

St. Joseph, Michigan

Monday, July 16, 2012 - 3:26 p.m.

THE COURT: Alright, Larry Hale. Come up to the microphone, sir; 2012000595. You are that person, sir. I recognize you from prior court appearances. Appearing along with your attorney Mr. Kirk. Good afternoon, Mr. Kirk.

MR. KIRK: Good afternoon, your Honor.

THE COURT: For purposes of sentencing as a result of a no contest plea which you entered on June 11th of 2012 to the felony offense of Criminal Sexual Conduct in the 3rd Degree, using force or coercion. This is a felony. The maximum penalty is 15 years in a Michigan state prison; however, sentencing guidelines in your particular case are 36 to 60 months, with a prior record variable score of 0. There is also a--a sentencing agreement on this file.

Appearing on behalf of the People is the prosecuting attorney Mr. Sepic. Good afternoon again, Mr. Sepic.

MR. SEPIC: Good afternoon, judge.

THE COURT: Any errors or additions to the PSI, Mr. Sepic?

MR. SEPIC: No, your Honor.

THE COURT: Mr. Kirk?

MR. KIRK: Yes, your Honor. I'd like to point out. There's one point at the very end, I wanna say it's called page 1 but it's--it's near to the second to the last page, and

1 they're describing the two children as children or
2 stepchild, and I don't believe they're--they're children but I
3 don't believe they were stepchild in any way. It was a
4 babysitting situation.

5 THE COURT: Okay, I'm sorry. Where are you, Mr. Kirk?

6 MR. KIRK: Well, I'm on the--right when they're
7 getting ready--

8 MISS WARMAN: The VIR.

9 MR. KIRK: --to score on the current offense.

10 THE COURT: Okay, so what--what page?

11 MR. KIRK: The first page of that--

12 THE COURT: All right.

13 MR. KIRK: --report.

14 THE COURT: Any objection, Mr. Sepic?

15 MR. SEPIC: No, your Honor.

16 THE COURT: Okay. I'll--

17 MR. KIRK: All--

18 THE COURT: --make--

19 MR. KIRK: --right.

20 THE COURT: --that change. Anything further?

21 MR. KIRK: Yes. I'd like to just briefly argue a
22 couple of points on the scoring. I don't object to the scoring
23 on the prior record of 0, of course. I would make a point on O
24 10--I mean, I'm sorry, OV 7 variable. He was scored with 50
25 points, saying that there was particular sadism, torture,

1 excessive brutality, and I would ask that your Honor score that
2 at 0 because I think the standard of sadistic and torture, what-
3 -what was not really brought out in any kind of thing--

4 THE COURT: Mister--

5 MR. KIRK: --any kind of--

6 THE COURT: --Sepic--

7 MR. KIRK: --prior testimony.

8 THE COURT: Oh, I'm sorry. Alright, any further
9 argument, Mr. Kirk?

10 MR. KIRK: No.

11 THE COURT: All right. Mister--

12 MR. KIRK: Not on that--

13 THE COURT: --Sepic, any--

14 MR. KIRK: --point.

15 THE COURT: --response?

16 MR. SEPIC: Well, judge, I can Mr. Ku--Kuczynski isn't
17 here. I can only imagine that he wasn't so much thinking of
18 sadism or torture, as it is the in--conduct or conduct designed
19 to san--substantially increase the fear, anxiety a victim
20 suffered during the offense. If I had had-- I didn't know there
21 was gonna be the--these objections to these scorings.

22 THE COURT: Yeah. Typically, Mr. Kirk, and I--I
23 realize I--I don't have you in my particular court a lot, but I
24 have to have these objections in writing the Friday before the
25 sentencing.

1 MR. KIRK: Oh. I didn't get the report till Friday--

2 THE COURT: Yeah.

3 MR. KIRK: --as well.

4 THE COURT: Yeah. So, alright, we'll go ahead and
5 take some time. But, go--

6 MR. SEPIC: Well--

7 THE COURT: --ahead, M--Mr. Sepic.

8 MR. SEPIC: --the only thing is I'm--I'm thinking
9 there were quotes from the children but I--I can't immediately
10 get to them, suggesting that, perhaps, things might happen if
11 they were to tell, or something like that. And so, I'd have to
12 be able to find those quotes, if that's what Mr. Kuczynski was
13 thinking of when he scored that.

14 THE COURT: I recall that as well, if not from a PSI,
15 from the preliminary examination that was conducted in this
16 matter. Let's take a moment to see if we can find--find it in
17 the PSI.

