

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHANE DIONNE SMITH,

Defendant-Appellant.

UNPUBLISHED
February 28, 1997

No. 184092
Kalamazoo Circuit
LC No. 93-001581-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty to violating probation on his underlying convictions of two counts of breaking and entering a building with intent to commit larceny, MCL 750.110; MSA 28.305. He was sentenced to three to ten years' imprisonment, and now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

The trial court did not err in sentencing defendant to a term of imprisonment based on the probation violation. There was no order which discharged defendant from probation and the court had jurisdiction to sentence him for the probation violation. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977).

Defendant was required to successfully complete the TREX rehabilitation program by an order entered on December 29, 1994, and by verbal instruction from his probation officer. Defendant's order of probation provided that he was to comply with all written and verbal orders given to him by his probation officer. Accordingly, defendant was required to successfully complete the TREX program as a condition of his probation. His failure to do so was a violation of his probation.

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

Defendant was not denied specific performance of a sentencing agreement. The sentence on appeal was imposed for a new probation violation, i.e., failure to complete the TREX program in Oregon, and was not a “modification” of the prior sentence which was imposed for the failure to complete the K-PEP program. The record reflects the trial court’s intention that any additional violation of probation would result in a lengthy prison term.

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar