimes it's because kids don't have a safe person . . . to tell. They might be in a living situation that would be counterproductive, like maybe the offender is somebody that lives in the home or has power authority over them. There's a variety of different reasons . . . why kids delay in reporting. Sometimes it's not until a . . . child becomes closer to teenager and I guess maybe it's the whole sexual thing is a little bit more normal then and then that's when they realize that something is different about what their experience is.

After the three-day trial, the jury found defendant guilty on all counts, and defendant was sentenced as indicated. This appeal followed.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant raises his challenges to the testimonies of LY and Detective Erickson under the rubric of ineffective assistance of counsel, arguing that defense counsel was ineffective for failing to object to LY's testimony attributing prior bad acts to defendant, or to Detective Erickson's testimony about delayed disclosures from sexual-assault victims.

"Generally, whether a defendant had the effective assistance of counsel is a mixed question of fact and constitutional law. This Court reviews findings of fact for clear error and questions of law de novo." *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012) (quotation marks and citations omitted). In this case, however, defendant did not move for a new trial or evidentiary hearing on grounds of ineffective assistance and therefore left this issue unpreserved. *Id*. Accordingly, our review is limited to mistakes apparent from the existing record. *Id*.

The Supreme Court has explained that "the ultimate determination of an ineffective-assistance claim is not the propriety of the trial court's actions with regard to an alleged error, but whether defendant has suffered a genuine deprivation of his right to effective assistance of counsel . . . ." *People v Randolph*, 502 Mich 1, 10-11; 917 NW2d 249 (2018) (quotation marks and citation omitted). The Court elaborated as follows:

> [T]rial counsel's deficient performance will often result in a trial court error, but the claims associated with each type of error have their own elements and require different analyses. In evaluating a trial court's error the appellate court is making one determination, and in evaluating trial counsel's deficient performance, the determination is different. [*Id*. at 11.]

"[E]stablishing ineffective assistance requires a defendant to show (1) that trial counsel's performance was objectively deficient, and (2) that the deficiencies prejudiced the defendant." *Id*. at 9. In this context, prejudice is " 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " *Id*., quoting *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

A. PRIOR BAD ACTS

Defendant argues that his trial counsel was ineffective for failing to object to the admission of prior acts evidence that was introduced through the testimony of LY. We disagree.

MRE 404(b) prohibits the introduction of "[e]vidence of any other crime, wrong, or act . . . to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." However, the Legislature has enacted exceptions to that general rule, allowing evidence of prior bad acts to be used to show a defendant's propensity to engage in certain behaviors.

Under MCL 768.27a, evidence of other sex acts[2] against minors is admissible for any relevant purpose—including to show propensity—when the defendant is charged with a sex crime against a minor. See *People v Duenaz*, 306 Mich App 85, 99; 854 NW2d 531 (2014) (citing MCL 768.27a). Similarly, MCL 768.27b permits evidence of sexual assault, to show propensity to engage in such conduct. See *People v Berklund*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 367568); slip op at 8 (citing MCL 768.27b). Yet such propensity evidence remains subject to exclusion if its probative value is substantially outweighed by the risk of unfair prejudice. MRE 403. Evidence is unfairly prejudicial if it has a tendency "to adversely affect the objecting party's position by injecting considerations extraneous to the merits of the lawsuit, e.g., the jury's bias, sympathy, anger, or shock." *People v Pickens*, 446 Mich 298, 337, 521 NW2d 797 (1994).

The crux of defendant's argument is that defense counsel's performance fell below an objective standard of reasonableness when counsel failed to object to LY's testimony describing instances of defendant sexually abusing her. Defendant notes that his attorney neither responded to the prosecutor's notice of intent to use the evidence, nor challenged the evidence before or during trial. However, "[f]ailing to advance a meritless argument or raise a futile objection does not constitute ineffective assistance of counsel." *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010). Therefore, to succeed with this claim, defendant must establish that an objection would have had merit.

Defendant raises two arguments in this regard. First, he contends that the events LY described were too far back in time to be admissible under MCL 768.27b(4), which states that "[e]vidence of an act occurring more than 10 years before the charged offense is inadmissible under this section" unless an exception applies. As noted, LY's testimony concerned events that took place when LY was between the ages of 8 and 18, and she was born in 1995. Defendant reasons that because LY was in her late 20s at the time of trial, the testimony in question was inadmissible because she described events that occurred more than 10 years before she testified. Defendant misreads the law. As MCL 768.27b(4) plainly states, testimony may be excluded if the events occurred "more than 10 years before the *charged offense*" (emphasis added). In this case, the victim (BS) alleged that defendant sexually abused her in the summer of 2012 (charged offenses), and LY turned eight in 2003. Therefore, the entirety of LY's testimony concerned events that occurred less than 10 years before the charged offenses.

