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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 02, 2026 1:12 PM
v	No. 368356 Arenac Circuit Court
RICHARD MICHAEL FAUST, Defendant-Appellant.	LC No. 2023-004549-FC

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

PER CURIAM.

Defendant appeals as of right his conviction of and sentence for first-degree criminal sexual conduct (CSC-I), MCL 750.520b(2)(b) (victim under 13, offender over 17). We affirm, but we remand to the trial court for the correction of defendant's judgment of sentence.

I. BACKGROUND

The offense occurred the Friday after Thanksgiving in 2021. Defendant, who was 19 years old at the time, and the victim, who was 12 years old, were watching a movie in defendant's bedroom with the victim's younger sister, defendant's sister, and the boyfriend of defendant's sister. When defendant and the victim were alone in the room, defendant retrieved a condom and penetrated the victim's vagina with his penis. The victim did not tell anyone about the assault until several months later. The victim's father confronted defendant when he learned what happened, and defendant allegedly admitted to having sexual contact with the victim.

At the trial, the prosecution introduced the testimonies of the victim, the victim's father, and the victim's sister. Notably, the victim testified about the incident and the victim's father testified about defendant's admission. Defendant did not offer any proofs and did not call any witnesses. Defendant was convicted as described above. Before his sentencing hearing, defendant registered under the Sex Offenders Registration Act (SORA). The trial court then sentenced defendant to a minimum sentence of 25 years' imprisonment and lifetime electronic monitoring. During the sentencing the trial court did not mention defendant's registration requirement under SORA and it did not indicate defendant's SORA requirement on defendant's judgment of sentence.

After sentencing, defendant moved the trial court for a new trial on the grounds that his trial counsel had been ineffective for failing to investigate several witnesses that would have impeached the victim's testimony. Specifically, defendant argued that his mother would have testified that she was home on the night of the incident, in contradiction to the victim's testimony that she was not home. Additionally, defendant argued that his father would have testified that he was not home on the night of the incident, also in contradiction to the victim's testimony. Defendant also stated that his trial counsel was ineffective for failing to investigate and gather the testimonies of defendant's sister and her boyfriend, who would have testified that the victim's recollection of their behavior that night was incorrect.

The court held a *Ginther*[1] hearing on the matter, and defendant's trial counsel testified that he did not investigate or speak to these witnesses because he believed that they would only corroborate the victim's testimony and because defendant did not tell him to contact them. Defendant's father, defendant's sister, and defendant's sister's boyfriend all testified at the *Ginther* hearing. The court found that trial counsel's failure to investigate these witnesses was constitutionally deficient performance. However, the court reasoned that counsel's deficient performance did not prejudice the defendant because the jurors had heard that some of the victim's testimony about who was home was inaccurate, these witnesses did not clearly remember the day of the assault, the victim's sister corroborated the victim's account of who was in the bedroom, and the defendant made an admission to the victim's father.

Defendant now appeals.

II. ANALYSIS

A. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues that the trial court erred when it found that trial counsel's performance did not prejudice him. "Generally, whether a defendant had the effective assistance of counsel is a mixed question of fact and constitutional law." *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012) (quotation marks and citation omitted). "This Court reviews findings of fact for clear error and questions of law de novo." *Id*.

The United States Constitution and the Michigan Constitution both entitle a criminal defendant to the assistance of counsel. US Const, Am VI; Const 1963, art 1, § 20. This counsel must be effective to satisfy this constitutional requirement. *Strickland v Washington*, 466 US 668, 686; 104 S Ct 2052; 80 L Ed 2d 674 (1984). Counsel is ineffective if "(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 [the] outcome would have been different." *People v Yeager*, 511 Mich 478, 488; 999 NW2d 490 (2023) (quotation marks and citation omitted). There is a reasonable probability that the outcome would have been different if the probability is sufficient to undermine confidence in the outcome. *Id*. "A reasonable probability need not rise to the level of making it more likely than not that the outcome would have been different." *People v Grant*, 470 Mich 477, 486; 684 NW2d 686 (2004). The burden is on the defendant to establish the factual

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

predicate for an ineffective-assistance claim. *People v Douglas*, 496 Mich 557, 592; 852 NW2d 587 (2014).

