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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 14, 2026 10:52 AM
v	No. 370516 Ingham Circuit Court
JOSEPH PAUL MARRISON, Defendant-Appellant.	LC No. 22-000889-FC

Before: GADOLA, C.J., and RIORDAN and SWARTZLE, JJ.

PER CURIAM.

Defendant appeals as of right his sentences of 300 to 600 months' imprisonment for first-degree criminal sexual conduct (CSC-I) (sexual penetration of a victim under 13 years of age by an individual 17 years of age or older), MCL 750.520b(2)(b), and 71 to 180 months' imprisonment for second-degree criminal sexual conduct (CSC-II) (sexual contact with a victim under 13 years of age), MCL 750.520c(1)(a), after he was convicted by a jury of both charges. We affirm.

I. BACKGROUND

This case arises out of incidents in which defendant sexually assaulted the victim beginning when she was five years old. The victim's mother testified that defendant would drive her to run errands and purchase drugs, and she would bring her daughter with her. The victim and her mother testified that they both went on countless trips with defendant while the victim was between the ages of five and nine years old. During at least two of these trips, defendant touched the victim's vagina when they were alone in the car.

Afterwards, the victim began living with her aunt, uncle, and cousin. After approximately a year of residing with them, the victim's cousin expressed her own history of sexual trauma to the victim, and the victim then revealed that defendant had sexually assaulted her. The police eventually were notified.

At a pretrial hearing, defendant was represented by a stand-in attorney from the local public defender office and had the following exchange with the trial court:

Defendant: I want to fire Mr. Silverthorn [defense counsel]. I no longer need—I don't want him no more, Duane Silverthorn. I want to fire him right now.

The Court: Well, I don't—

Defendant: And you can't talk me out of it.

The Court: I'm not going to. I don't fire defense attorneys from the Public Defender's Office. So they'll have to handle it internally. And I'm sure you'll make them aware of that, Mr. Palmer [stand-in counsel].

Stand-in counsel explained that defendant already had met with him and the Chief Public Defender to discuss those concerns. Stand-in counsel further explained that the two of them advised defendant that he would not be assigned new counsel from the office, and that if he chose to fire counsel, he would need to either hire outside counsel or represent himself. Defendant proceeded to trial with his assigned public defender.

At trial, the jury heard testimony from, among other people, the victim, her mother, and her aunt and uncle. The victim's aunt and uncle testified about behavioral changes that they noticed in the victim that occurred around the time that she was sexually abused. The victim testified about the episodes of sexual assault that happened while she was alone in the car with defendant, and the victim's mother corroborated much of the victim's details surrounding the assaults. On direct examination, the following exchange between the prosecution and the victim's mother occurred:

The Prosecution: Did you have any reason to want something bad to happen to him?

The Victim's Mother: No. I was even calling him when I was in jail because I thought he was family. I didn't know anything about it. I was shocked when I heard it.

The Prosecution: Did you ask your daughter to make all of this up to get the defendant in trouble?

The Victim's Mother: No, I did not. She knows not to lie, and she doesn't lie.

Defendant's statements from police interviews also were made available to the jury. Specifically, the jury was informed that defendant admitted to the police that he touched the victim in an "uncomfortable" manner and that he touched the victim's vagina. Defendant's rationale for some or all of his "uncomfortable" touching was that he was attempting to make the victim uncomfortable so he could convince the victim's mother not to bring the victim along on future rides, which would allow him to have sex with the mother during the errands. Defendant also admitted to giving the victim money.

The jury ultimately found defendant guilty of CSC-I and CSC-II, and he was sentenced as noted. Defendant also was required to register under the Sex Offenders Registration Act (SORA),

MCL 28.721 *et seq*., and be subject to lifetime electronic monitoring (LEM). Defendant now appeals.

II. ANALYSIS

A. SUBSTITUTION OF COUNSEL

Defendant first argues that the trial court abused its discretion by denying his request to substitute counsel without inquiring into whether there was a breakdown of the attorney-client relationship. We disagree.

"The decision regarding substitution of counsel is within the sound discretion of the trial court and will not be upset on appeal absent a showing of an abuse of that discretion." *People v Buie*, 298 Mich App 50, 67; 825 NW2d 361 (2012) (quotation marks and citation omitted). "A trial court abuses its discretion when it issues a decision that falls outside the range of principled outcomes." *People v McFall*, 309 Mich App 377, 382; 873 NW2d 112 (2015).

