

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
September 20, 2012

v

AIMEE LOUISE SWORD,

No. 301169
Oakland Circuit Court
LC No. 2009-228490-FC

Defendant-Appellant.

Before: MURPHY, C.J., and MARKEY and WHITBECK, JJ.

PER CURIAM.

Defendant pleaded guilty to first-degree criminal sexual conduct (CSC) for engaging in sexual penetration with a 14-year-old victim related by blood or affinity, MCL 750.520b(1)(b)(ii). She was sentenced to a prison term of 9 to 30 years and directed to “serve lifetime tether upon release from prison.” This Court originally denied defendant’s delayed application for leave to appeal,¹ but our Supreme Court, in lieu of granting leave to appeal, has remanded the case to this Court “for consideration as on leave granted of the question of whether lifetime monitoring was authorized in this case, as part of the defendant’s sentence, where the complainant was 14 years old.” *People v Sword*, 490 Mich 871; 803 NW2d 329 (2011). We hold that the trial court did not err in ordering lifetime monitoring and, therefore, affirm defendant’s sentence.

MCL 750.520b(2)(d) provides that in addition to the prison sentence imposed under § 520b(2)(a), “the court shall sentence the defendant to lifetime electronic monitoring under section 520n.” MCL 750.520n provides, in pertinent part:

(1) A person convicted under section 520b^[2] or 520c^[3] for criminal sexual conduct committed by an individual 17 years old or older against an individual

¹ *People v Sword*, unpublished order of the Court of Appeals, entered December 17, 2010 (Docket No. 301169).

² Section 520b sets forth the crime of first-degree CSC, which is predicated on sexual penetration. MCL 750.520b(1).

less than 13 years of age shall be sentenced to lifetime electronic monitoring as provided under . . . MCL 791.285.

Defendant argues that MCL 750.520n authorizes electronic monitoring only when (1) a defendant has been convicted of first- or second-degree CSC, (2) the defendant was at least 17 years of age, and (3) the victim was under 13 years of age. This Court recently addressed this precise issue and held that lifetime monitoring is to be ordered (1) when the defendant has been convicted of first-degree CSC, regardless of anyone's age, or (2) when the defendant has been convicted of second-degree CSC and (a) the defendant was at least 17 years of age and (b) the victim was under 13 years of age. *People v Brantley*, __ Mich App __; __ NW2d __, issued May 17, 2012, and amended June 18, 2012⁴ (Docket No. 298488). Shortly after *Brantley* was issued, this Court released *People v King*, __ Mich App __; __ NW2d __, issued July 31, 2012 (Docket No. 301793), in which a majority of the panel disagreed with the reasoning and holding in *Brantley* on the matter at issue, explained its disagreement, ruled consistent with *Brantley* only because it was required to do so under MCR 7.215(J)(1), and requested the convening of a special conflict panel pursuant to MCR 7.215(J)(2). In a poll taken by the judges of the Court of Appeals under MCR 7.215(3), the Court declined to convene a special panel. *People v King*, __ Mich App __; __ NW2d __, special order entered August 20, 2012 (Docket No. 301793). Accordingly, we are bound to follow *Brantley*, MCR 7.215(J)(1). Because defendant was convicted of first-degree CSC, the trial court properly ordered lifetime monitoring.

Affirmed.

/s/ William B. Murphy
/s/ William C. Whitbeck

³ Section 520c concerns second-degree CSC, which is predicated on sexual contact. MCL 750.520c(1). We note that, as opposed to the all-encompassing language in the first-degree CSC statute regarding lifetime monitoring, MCL 750.520c(2)(b) provides that, in addition to a prison sentence, “the court shall sentence the defendant to lifetime electronic monitoring under section 520n *if the violation involved sexual contact committed by an individual 17 years of age or older against an individual less than 13 years of age.*” (Emphasis added.)

⁴ The June 18, 2012, amendment corrected a clerical error in a separate concurring and dissenting opinion.

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MARKEY, J. (*concurring*).

I concur in result only.

/s/ Jane E. Markey