Second, defendant asserts that LY's testimony was not relevant. MCL 768.27b(1) states that, for the specified kinds of prosecutions, evidence of prior bad acts "is admissible for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403." This encompasses evidence that is relevant only because it shows propensity. See *Duenaz*, 306 Mich App at 99 (citing MCL 768.27a); *Berklund*, ___ Mich App at ___; slip op at 8 (citing MCL 768.27b). Specifically, defendant contends that LY's testimony that defendant molested her and spied on her in the shower when she was between the ages of 8 and 18 is not relevant to

[2] MCL 768.27a applies to a "criminal case in which the defendant is accused of committing a listed offense against a minor," and specifies that the listed offenses are "defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722."

whether he molested BS when she was 5 years old, on the ground that the accusations are too dissimilar for the one to have bearing on the other.

Prior-acts evidence is "relevant if two components are present: materiality and probative value." *People v Denson*, 500 Mich 385, 401; 902 NW2d 306 (2017). "Materiality is the requirement that the other-acts evidence be related to any fact that is of consequence to the action. In other words, is the fact to be proven truly in issue?" *Id*. (quotation marks and citations omitted). Evidence is probative if it has "any tendency to make a fact more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action." MRE 401. As our Supreme Court has held, "the threshold is minimal: 'any' tendency is sufficient probative force." Denson, 500 Mich at 402, quoting People v Crawford, 458 Mich 376, 390; 582 NW2d 785 (1998) (alteration and some quotation marks omitted).

In this case, defendant's theory was that, although the victim had suffered sexual abuse, it was perpetrated by someone other than himself. The prosecution moved to introduce the prior-acts evidence to establish "the relevant purposes of proving [d]efendant's character and that [d]efendant intended to commit the charged crime." Additionally, the prosecution wanted "to show that it was more probable than not that the minors were telling the truth." *Duenaz*, 306 Mich App at 100. Given the modest hurdle to establish probative value, we hold that testimony that defendant had committed similar sexual offenses against a minor in similar circumstances was plainly material with respect to defendant's intent, character, or propensity to commit such acts.

In sum, no mistakes on the part of defense counsel are apparent from the record in connection with LY's testimony. Her descriptions of sexual assaults plainly fell within MCL 768.27b. As explained, the acts occurred less than 10 years before the charged offenses; the testimony concerned sexual offenses against a minor; the prosecution followed the required notice provisions; and defendant now stood accused of committing similar crimes against BS. Because there was no error in admitting the other-acts evidence, trial counsel was not ineffective for declining to raise an objection. See *Ericksen*, 288 Mich App at 201. Accordingly, defendant has not established ineffective assistance of counsel with this issue.

B. EXPERT TESTIMONY

Defendant contends that trial counsel was also ineffective for failing to object to improper expert-opinion testimony from Detective Erickson. Defendant maintains that had counsel objected, the testimony would have been excluded, and that there is a reasonable probability that the outcome of the trial would then have been different. We disagree.

Although framed as an argument for ineffective assistance of counsel, the gateway issue here is whether the detective's testimony was proper lay-opinion, or improper expert-opinion, testimony. MRE 701 requires that lay-opinion testimony be "(a) rationally based on the witness's perception," and "(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue." Additionally, such testimony may not "invade the province of the jury." *People v Fomby*, 300 Mich App 46, 52; 831 NW2d 887 (2013).

In contrast, MRE 702 permits the admission of expert testimony if

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

We conclude that Detective Erickson's testimony about the frequency of delayed disclosures is best characterized as lay-opinion testimony under MRE 701. It was rationally based on his 23 years of experience in law enforcement, and the detective couched it in those terms, explaining that he could speak only from his experience as a deputy and a detective. Further, his opinion was helpful to determine whether the victim was truthfully reporting sex crimes despite a lengthy delay in doing so. Moreover, the detective's testimony did not invade the province of the jury. He did not opine directly on the victim's veracity, but explained only that—in his experience—sexual assault victims often delay reporting the crimes. Detective Erickson's testimony about the frequency of delayed disclosures was properly admitted as lay-opinion testimony under MRE 701.[3]

Because the testimony about the frequency of delayed disclosures was properly admitted, any attendant objection from defense counsel would have been meritless. See *Ericksen*, 288 Mich App at 201. Accordingly, defendant has therefore again failed to establish ineffective assistance of counsel.