"Both the Michigan and the United States Constitutions require that a criminal defendant enjoy the assistance of counsel for his or her defense." *People v Trakhtenberg*, 493 Mich 38, 51; 826 NW2d 136 (2012), citing Const 1963, art 1, § 20; US Const, Am VI. "[H]owever, he is not entitled to have the attorney of his choice appointed simply by requesting that the attorney originally appointed be replaced." *People v Strickland*, 293 Mich App 393, 397; 810 NW2d 660 (2011) (quotation marks and citation omitted). "A defendant is only entitled to a substitution of appointed counsel when discharge of the first attorney is for good cause and does not disrupt the judicial process." *Buie*, 298 Mich App at 67 (quotation marks and citation omitted). "Good cause may exist when a legitimate difference of opinion develops between a defendant and his appointed counsel as to a fundamental trial tactic, when there is a destruction of communication and a breakdown in the attorney-client relationship, or when counsel shows a lack of diligence or interest." *McFall*, 309 Mich App at 383 (quotation marks and citations omitted). "A mere allegation that a defendant lacks confidence in his or her attorney, unsupported by a substantial reason, does not amount to adequate cause. Likewise, a defendant's general unhappiness with counsel's representation is insufficient." *Strickland*, 293 Mich App at 398 (citations omitted). This Court considers the following factors when reviewing a trial court's denial of a motion for substitute counsel:

> (1) whether the defendant is asserting a constitutional right, (2) whether the defendant has a legitimate reason for asserting the right, such as a bona fide dispute with his attorney, (3) whether the defendant was negligent in asserting his right, (4) whether the defendant is merely attempting to delay trial, and (5) whether the defendant demonstrated prejudice resulting from the trial court's decision. [*People v Akins*, 259 Mich App 545, 557; 675 NW2d 863 (2003) (quotation marks and citation omitted).]

"When a defendant asserts that the defendant's assigned attorney is not adequate or diligent, or is disinterested, the trial court should hear the defendant's claim and, if there is a factual dispute, take testimony and state its findings and conclusion on the record." *Strickland*, 293 Mich App at 397 (quotation marks and citation omitted).

In this case, defendant did not assert that his appointed attorney was inadequate, disinterested, or not diligent. See *id*. Nor did he suggest the existence of any type of dispute with his attorney. See *Akins*, 259 Mich App at 557. His request to "fire" his attorney failed to even rise to the level of an allegation of lack of confidence in counsel. See *McFall*, 309 Mich App at 383. Thus, defendant failed to adequately articulate a basis for substitution that would trigger the trial court's responsibility to inquire further. In fact, defendant indicated that he specifically did not want the trial court to inquire further, as he told the trial court that "you can't talk me out of it." Caselaw did not require the trial court to engage with defendant under these circumstances when defendant himself was unwilling to engage. Therefore, although defendant was asserting a constitutional right to counsel of choice, he did not provide a legitimate reason for his assertion and was largely negligent in failing to do so. Consequently, the trial court's decision not to take testimony or appoint substitute counsel was not an abuse of discretion.[1]

B. CLAIMS OF ERROR AT TRIAL

Defendant next argues that the prosecutor erred by eliciting testimony that vouched for the victim's credibility. We disagree.

"To preserve a claim of prosecutorial error, a defendant must timely and specifically challenge the prosecutor's statements or conduct." *People v Thurmond*, 348 Mich App 715, 735; 20 NW3d 311 (2023). Defense counsel did not object at trial, so this claim is unpreserved. Unpreserved claims are reviewed for plain error affecting substantial rights. *People v Ventour*, 349 Mich App 417, 433; 27 NW3d 660 (2023). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. at 763-764 (cleaned up).

"The test for prosecutorial error is whether the defendant was denied a fair trial." *Thurmond*, 348 Mich App at 736. "A prosecutor commits error by abandoning his or her responsibility to seek justice and, in doing so, denying the defendant a fair and impartial trial." *Id.* (cleaned up). "It is generally improper for a witness to comment or provide an opinion on the credibility of another witness, because credibility matters are to be determined by the jury." *People v Dobek*, 274 Mich App 58, 71; 732 NW2d 546 (2007). "[W]e cannot find error requiring reversal where a curative instruction could have alleviated any prejudicial effect." *People v Unger*, 278 Mich App 210, 235; 749 NW2d 272 (2008) (quotation marks and citation omitted).

