

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JON ERIC JOHNSON,

Defendant-Appellant.

UNPUBLISHED

September 19, 1997

No. 196721

Midland Circuit Court

LC No. 94-007345 FH

Before: Markey, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

On plea of nolo contendere, defendant was convicted of assault with intent to commit criminal sexual conduct involving penetration. The plea was the result of a bargain, pursuant to which an original charge of third degree criminal sexual conduct, with possible enhancement as a second offender, was dismissed. Defendant was sentenced to probation for four years, with the first year to be spent in the county jail.

After being released from confinement, defendant was charged, tried, and convicted in a jury trial in the same circuit and before the same judge of first degree criminal sexual conduct. On this basis, he was adjudicated a probation violator. He first contends that, where he pleaded not guilty to the probation violation charges, the court erred in simply taking judicial notice of the jury conviction and adjudicating him a probation violator without a proper hearing. We disagree. All the due process to which defendant was entitled was accorded him in his jury trial on the first degree criminal sexual conduct charges. His conviction is conclusive evidence of a violation of his probation, and no further hearing was required. *Shadbolt v Department of Corrections*, 386 Mich 232, 236; 191 NW2d 344 (1971).

Defendant contends that his six to ten year sentence as a probation violator is disproportionate, it reflects a failure by the trial court to take the facts and circumstances of the underlying offense into account, and it also involves the trial court improperly finding defendant guilty, independently, of an unsubstantiated charge. Again, we disagree. The trial court was made fully aware of the facts and circumstances of the offense by the presentence report, defense counsel's comments during allocution,

and its own familiarity with the record in this case. There is no requirement that it recite such facts as a prerequisite to imposing a valid sentence. See *People v Beneson*, 192 Mich App 469, 470-471; 481 NW2d 799 (1992). In referring to defendant as having a history of three rape or rape-like offenses, the trial court in no way took into consideration the pending charges involving victim Fowler. This case, defendant's new conviction for first degree criminal sexual conduct, and his Missouri conviction constituted the three offenses to which the trial court thus accurately referred.

Finally, a probation violation sentence is reviewed for abuse of discretion, and the sentence guidelines are irrelevant. *People v Williams*, 223 Mich App 409, 412-413; 566 NW2d 649 (1997). No abuse of that sentencing discretion has been established on this record.

Affirmed.

/s/ Jane E. Markey

/s/ Janet T. Neff

/s/ Michael R. Smolenski