

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN PATRICK GWIZDALA,

Defendant-Appellant.

UNPUBLISHED

January 21, 1997

No. 191101

Bay County

LC No. 91-001144-FH

Before: Neff, P.J., and Smolenski and D.A. Roberson,* JJ.

PER CURIAM.

Defendant pleaded guilty to probation violation. His probation was revoked, and he was sentenced on the underlying conviction of breaking and entering an unoccupied dwelling with the intent to commit larceny, MCL 750.110; MSA 28.305,¹ to a term of eighty to 120 months' imprisonment. Defendant appeals as of right. We affirm.

In 1991, defendant was involved in several breaking and enterings in Bay County and Tuscola County. In this case and pursuant to a plea agreement in which other charges arising out of the same incident were dismissed, defendant, as indicated above, pleaded guilty to breaking and entering an unoccupied dwelling with the intent to commit larceny. Defendant was sentenced to a term of five years' probation. Defendant also pleaded guilty in a separate case below to another breaking and entering. Charges against him in a third case were dismissed.

In 1993, defendant pleaded guilty to violating his probation. Specifically, defendant pleaded guilty to violating condition two of his probation (violate no criminal law or ordinance) by being arrested for OUIL, and to violating condition seven of his probation (neither possess or use alcoholic beverages nor abuse controlled substances) by consuming alcohol. Defendant's probation was continued, and he was sentenced to four months' incarceration in jail.

* Recorder's Court judge, sitting on the Court of Appeals by assignment.

In 1994, defendant pleaded guilty to violating his probation. Specifically, defendant pleaded guilty to violating condition seven of his probation by consuming alcohol. Another charge of violating condition two of his probation was dismissed. The dismissed charge alleged that defendant struck a woman with his hand. Defendant's probation was continued, and he was sentenced to seven months' incarceration in jail.

In 1995, defendant pleaded guilty to six charges of violating his probation. Specifically, defendant pleaded guilty to violating condition seven of his probation (1) by possessing alcohol in June, 1995; (2) by testing positive for using THC in July, 1995; (3) by testing positive for using THC in August, 1995, and; (4) by consuming alcohol in September, 1995. Defendant also pleaded guilty to violating condition two of his probation (1) by driving under the influence of alcohol in September, 1995, and (2) by forcibly confining his fiancée in June, 1995. This latter incident involved defendant's forcibly pulling his fiancée from a vehicle, pulling her down a driveway, putting her into his vehicle, and taking her to a field. For this conduct, defendant was charged in another case below with kidnapping. He subsequently pleaded guilty in that case to the felony of taking a woman with the intent to compel her to marry, MCL 750.12; MSA 28.202, and sentenced for this crime to a term of four to ten years' imprisonment.

As a result of his 1995 probation violations, defendant was sentenced to a term of eighty to 120 months' imprisonment. It is this sentence that defendant appeals as of right.

Defendant argues that his sentence of eighty to 120 months' imprisonment is disproportionate where the sentencing guidelines, as computed in 1991, recommend a minimum sentence of twelve to thirty-six months' imprisonment. We disagree. The sentencing guidelines do not apply to defendants convicted of probation violation. *People v Reynolds*, 195 Mich App 182, 184-185; 489 NW2d 128 (1992). In this case, defendant came before the court three times, incurring nine probation violations, at least one of which, as can be determined from the record, resulted in a separate conviction. Moreover, as noted by the sentencing court, defendant's violence was escalating. Accordingly, we find that defendant's sentence was proportionate to the offense and this offender. *Id.*

Affirmed.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Dalton A. Roberson

¹ Redesignated as MCL 750.110a; MSA 28.305(a) by 1994 PA 270.