"There is a presumption that counsel was effective, and a defendant must overcome the strong presumption that counsel's challenged actions were sound trial strategy." *People v Cooper*, 309 Mich App 74, 80; 867 NW2d 452 (2015). "This Court will not substitute [its] judgment for that of counsel on matters of trial strategy, nor will [this Court] use the benefit of hindsight when assessing counsel's competence." *Id*. (quotation marks and citation omitted; alteration in original). "A sound trial strategy is one that is developed in concert with an investigation that is adequately supported by reasonable professional judgments." *Grant*, 470 Mich at 486. "Counsel must make "an independent examination of the facts, circumstances, pleadings and laws involved...." and "pursu[e] all leads relevant to the merits of the case." *Id*. at 486-487 (quotation marks and citation omitted). "The failure to make an adequate investigation is ineffective assistance of counsel if it undermines confidence in the trial's outcome." *Id*. at 493.

Defendant alleges that trial counsel gave deficient performance by failing to investigate the people who the victim said were at the house on the day of the offense: defendant's mother, defendant's father, the victim's sister, defendant's sister, and defendant's sister's boyfriend. Given that this case involved no physical evidence and rested on witness testimony, trial counsel's failure to investigate or speak to these witnesses was deficient performance. Trial counsel cannot have developed a reasonable trial strategy without even contacting multiple witnesses. See *Grant*, 470 Mich at 486.

However, the absence of these witnesses did not prejudice defendant sufficiently to undermine confidence in the outcome of the trial. Trial counsel was able to impeach the victim on whether defendant's mother was home the day after Thanksgiving, so further testimony on this matter would be unlikely to have any effect on the outcome of the trial. Further, even though the victim was not impeached at trial on whether defendant's father was home, the presence of defendant's father is not particularly material to defendant's conduct because the victim did not testify that defendant's father was in the room with her and defendant at any point or that he was aware of the assault. Additionally, any testimony regarding the behavior of the victim's sister, defendant's sister, or the boyfriend of defendant's sister, is similarly not material to defendant's conduct given that the jury heard testimony that defendant was alone with the victim in the room at the time of the assault. The fact that these witnesses might have testified that they were not present on the night of the assault as the victim recalled they were, would not create a reasonable probability of a different outcome in light of the other evidence presented at trial.

Finally, the victim's father testified that he confronted defendant about the assault and that defendant admitted to it. None of the witnesses indicated at the *Ginther* hearing that they would have been able to provide testimony to impeach the victim's father or to contradict the victim's testimony about what occurred when she was alone with defendant. For this reason, the trial court did not err when it concluded that trial counsel's performance, although deficient, did not sufficiently prejudice defendant.

B. THE 25-YEAR MANDATORY MINIMUM

Defendant next argues that his 25-year mandatory minimum sentence for CSC-I is an unconstitutional cruel or unusual punishment due to his age at the time of the offense. The issue whether a defendant's sentence constitutes cruel and/or unusual punishment receives de novo review. *People v Stovall*, 510 Mich 301, 312; 987 NW2d 85 (2022). De novo review is independent and requires no deference to the trial court. *Id*.

The Eighth Amendment of the United States Constitution prohibits cruel and unusual punishment. US Const, Am VIII. Michigan's Constitution prohibits cruel or unusual punishment. Const 1963, art 1, § 16. "Legislatively mandated sentences are presumptively proportional and presumptively valid." *People v Brown*, 294 Mich App 377, 390; 811 NW2d 531 (2011). "In order to overcome the presumption that the sentence is proportionate, a defendant must present unusual circumstances that would render the presumptively proportionate sentence disproportionate." *People v Bowling*, 299 Mich App 552, 558; 830 NW2d 800 (2013). Four factors are considered when determining if a sentence is disproportionate: "(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. . . ." *People v Parks*, 510 Mich 225, 242; 987 NW2d 151 (2022).

This Court has already considered whether the 25-year mandatory minimum imposed for CSC-I involving an offender over 17 years old and a victim under 13 years old is disproportionate to the offense. In *People v Benton*, 294 Mich App 191, 204-207; 817 NW2d 599 (2011), this Court determined that the 25-year mandatory minimum was not disproportionate for an adult offender, even when there were no aggravating factors. In *People v Payne*, 304 Mich App 667, 674-676; 850 NW2d 601 (2014), this Court determined that the sentence was not unconstitutional as applied to a juvenile offender. Under MCR 7.215(C)(2), these holdings are binding precedent that we are bound to follow. Therefore, defendant's 25-year sentence does not constitute cruel or unusual punishment.

C. SORA REGISTRATION

Defendant next argues that lifetime SORA registration is cruel or unusual punishment as applied to him due to his age at the time of the offense. He also argues that the trial court's failure to include SORA registration on his judgment of sentence necessitates his removal from the registry. We disagree.

A defendant challenges a sentence as being cruel or unusual punishment by raising the claim in the trial court. *Bowling*, 299 Mich App at 557. Defendant did not argue before the trial court that lifetime registration under SORA constituted cruel or unusual punishment, so this issue is unpreserved.

