

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER LANE BATES,

Defendant-Appellant.

UNPUBLISHED

October 3, 1997

No. 188684

Monroe Circuit Court

LC No. 92-024741-FH

Before: Taylor, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Defendant pleaded guilty to violating probation on his underlying conviction of breaking and entering an unoccupied building, MCL 750.110; MSA 28.305. The defendant was placed on a delayed sentencing status until August 25, 1995, at which time defendant was sentenced to three to ten years imprisonment. Defendant appeals as of right. We affirm.

Receiving a delayed sentence pursuant to MCL 771.1; MSA 28.1131 is not equivalent to being on probation. *People v Hacker*, 127 Mich App 796; 339 NW2d 645 (1983). A probationer is entitled to a probation revocation proceeding and is entitled to certain due process rights at that proceeding, including the opportunity to be heard, and to present witnesses and documentary evidence. *People v Rocha*, 86 Mich App 497; 272 NW2d 699 (1978). A probationer is entitled to a written copy of the charge as well as a hearing on the charge. MCL 771.4; MSA 28.1134. Only evidence relating to the charge may be considered, and only such evidence may provide the basis for a decision to revoke probation. *People v Ebert*, 21 Mich App 677; 176 NW2d 467 (1970). A trial court must not allow uncharged conduct to affect its decision to revoke probation. *People v Longmier*, 114 Mich App 351; 319 NW2d 579 (1982).

In contrast, a defendant who has been placed on delayed sentencing status pursuant to MCL 771.1(2); MSA 28.1131 does not have the right to any hearing on the question of whether he or she violated a condition of his or her delayed sentencing arrangement. *People v Clyne*, 36 Mich App 152; 193 NW2d 399 (1971). The purpose of placing a defendant on delayed sentencing status is to give the defendant the opportunity to prove that he or she is eligible for probation or some other type of

leniency. MCL 771.1(2); MSA 28.1131. A trial court may impose conditions upon a defendant receiving a delayed sentence that are exactly the same as probation conditions, including the requirement to report to a probation officer. *People v Leonard*, 144 Mich App 492; 375 NW2d 745 (1985). However, being on delayed sentencing status and being on probation, as seen above, are distinct with respect to the rights a defendant has when charged with the violation of a condition. Consequently, a defendant cannot be on probation and delayed sentencing status concurrently.

As a result, when the defendant was placed on a delayed sentencing status, his probation was necessarily revoked. The trial judge had the proper authority to revoke the defendant's probation upon accepting his plea of guilty to his failure to report. Once on delayed sentencing status, the defendant had no right to any hearing or formal charge, and pursuant to MCL 771.1(2); MSA 28.1131, the delay in sentencing did not deprive the trial court of jurisdiction to sentence the defendant at any time during the extended period. Although the trial court judge erred by not expressly revoking probation prior to placing defendant on delayed sentencing status, we do not believe that this constitutes reversible error.

Affirmed.

/s/ Henry William Saad