18 MR. KIRK: The point I'd make, your Honor, is that
19 it's to substantially increase the fear. I'm not gonna claim
20 that there's no fear or anxiety, but it has to be an action
21 that's substantially increases that, so.

22 THE COURT: I didn't see it in the PSI, Mr. Sepic.
23 Anything from Miss Welke at the child assessment center, or the
24 preliminary examination transcript? And I--again, I realize you
25 don't have a lot of time to prepare here.

1 MR. KIRK: Well, can I say one thing too, is that, it
2 didn't se--it's--it's kind of a moot on the overall score, but
3 it is a--

4 THE COURT: Well--

5 MR. KIRK: --point.

6 THE COURT: --but--

7 MR. KIRK: It is a point.

8 THE COURT: --the scoring issues are important--

9 MR. KIRK: Yes.

10 THE COURT: --so I--I wanna nail this down, even if it
11 doesn't change the guideline range, or the agreement that was
12 reached when he pled.

13 Anything further, Mr. Sepic?

14 MR. SEPIC: Judge, if I could have about--

15 THE COURT: Sure.

16 MR. SEPIC: --30 more seconds--

17 THE COURT: Sure.

18 MR. SEPIC: --to read this other report.

19 THE COURT: I've read the PSI. I'm looking at the
20 preliminary examination transcript now.

21 MR. SEPIC: Judge, I don't see any particular
22 references that would cause me to score that variable.

23 THE COURT: I do recall the--from the preliminary
24 examination that was conducted--or, held on March 6th of 2012,
25 the testimony from the children that they became very agitated

1 MR. SEPIC: I just don't--

2 THE COURT: --of the--

3 MR. SEPIC: --know if that would be something OV 7
4 would--

5 THE COURT: Here's--

6 MR. SEPIC: --contemplate.

7 THE COURT: Here's the problem with that. At page 3
8 of the preliminary examination transcript: "Question: Had yo
9 - Were you afraid of Larry? Answer: Yes. Question, at line
10 Why? Answer: **Because he had a gun underneath his bed.**
11 Question: He ever threatened you or said he'd do anything bad
12 to you with the gun? Answer: No." Was the answer. "Question
13 Okay. You've talked with other people about this, haven't you?
14 Answer: Yes."

15 Mr. Sepic did question M.K. as to whether she wa
16 afraid, and she said she was, and she went by the home.

17 MR. KIRK: If I continue to say a couple... But I
18 think when you have the definitions of sadism, torture,
19 excessive brutality, I just don't think we have any of those
20 things, and--and to say that the children were afraid and then
21 claiming that that rises--

22 THE COURT: Yeah, but--

23 MR. KIRK: --to the--

24 THE COURT: --Mister--

25 MR. KIRK: --level--

1 THE COURT: --Kirk, you're not reading the final
2 portion. It says, "...or conduct designed to substantially
3 increase the fear and anxiety of a victim suffered during the
4 offense."

5 MR. KIRK: Right.

6 THE COURT: So if your client told them, "You're never
7 gonna see your parents again, or, I'm gonna kill you if you tell
8 anyone," clearly that meets the final--

9 MR. KIRK: But I don't--

10 THE COURT: --section--

11 MR. KIRK: --believe he--that any of that was said.

12 THE COURT: That's what-- Had I'd received the--the
13 challenge on Friday, I would've had an opportunity to review
14 this transcript more fully, because I thought I recalled some
15 testimony along the lines of, you know, If you tell anyone you
16 wont' see your family again. Alright, well, why don't we
17 temporarily pass this one, and I'll deal with any other
18 challenges now, see if we can dispose of them more quickly, and
19 I'll come back to that transcript before I complete the
20 sentencing. Further challenges, Mister--

21 MR. KIRK: Okay--

22 THE COURT: --Kirk?

23 MR. KIRK: --I had--it is very similar, very similar;

24 OV 10.

25 THE COURT: Okay.

1 MR. KIRK: They scored him at 15 points, predatory
2 conduct was involved. I would say it would be more
3 appropriately scored at 10 points because he--the offender
4 exploited a person's youth or--youth or abused their--his or her
5 status as authority; being the babysitter in this case and being
6 them young children. I'd say that would be more appropriate
7 than the predatory conduct, that's a definition that was scored.
8 I think it's very similar to the OV 7 argument.