Defendant claims that there were three instances where the prosecution improperly elicited vouching testimony—once from the victim's aunt, once from the victim's uncle, and once from the victim's mother. Regarding the testimonies provided by the victim's aunt and uncle, defendant

[1] We note that defendant's request to "fire" his attorney was so brief and ambiguous that it could even be construed as a request to represent himself. However, as his appellate counsel has treated this issue as involving a request for substitute counsel, we do so as well.

cites their testimonies concerning behavioral changes of the victim. Defendant argues that testimony concerning the victim's behavioral changes vouched for the victim's testimony. However, defendant's argument is misplaced. Neither the aunt nor the uncle testified as to the veracity of the victim's allegations against defendant or her character for truthfulness. See *Dobek*, 274 Mich App at 71. And, the questions that the prosecution asked of the aunt and uncle were proper questions aimed only at their experiences with the victim. Thus, the prosecution did not commit error with respect to eliciting vouching with either of these two witnesses, nor was the challenged testimony itself improper.

As to the victim's mother, defendant argues that the exchange between the prosecution and the victim's mother quoted above, where the victim's mother testified that the victim "doesn't lie," was prosecutorial error. However, this statement by the victim's mother was not elicited by the prosecution. Rather, the prosecution posed a good-faith, yes-or-no question to the mother concerning whether the mother asked her daughter to lie. The question was relevant when considered in the context of defendant's out-of-court statement that the allegations were fabricated by the victim's family. The mother's response may have constituted improper vouching for the victim's credibility, but the inquiry itself was not erroneous or unreasonable by the prosecution. "[A]n unresponsive, volunteered answer to a proper question is not grounds for the granting of a mistrial." *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995).

In any event, even if one or more of the statements challenged by defendant constituted plain error, defendant cannot show prejudice. See *Carines*, 460 Mich at 763. The statements were brief in the context of this multiday trial, and multiple witnesses corroborated aspects of the victim's testimony. More importantly, defendant admitted to the police that he touched the victim's vagina and that he touched the victim in an "uncomfortable" manner.[2] His explanation for touching the victim in an uncomfortable manner was that he wanted the victim to stop going on rides with him and her mother, which would allow him an opportunity to have sex with the mother during errands. This exculpatory explanation is simply implausible, which renders it strong evidence of guilt of the CSC charges. See *People v Dixon-Bey*, 321 Mich App 490, 509-510; 909 NW2d 458 (2017). Given these facts, defendant is not entitled to relief.

C. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant, in the alternative, argues that defense counsel's failure to object to the mother's testimony constituted ineffective assistance of counsel. Defendant also argues that he received ineffective assistance of counsel when his counsel stated in closing that delayed disclosure of sexual abuse is common. We disagree.[3]

[2] The context clearly indicates that touching the victim in an uncomfortable manner referred to touching her private parts, as it included tickling her inner thigh.

[3] Defendant additionally implies that he received ineffective assistance through defense counsel's failure to object to the aunt's and uncle's testimonies. To the extent that defendant intended to raise this argument, it is meritless because any objection would have been unavailing. See *People v Heft*, 299 Mich App 69, 83; 829 NW2d 266 (2012).

"Whether a defendant has received ineffective assistance of counsel is a mixed question of fact and constitutional law." *People v Yeager*, 511 Mich 478, 487; 999 NW2d 490 (2023). This Court reviews the trial court's factual findings for clear error and questions of law de novo. *Id.* "Clear error exists if the reviewing court is left with a definite and firm conviction that the trial court made a mistake." *People v Armstrong*, 490 Mich 281, 289; 806 NW2d 676 (2011). When the defendant has not moved for a new trial or sought remand for a *Ginther*[4] hearing, appellate review of his or her claim is limited to mistakes apparent from the record. *People v Putman*, 309 Mich App 240, 247; 870 NW2d 593 (2015). Defendant has not moved for a new trial or sought remand for a *Ginther* hearing, so our review is limited to the record before us.