III. SENTENCING

Defendant notes that his minimum sentence for the CSC-I conviction[4] was near the high end of the recommended range under the sentencing guidelines, and argues that the court did not show that it considered less severe alternatives, and that defense counsel failed to advocate for any such mitigation, with the result that the sentence was disproportionate and therefore unreasonable. We disagree.

"The standard of review to be applied by appellate courts reviewing a sentence for reasonableness on appeal is abuse of discretion." *People v Dixon-Bey*, 321 Mich App 490, 520; 909 NW2d 458 (2017) (quotation marks, citation, and alteration brackets omitted). An appellate challenge to the reasonableness of a sentence does not require preservation. *People v Walden*, 319 Mich App 344, 350 (2017). However, to the extent defendant's claim is presented as one of

[3] Detective Erickson's testimony regarding the reasons why child victims might make delayed disclosures could be considered expert testimony for which he was not qualified; however, because defendant does not challenge that the abuse took place, the reasons for the delayed disclosure are not material to defendant's guilt or innocence.

[4] Defendant does not appear to challenge the sentences for his lesser convictions.

ineffective assistance of counsel, it is not preserved because defendant did not move for a new trial or evidentiary hearing. See *Heft*, 299 Mich App at 80.[5]

Michigan generally uses an indeterminate sentencing scheme, under which the sentencing guidelines recommend a range the court must consider for the minimum sentence, with the maximum sentence set by the pertinent statute. See generally *People v McCuller*, 479 Mich 672, 683; 739 NW2d 563 (2007), citing *People v Drohan*, 475 Mich 140, 160-161; 715 NW2d 778 (2006). In this case, the guidelines recommendation was for a minimum sentence of between 135 and 450 months. The trial court imposed a minimum of 37 years' (or 444 months) imprisonment, which was within the guidelines recommendation, albeit near the high end.

When a defendant's minimum sentence is within the guidelines' range, there is a rebuttable presumption of proportionality. See *People v Posey*, 512 Mich 317, 360; 1 NW3d 101 (2023). In this case, defendant has not offered any substantive argument to rebut this presumption. Defendant briefly refers to proportionality, but does not explain how that concept brings error to light here. In fact, appellate counsel plainly acknowledges that the crime "in and of itself, is horrible." Defendant therefore offers no avenues through which to overcome the presumption of proportionality.

As a final challenge, defendant complains that the trial court did not "elaborate on what specific facts about [defendant] or his conviction warranted the high end." But this is not a requirement for a within-guidelines sentence. See *People v Posey (On Remand)*, 349 Mich App 199, 207; 27 NW3d 137 (2023) (observing a lack of authority "suggesting that a sentencing court needs to expressly explain why a within-guidelines sentence is reasonable and proportionate"). Moreover, the trial court did offer an explanation for its sentencing decision. The court noted that "these are difficult cases to listen to," and that it was difficult hearing from the victims of defendant's sexual aggressions. The court further chastised defendant over "the destruction; emotional and physical that you caused," and agreed that "no amount of time" would entirely ameliorate what the family had gone through "if they ever get through it." The court additionally expressed its intent to sentence defendant to the "maximum extent of what the law will allow." In sum, defendant's sentence was presumptively valid because it fell within the guidelines range, and defendant did not rebut this presumption. Accordingly, defendant has provided this Court with no basis for disturbing the trial court's sentencing decision. Further, defendant provided no reason to suppose that the court would have been moved by any argument for leniency from defense counsel—particularly in light of the court's statement about its intent to impose the "maximum" punishment that the law would allow.

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[5] Defendant frames this issue in his statement of the questions presented as a direct challenge to his sentence. However, most of defendant's attendant argument is devoted to criticism of trial counsel's performance.

IV. CONCLUSION

Defendant has not shown from the existing record any mistakes on the part of defense counsel that prejudiced defendant, nor has he shown that the trial court abused its discretion by imposing a within-guidelines sentence. Affirmed.

/s/ Michael F. Gadola
/s/ Mark T. Boonstra
/s/ Thomas C. Cameron