Unpreserved claims of error receive review for plain error affecting substantial rights. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "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." *Id*. "The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower

court proceedings." *Id*. "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. at 763-764 (quotation marks and citation omitted; alteration in original).

Defendant was convicted of CSC-I, MCL 750.520b(2)(b) (victim under 13, perpetrator 17 or older). Under SORA, this is a tier III offense. MCL 28.722(v)(iv). Tier III offenders are required to register under SORA for life. MCL 28.725(13).

1. CRUEL OR UNUSUAL PUNISHMENT

Defendant challenges the lifetime-registration requirement, without the ability to petition for removal from the registry, as cruel or unusual punishment. The Michigan Supreme Court has determined that registration under SORA constitutes punishment but that the registration requirements for tier III offenders do not constitute cruel or unusual punishment. *People v Kardasz*, ___ Mich ___; ___ NW3d ___ (2025) (Docket No. 165008), slip op at 33-34. Defendant argues that the registration requirement is unconstitutional as applied to him due to his young age, rendering the punishment harsher for him than it would be for an older offender. In doing so, he references *People v Taylor*, ___ Mich ___; ___ NW3d ___ (2025) (Docket Nos. 166428 and 166654), in which the Michigan Supreme Court held that mandatory life without parole (LWOP) was cruel or unusual punishment as applied to offenders who were 19 or 20 years old when they committed the offense on the grounds that these offenders were neurologically similar to 18-year-olds, would spend a significantly longer time in prison than older offenders who committed the same offenses, and because mandatory LWOP for young offenders was contrary to the state Constitution's stated goal of rehabilitation. *Id*., slip op at 13-25, 33-34.

Addressing the proportionality factors for this case, the gravity of the offense (sexual assault of a 12-year old committed by an individual who was 19 at the time of the offense) is significant. While the lifetime-registration requirement is also a significant punishment, it is not so severe as to be disproportionate to the offense. The punishment addressed in *Taylor*, lifetime incarceration without the possibility of release, is far harsher than SORA registration, which, while imposing restrictions on a registrant's liberty, still permits registrants to live outside of prison. The decision in *Kardasz* describes SORA registration as a "relatively moderate punishment" compared to the gravity of the offense. *Kardasz*, ___ Mich at ___, slip op at 35.

The second factor, sentences imposed for other offenses, also weighs against SORA registration being cruel or unusual as applied to defendant. Lifetime SORA registration is required for all tier III sexual offenses, which include gross indecency committed against persons under 13 years old, CSC-I, CSC-III, and assault with intent to commit criminal sexual conduct involving sexual penetration. MCL 28.722(v). Given that defendant's offense in this case, CSC-I committed against a victim under the age of 13, is especially serious, this factor also indicates that lifetime registration is not cruel or unusual as applied to defendant.

The third factor also does not support defendant's claim that the lifetime-registration requirement is cruel or unusual punishment: as discussed in *Kardasz*, Michigan's sex-offender-registration regime is similar to a "plurality" of states, *id*. at 39, and other jurisdictions do not treat

19-year-old offenders who committed offenses against children under 13 distinctly from older offenders convicted of the same crimes.

However, the fourth factor, whether the punishment advances the goal of rehabilitation, does weigh in favor of the registration requirement being cruel or unusual, given that it limits a registrant's ability to find employment and housing and invites social stigma that can inhibit rehabilitation. *Id*. at 40-41. Nevertheless, given the balance of these factors, defendant has not shown that the SORA registration requirement is unconstitutional as applied to him when considered in light of the severity of the offense and the lack of exemptions for 19-year-old offenders in sex-offender-registration regimes in other jurisdictions. The trial court did not plainly err by ordering lifetime registration for defendant.

2. OMISSION FROM THE JUDGMENT OF SENTENCE

The omission of the SORA registration requirement from defendant's judgment of sentence does not necessitate his removal from the registry. A person who is required to register under SORA is required to do so before sentencing, and the court may not impose a sentence until it determines that the department of corrections has received the registration. MCL 28.724(5). MCL 28.726 includes further procedural requirements that the officer, court or agency provide a copy of the registration or notification to the individual at the time of registration or notice and immediately forward the registration or notification to the department.

Defendant did sign the sex offender registry form before his sentencing hearing. He was also informed of the lifetime GPS monitoring requirement at his sentencing hearing. However, defendant's judgment of sentence left unchecked the box stating that sex-offender registration is required. Under MCR 6.427(9), the judgment of sentence must include "the conditions incident to the sentence."