To prevail on a claim of ineffective assistance of counsel, "a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that that outcome would have been different." *Yeager*, 511 Mich at 488 (quotation marks and citation omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *People v Randolph*, 502 Mich 1, 9; 917 NW2d 249 (2018) (quotation marks and citation omitted).

Defendant cites *People v Douglas*, 496 Mich 557; 852 NW2d 587 (2014), for the proposition that it was ineffective assistance for his counsel to not object to the mother's testimony. See *id*. at 587 (explaining that "given the reliability problems created by children's suggestibility, this Court has condemned opinions related to the truthfulness of alleged child-sexual-abuse complainants because the jury in such credibility contests is often looking to hang its hat on the testimony of witnesses it views as impartial") (quotation marks and citation omitted). Here, in contrast, the victim's mother certainly was not an "impartial" witness, so the concerns expressed in *Douglas* are not entirely applicable here. Thus, it may have been reasonable trial strategy for defense counsel not to object to this testimony and draw attention to it. See *People v Bahoda*, 448 Mich 261, 287 n 54; 531 NW2d 659 (1995). Nonetheless, we acknowledge that the brief statement from the victim's mother regarding the victim's truthfulness technically constituted improper commentary under *Douglas*, so we may assume without deciding that defense counsel was ineffective for failure to object to it.

Defendant also argues that defense counsel's concession during closing that victims of sexual assault may wait a long time before reporting an assault constituted ineffective assistance. Defendant cites *People v Walker*, 167 Mich App 377; 422 NW2d 8 (1988), for the proposition that "(1) concession is justified only to those elements or charges for which the prosecution has proffered overwhelming evidence in support, and (2) concession to a charge is only justified when it is to the lesser charge of a multiple charge indictment." However, *Walker* does not stand for the proposition that defense counsel may not concede any other facts that are relevant for the case. Here, defense counsel's concession likely was nothing more than reiterating what is common sense to most jurors. In fact, it probably aided counsel's reputation before the jury by showing that counsel would not stubbornly dispute common-sense facts and observations.

In both instances, however, even if his counsel performed deficiently, defendant cannot establish that but for defense counsel's deficient performance, there was a reasonable probability

[4] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

that the outcome of trial would have been different. See *Yeager*, 511 Mich at 488. As explained, defendant admitted that he touched the victim's vagina and provided an implausible explanation for touching the victim in an uncomfortable manner. Further, the victim's testimony was corroborated in material respects. Thus, relief is not warranted for any alleged ineffective assistance.

D. CONSTITUTIONAL CLAIMS

Finally, defendant raises several constitutional challenges to lifetime registration under SORA and LEM, none of which have merit.

Generally, questions of constitutional law are reviewed de novo. *People v Vanderpool*, 505 Mich 391, 397; 952 NW2d 414 (2020). However, to preserve a claim that a sentence is unconstitutional, the defendant must raise the claim in the trial court. *People v Burkett*, 337 Mich App 631, 635; 976 NW2d 864 (2021). Defendant did not raise such constitutional claims at sentencing, so they are unpreserved. See *id*. Unpreserved claims are reviewed for plain error affecting substantial rights. *Ventour*, 349 Mich App at 433.

Defendant first argues that lifetime registration under SORA violates the US Const, Am VIII, and Const 1963 art 1 § 16, the state analog to the Eighth Amendment, both facially and as applied. In this regard, the United States Constitution prohibits cruel and unusual punishment, while the Michigan Constitution prohibits cruel or unusual punishment. *People v Lorentzen*, 387 Mich 167, 171-172; 194 NW2d 827 (1972), citing US Const, Am VIII, and Const 1963 art 1 § 16. Our Supreme Court has held that the state prohibition is broader and more protective than the Eighth Amendment. *People v Parks*, 510 Mich 225, 242; 987 NW2d 161 (2022). Michigan courts apply the test in *Lorentzen* to determine whether a punishment is "disproportionate and thus 'cruel or unusual.' " *Id*. at 254. The *Lorentzen* test is comprised of the following four factors:

> (1) the severity of the sentence relative to the gravity of the offense; (2) sentences imposed in the same jurisdiction for other offenses; (3) sentences imposed in other jurisdictions for the same offense; and (4) the goal of rehabilitation, which is a criterion specifically rooted in Michigan's legal traditions. [*Id*. at 254-255 (cleaned up).]