9 THE COURT: All right. Mr. Sepic?

10 MR. SEPIC: Well, judge, I don't really think I
11 disagree. I-- Although, we don't know entirely what the--we
12 don't have a video of the precursor to all these events. But I
13 don't believe it was Mr. Hale, necessarily, for instance, that
14 solicited the children going there. They were taken there by
15 their parents, etcetera, by mutual agreement. So, I don't know
16 that there was pre-offense conduct that necessarily led to these
17 acts. So I think ten probably fits a little squarer.

18 THE COURT: Okay.

19 MR. SEPIC: Ten points, rather.

20 THE COURT: All right. OV 10, I'll modify it from a
21 15 to 10 pointes. Alright, further challenges, Mr. Kirk?

22 MR. KIRK: No, your Honor. Just those two points.

23 THE COURT: So I come back to OV 7. Well, tell you
24 what, I don't know, Mr. Sepic, if anyone from your office can
25 review that transcript of that preliminary examination--

1 MR. SEPIC: Judge, I--I--took a--

2 THE COURT: --briefly.

3 MR. SEPIC: --quick look as well and I'm not--

4 THE COURT: You're not finding--

5 MR. SEPIC: --seeing--

6 THE COURT: --any of that language--

7 MR. SEPIC: Yeah.

8 THE COURT: --either? Okay. All right. So, any
9 further argument as to the scoring of OV 7, Mr. Sepic?

10 MR. SEPIC: No, your Honor.

11 THE COURT: All right. Do you agree that it should be
12 properly scored a 0 or...

13 MR. SEPIC: That's the only other choice on that one.

14 THE COURT: It's kind of an all or nothing type--

15 MR. SEPIC: Yeah.

16 THE COURT: --of scoring. So, I'll modify OV 7. I
17 know these cases. We see, regrettably, many of them, and--and--
18 But I thought that I recalled something in a probable cause
19 sheet. Let me take a quick--

20 MR. SEPIC: I looked--

21 THE COURT: --look.

22 MR. SEPIC: --at both of the interviews from the CAC
23 and I didn't see any particular comments like that.

24 THE COURT: I-- I realize you're substituting in here
25 Mr. Kirk, but Mister--

1 MR. KIRK: Yeah, that is a--

2 THE COURT: --Parish--

3 MR. KIRK: I read it over--

4 THE COURT: --had--

5 MR. KIRK: --but not as--

6 THE COURT: Yeah.

7 MR. KIRK: --often as I could've in 3 days.

8 THE COURT: Something-- I'm recalling something about,
9 "You won't see your family again if you tell anyone."

10 MR. KIRK: No, I don't think that was the case but
11 something might've been said about, "Don't tell" but no threat
12 associated with it.

13 THE COURT: Nothing from the child assessment center
14 that you can see there, Mr. Sepic?

15 MR. SEPIC: That's correct.

16 THE COURT: Because we did have testimony from Miss
17 Welke at the preliminary examination as well.

18 Alright, I'll modify OV 7 from a 50 to a 0. That
19 changes the total OV score to, 110?

20 MR. SEPIC: Yes.

21 THE COURT: What does that do to the OV level?

22 MR. SEPIC: I don't think it does anything.

23 MR. KIRK: Yeah, I-- I think it's 75 points--

24 THE COURT: Rema--

25 MR. KIRK: --your Honor. So it's--

1 THE COURT: Remains--

2 MR. KIRK: --still over--

3 THE COURT: --the same at--

4 MR. KIRK: Yes.

5 THE COURT: --six. Okay. Guideline range remains th
6 same as well, counsel?

7 MR. SEPIC: Yes.

8 THE COURT: Okay. You agree with that as well, Mr.
9 Kirk?

10 MR. KIRK: Yes. It sa-- It stays in the same--

11 THE COURT: Okay.

12 MR. KIRK: --range.

13 THE COURT: Okay. All right. Further challenges or
14 additions, Mr. Kirk?

15 MR. KIRK: No, your Honor.

16 THE COURT: Mr. Sepic, do we have a victim that would
17 like to address the Court today prior to sentencing?

18 MR. SEPIC: We do, judge.

19 THE COURT: Okay. If you could have a seat in the
20 jury box, please, Mr. Hale.

21 MR. SEPIC: Judge, this is J.K. _____, the uncle of
22 the children who testified at the preliminary examination.

23 THE COURT: I-- I recognize him. Good afternoon, sir

24 J.K. : Good afternoon--

25 THE COURT: You have the--

J.K .: --judge.

