

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL LAWRENCE JORDAN,

Defendant-Appellant.

UNPUBLISHED

May 23, 1997

No. 185957

Kalamazoo Circuit Court

LC No. 93001170-FH

Before: Wahls, P.J., and Young and J.H. Fisher*, JJ.

PER CURIAM.

Defendant appeals by right the order revoking his probation. MCL 771.4; MSA 28.1134. The court sentenced defendant to a term of imprisonment of sixteen months to five years. Although defendant now is on parole, that status does not render the issue presented moot. *People v Briseno*, 211 Mich App 11, 17; 535 NW2d 559 (1995). We affirm.

Defendant's probation required him to obey all the rules of the residential K-PEP work release program and successfully complete the program.¹ Defendant was required to inform program officials of his whereabouts during days he was out on work release. At the probation hearing, defendant admitted that he had undocumented "out-of-place" hours during two pay periods without justification. Because of those two violations, the court discharged defendant from the program and revoked his probation.

A probation revocation proceeding has two steps: first, a factual determination that the defendant violated probation; and second, a discretionary determination that the violation warrants a revocation of probation. *People v Laurent*, 171 Mich App 503, 505; 431 NW2d 202 (1988). When a court finds a probation violation, it has wide discretion in deciding whether to continue or revoke probation. *People v Whiteside*, 437 Mich 188, 193; 468 NW2d 504 (1991). Defendant challenges only the second step of the probation revocation proceeding; therefore, we review the trial court's

* Circuit judge, sitting on the Court of Appeals by assignment.

decision for an abuse of discretion. See *People v Knox*, 115 Mich App 508, 514-515; 321 NW2d 713 (1982).

Defendant first argues that the violations did not warrant a revocation of his probation because he was not given an opportunity to justify the unexcused time. Defendant's probation agent and his resident counselor at the K-PEP work release program both testified that they had given defendant opportunities to explain the time discrepancies and defendant had not done so. Additionally, defendant did not take advantage of the grievance procedure available in the K-PEP program to appeal the discharge decision. Defendant also did not offer an explanation at the probation revocation hearing for the discrepancies in his hours, except to state that the timecards that he had filled out were inaccurate. In short, defendant did not use several opportunities to explain the approximately twenty-five "out-of-place" hours and cannot now assert an abuse of discretion by the trial court. Defendant may not complain on appeal about an error that he caused or to which he acquiesced. *People v Barclay*, 208 Mich App 670, 673; 528 NW2d 842 (1995).

Defendant also argues that the court abused its discretion in revoking his probation because the violation involved only two weeks out of the four months in which defendant participated in the program. The time discrepancies, however, occurred in January 1995, only two months after defendant began the program. Defendant's argument also is not persuasive because testimony at the probation revocation hearing clearly indicated that officials had alerted defendant to the conditions of his probation, including the requirement that he was accountable for his time. Defendant received the resident handbook with the program's rules and regulations. He also signed the program's rules agreement. On cross-examination, defendant himself admitted that he had been informed of the program requirement that he either had to be at work and working, or in transit.

Further, defendant does not establish an abuse of discretion merely by arguing that revocation was unwarranted because only two time periods were at issue. Similarly, the court did not abuse its discretion in rejecting a continuation of defendant's probation based on the mitigating circumstances of his remorse and his employer's favorable letter. That this was defendant's second probation violation does not support a finding that he was remorseful. As this Court has noted, "[a] trial judge's finding that a probation order has been violated will not be overturned where it is based on verified facts and where the trial judge's exercise of discretion was based on accurate knowledge of the probationer's behavior." *People v Rocha (After Remand)*, 99 Mich App 654, 657; 299 NW2d 16 (1980).

Affirmed.

/s/ Myron P. Wahls

/s/ Robert P. Young, Jr.

/s/ James H. Fisher

¹ Defendant previously had violated his five-year term of probation by using a controlled substance. The court then sentenced him to six months in the K-PEP program.