"To prevail on a facial proportionality challenge, a defendant must show that there are no circumstances in which the punishment would be valid." *People v Kardasz*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 165008); slip op at 33. "An as-applied challenge is less stringent and requires a court to analyze the constitutionality of the statute against the backdrop of the facts developed in the particular case." *Id.*

In *Kardasz*, which was decided after defendant filed his brief on appeal, our Supreme Court held that SORA is not facially unconstitutional under Const 1963, art 1, § 16, or the Eighth Amendment. *Id*. at ___; slip op at 1. Therefore, to the extent that defendant argues that SORA is facially unconstitutional, we disagree. See *id*.

With regard to his claim that SORA is unconstitutional as applied, notably, the defendant in *Kardasz* also was registered under SORA as a Tier III offender,[5] and our Supreme Court ultimately concluded that SORA was not cruel or unusual as applied to that defendant. *Id.* at ___; slip op at 34. Like the defendant in *Kardasz*, defendant here "committed the most elevated registrable offense and has not provided evidence to support a claim that lengthy registration requirements are not appropriate relative to his individualized level of risk of reoffending." *Id.* at ___; slip op at 42. Simply put, defendant sexually assaulted a young child on a repeated basis and threatened her if she disclosed these matters to another individual. It is not cruel or unusual to impose lifetime SORA registration on him for the purposes of societal safety. Therefore, defendant's as-applied claim fails as well.

Next, defendant argues that being subject to LEM constitutes cruel or unusual punishment under the Michigan Constitution because it does not promote rehabilitation and is disproportionate compared to other jurisdictions. This argument is foreclosed by *People v Hallak*, 310 Mich App 555, 582; 873 NW2d 811 (2015), rev'd in part on other grounds 499 Mich 879 (2016).[6] In that case, after balancing the *Lorentzen* factors, this Court held that LEM is neither facially unconstitutional as cruel-or-unusual punishment, nor was it cruel or unusual as applied to the defendant convicted of CSC-II as an individual 17 years of age or older against a victim under 13 years of age. *Id.* at 577. The same conclusion is compelled in this instance. Defendant was convicted of CSC-I with the same age framework, a more serious offense than the defendant in *Hallak*, and he has not demonstrated any facts or circumstances that would require this Court to find that LEM as applied to him is cruel or unusual. Given the facts of this case, for the same reasons why lifetime SORA registration is not cruel or unusual as applied to defendant, neither is LEM. See *id*.

Lastly, defendant argues that LEM constitutes an unreasonable search in violation of US Const, Am IV, and Const 1963, art 1, § 11, the state analog to the Fourth Amendment. Again, this Court is foreclosed by *Hallak*, in which this Court held that "lifetime electronic monitoring for a defendant 17 years or older convicted of CSC-II involving a minor under 13 is not unreasonable" and therefore does not violate the Fourth Amendment. *Hallak*, 310 Mich App at 579. Further, while this holding in *Hallak* was limited to the federal constitution, defendant does not argue that the holding should be otherwise under the state constitution. See *People v Chowdhury*, 285 Mich App 509, 516; 775 NW2d 845 (2009) ("The Michigan Constitution . . . is generally construed to provide the same protection as the Fourth Amendment of the United States Constitution.") (quotation marks and citation omitted). Consequently, because defendant here was convicted of CSC-I as an individual 17 years of age or older against a victim under 13 years of age, a more serious offense than CSC-II with the same age framework as occurred in *Hallak*, it follows that

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[5] A Tier III offense is defined by SORA as including the most serious sex-based offenses, such as CSC-I. See MCL 28.722(v). A person convicted of a Tier III offense is subject to the greatest requirements under SORA. See, e.g., MCL 28.725(13).

[6] When defendant filed his brief on appeal, our Supreme Court had ordered argument as to whether *Hallak* was correctly decided. See *People v Kardasz*, 513 Mich 1118 (2024). However, the Court ultimately denied leave to appeal challenges related to LEM. *Kardasz*, ___ Mich at ___; slip op at 2. Therefore, *Hallak* remains controlling.

LEM imposed on defendant here does not violate the Fourth Amendment or Const 1963, art 1, § 11.

III. CONCLUSION

There were no errors warranting relief. Accordingly, we affirm.

/s/ Michael F. Gadola
/s/ Michael J. Riordan
/s/ Brock A. Swartzle