THE COURT: --right to address the Court.

THE COURT: You have the right to address the Court prior to the sentencing of the defendant in this matter. Is there anything that you would like me to know?

J.K .: Well, I got a letter here that I--

THE COURT: Okay.

J.K .: --typed up that I'd like to read.

Judge, I'd like to thank you for your time to hear me today in this horrific cry. What this man has done will follow these young girls for life. The sentence he is getting is far less than the sentence the girls has gotten. I is far beyond me how a grown man thinks it's right to perform these acts on such young kids and sleep in the same bed as the little. A grown man should know kids are not play toys. They're real people like you and I. They have feelings and they have rights. These girls did not deserve this. They're innocence have been stolen right out from under them.

Now, Larry, not only did you rob these little girls-- rob from these little girls and hurt them, but you have stolen precious time from your own family. You've caused them pain, anguish, as well.

I would like to apologize to Larry's family for his

1 actions, and friends.

2 Put yourself in their shoes once, these little girls,
3 the kids. The day that all this was revealed was the worse day
4 in my life. From that day on, these girls have had nothing but
5 trust issues with male figures in their life; their father,
6 their uncles, their grandfathers. They'll probably continue to
7 have this from--quite some time.

8 They wake up in the middle of the night with--crying
9 because they have fear. They don't want this to happen again.
10 They don't know why it has happened. How do you explain?

11 They're kids that should not have distress in their
12 life. They should be playing and have good times, not going to
13 counseling and talking about issues, how to deal with them. I
14 really hope that they will not have to attend counseling the
15 rest of their life because of this. I really hope that this
16 does not mess them up with any relationships that they may have
17 in the future.

18 I compare this crime to murder. The difference I see--
19 - Murder of their... Wait just a minute. I'm sorry.

20 I compare this to murder; murder of their innocence
21 and trust. The difference I see between this crime and murder
22 is that with murder the victim is dead. They don't have to live
23 with it the rest of their life, unlike these little girls.

24 Judge, thank you for your time.

25 THE COURT: Okay, thanks for coming in, Mr. Kaeding.

1 J.K. : Thank you.

2 MR. SEPIC: Judge, also, the father of the children,
3 _____, is here, but he asked if I would read this to
4 your Honor.

5 THE COURT: Okay. All right. Thank you, Mr. Sepic.
6 Go ahead.

7 MR. SEPIC: He says, "We never thought that a longtime
8 friend to the family would or could even do something as bad as
9 that to the girls that looked up to him. They even called you
10 their uncle and trusted you as much as they did. We know they
11 will have a hard time trusting anyone. It is very hard to see
12 and know what they have been through. It has taken a lot of
13 help from a lot of people to get them through the nightmares
14 they have. I still sometimes get woke up by the girls at night
15 and they say that they're scared that he is going to get them,
16 and we tell them that they are safe here and it is okay. It is
17 so hard to trust anyone with the girls, to leave them with,
18 because of things like this. They are only left with family now
19 because we can't trust anybody, not even our friends that have
20 been around for a long time. It is not a safe world anymore.
21 We just don't understand how an older man can even like younger
22 girls that are so young to do what you did to them. We hope it
23 is hard to live with yourself knowing what you did to them.

24 Art Kaeding.

25 THE COURT: Alright, thank you, Mr. Sepic. Okay, Mr.

1 Hale, you can come back forward, please, sir.

2 Anything on behalf of the People before I sentence the
3 defendant in this case, Mr. Sepic?

4 MR. SEPIC: Judge, really, just, I think they've said
5 it all here and I think the 10 years agreed upon is an
6 appropriate sentence. Thank you.

7 THE COURT: Okay, thank you, Mr. Sepic. Mr. Kirk,
8 anything on behalf of your client, sir, before I sentence him?

9 MR. KIRK: Yes, your Honor. I would note that it was
10 a no contest plea, that Mr. Hale has maintained his innocence on
11 this. I was not part of a plea agreement for 10 years so I'm
12 gonna be asking that it be within the guidelines itself.

13 We got a man here that's 54 years old and he has no
14 criminal record and no record of doing anything like this in the
15 past. There's sympathy for the victims but there was also other
16 de--there was another victimization issue, altogether, with this
17 fellow Michael Barrett, who pled guilty and was sentenced by--by
18 a court for this. So, to say that the girls have been
19 traumatized, well, the question would be as--at--at whose
20 actions were that, Mr. Barrett or what the claim was on Mr.
21 Hale?