Defendant argues that, following *People v Nunez*, 342 Mich App 322; 994 NW2d 824 (2022), the trial court's failure to include SORA in his judgment of sentence requires his removal from the registry. However, *Nunez* is distinguishable. In *Nunez*, the defendant was convicted of fourth-degree criminal sexual conduct (CSC-IV). *Id*. at 325. However, he was not given a SORA registration form, was not informed of the registration requirement at sentencing, and his judgment of sentence did not mention SORA. *Id*. He registered after receiving a letter from the prosecutor's office but later filed a motion to enforce the judgment of sentence, arguing that, because the judgment of sentence omitted the registration requirement, he was not required to register. *Id*. at 326. The trial court denied his motion. *Id*. at 326-327. On appeal, this Court determined that the district court violated the procedural requirements of SORA because the defendant was not informed of the registration requirement until after he pleaded guilty and because it was too late for the judge to amend defendant's judgment of sentence. *Id*. at 330-334.

Unlike *Nunez*, defendant in this case was informed of the SORA registration requirement before his sentencing and then registered. In an unpublished case with similar facts (a defendant who registered under SORA before sentencing but whose judgment of sentence omitted the SORA registration requirement), this Court determined that *Nunez* did not require that the SORA requirement be voided because the trial court otherwise complied with SORA requirements. *People v Rickerd*, unpublished per curiam opinion of the Court of Appeals, issued February 29,

2024 (Docket No. 365408), p 9.[2] Accordingly, the panel remanded to the trial court so that the defendant's judgment of sentence could be corrected to reflect the SORA registration requirement. *Id*. The same remedy is appropriate in this case because defendant otherwise complied with, and was aware of, the SORA requirements when considering his conviction.

D. LIFETIME ELECTRONIC MONITORING

Finally, defendant argues that the lifetime electronic monitoring (LEM) requirement constitutes cruel or unusual punishment and an unreasonable search. Defendant did not raise this argument before the trial court, so the issue is unpreserved and subject to review for plain error affecting substantial rights. See *People v Vandenberg*, 307 Mich App 57, 61; 859 NW2d 229 (2014); *Carines*, 460 Mich at 763-764.

1. CRUEL OR UNUSUAL PUNISHMENT

Defendant was convicted of CSC-I, MCL 750.520b(2)(b) (victim under 13, perpetrator 17 or older). As such, he is required to be subject to LEM. MCL 750.520n(1). This Court has held that LEM is a punishment. *People v Hallak*, 310 Mich App 555, 571; 873 NW2d 811 (2015), rev'd in part on other grounds 499 Mich 879 (2016). This Court has also held that it is not a cruel or unusual punishment for CSC-II committed against a victim under the age of 13. *Id*. at 575-577. This Court determined that LEM promotes rehabilitation by limiting the offender's ability to reoffend, that it is not excessive compared to other punishments due to the vulnerability of child victims, and that it is not unique because at least 10 other states have mandatory LEM for certain CSC offenses. *Id*. at 573-576. *Hallak* is binding precedent that we must follow. See MCR 7.215(C)(2). Furthermore, the facts in this case indicate that defendant's offense was graver than the offense in *Hallak*; defendant committed CSC-I whereas the defendant in *Hallak* committed CSC-II. Accordingly, the reasoning provided in *Hallak* as a basis for LEM not being cruel or unusual punishment is applicable in this case as well.

2. UNREASONABLE SEARCH

Binding caselaw also provides that LEM does not constitute an unreasonable search. Even though electronic monitoring is a search under the Fourth Amendment, *Grady v North Carolina*, 575 US 306, 310; 135 S Ct 1368; 191 L Ed 2d 459 (2015), this Court has held that LEM for defendants convicted of CSC-II against a minor under 13 years of age is reasonable, *Hallak*, 310 Mich App at 579. This is because the public interest in reducing recidivism and protecting society outweighs the diminished privacy interest afforded to those who have been convicted of the offense. *Id*. at 580-582. Under MCR 7.215(C)(2), the *Hallak* decision remains binding precedent, and we are required to hold that defendant is not entitled to resentencing on this issue.

[2] Unpublished opinions are not binding precedent, but this Court may consider them for their persuasive value. *People v Green*, 260 Mich App 710, 720 n 5; 680 NW2d 477 (2004).

III. CONCLUSION

We affirm defendant's conviction and sentence. However, we remand to the trial court so that it may correct defendant's judgment of sentence to include registration under SORA. We do not retain jurisdiction.

/s/ Michael F. Gadola
/s/ Michael J. Riordan