22 He has a-- Mr. Hale has a strong family support. I've
23 met many of them. They've been there for him. They're
24 communicating with him regularly. He has severe medical
25 problems. He has a heart condition. I believe he has nitro

1 pills in his pocket at this moment. His-- He was under Dr.
2 Aurora's care. He has a--a damaged heart and with serious heart
3 conditions. So, anything like a 10-year would be, essentially,
4 a death sentence for him, in our opinion.

5 So, the fact that-- I'm not gonna make a big-- I know
6 the Court doesn't like hearing that about maintaining innocence
7 and what not, but, he has maintained that he did plead no
8 contest. A person with no record. The offense variables score
9 out pretty high in themselves. But I would ask, your Honor,
10 that--that you sentence him within the guidelines and look for
11 sentence, you know, at the 36-month category or thereabouts, and
12 not go departing higher based on a plea agreement that I don't
13 think my client understood at all, let alone I wasn't part of.
14 So, I'm arguing that if he's pled guilty to--you know, pled no
15 contest to the CSC 3rd, that the guidelines themselves provide
16 very adequate punishment and that you stay within those
17 guideline when you sentence Mr. Hale.

18 THE COURT: Okay. Thank you, Mr. Kirk. This is your
19 opportunity, Mr. Hale; is there anything that you would like to
20 say, sir, before I sentence you?

21 THE DEFENDANT: (No verbal response)

22 THE COURT: Okay. These cases are--are always
23 difficult. They're traumatic, obviously, to the victim's
24 family, who's here today, but also, to your family it's a--it's
25 a traumatic situation because multiple lives have been forever

1 changed due to the conduct that occurred from September 20th of
2 2009 to August 24th of 2011. When-- And as has been stated
3 earlier - And Mr. Kirk's done a fine job for you as he's
4 processed the case along here recently as substitute counsel,
5 your prior counsel is extremely thorough, and, in the Court's
6 opinion, you know, turned over every rock and tree and visited
7 every crevice in this case to, in his effort, try to get the
8 best possible plea arraignment for you that he could. Met in
9 chambers with him because I am reluctant to accept no contest
10 pleas in CSC cases like this because of the counseling that's
11 required once a person is released from prison. It-- It makes
12 it difficult and problematic.

13 These children have been through a lot, not just from
14 you, but by a prior felon. I would note that this plea
15 agreement that was reached and ultimately entered into on June
16 11th of 2012, you were looking at spending life in a Michigan
17 state prison, and, after consulting with your able attorney at
18 that time, arrived at--at this plea agreement. It's not as if
19 this was just plucked out of the air for a man that had no prior
20 convictions. You had access to these children. The children
21 testified under oath. Your uncle testified under oath. The
22 eldest child's testimony was compelling. In addition, the--the
23 children were interviewed on January 20th of 2012, a forensic
24 interview, prepared--or, conducted by the Berrien County Child
25 Assessment Center, and they were found to be truthful and the

1 statements that they were making were found to be meritorious.

2 For years and years in--in this country, state and county, this
3 might have been a case that would've fallen through the cracks
4 because there wasn't an adult eyewitness that could testify,
5 raise their hand in court and swear that you penetrated these
6 children. But, through the professional techniques that have
7 been developed, this was the testimony of--of the children on
8 this case. Your guilt was established and you knowingly,
9 freely, voluntarily entered into that plea agreement. You chose
10 to take a--a sentencing agreement of 10 years to give you a
11 chance at a life-after-prison rather than risk ~~what I--I think~~
12 would've been a conviction had you gone to trial by jury, ~~8~~
13 because I listened to the children testify under oath on March
14 6th of 2012 and I found their testimony to be compelling and
15 truthful. ~~1~~

16 Accordingly, it is the sentence of the Court, again,
17 the plea agreement entered into on June 11th of 2000 and--and 12
18 that you are to serve 10 to 15 years in a Michigan state prison,
19 with credit for time served as of today's date of 147 days. You
20 are to pay \$68 in state cost, victim's rights fee of \$130, for a
21 total of \$198 within 30 days of your release.

22 You do have the right, sir, to appeal your conviction
23 and sentence within 42 days of today's date to the Michigan
24 Court of Appeals.

25 Anything further, counsel?

MR. SEPIC: No, your Honor.

MR. KIRK: No, your Honor.

THE COURT: Okay, thank you. You're all set.

(At 3:54 p.m., court proceeding concluded)