

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNNY ANTHONY ARROYO,

Defendant-Appellant.

UNPUBLISHED
December 16, 1997

No. 192318
Bay Circuit Court
LC No. 91-001433 FH

Before: O'Connell, P.J., and White and C. F. Youngblood*, JJ.

MEMORANDUM.

In 1991, defendant was convicted on plea of guilty, pursuant to a plea bargain, of conspiracy to discharge a firearm at a dwelling. MCL 750.234b; MSA 28.431(2). Defendant was placed on five years' probation and ordered to pay a fine and restitution. In 1995, defendant, after a hearing, was found guilty of violating his probation by committing criminal acts, namely, ethnic intimidation and felony-firearm. On January 3, 1996, defendant as a probation violator was sentenced to thirty-two to forty-eight months' imprisonment. Defendant now appeals his probation violation adjudication as of right. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that his sentence is disproportionate to the offense and the offender. Because defendant is a probation violator, the sentence guidelines are inapposite to appellate review of his sentence. *People v Williams*, 223 Mich App 409; 566 NW2d 649 (1997). Where the sentence guidelines do not apply, appellate review is for abuse of sentencing discretion. *People v Hansford* (After Remand), 454 Mich 320; 562 NW2d 460 (1997). As the underlying offense involves violence with firearms directed at an occupied dwelling, and defendant violated his probation by a further act of violence involving a firearm directed at another person, although defendant's sentence is the maximum allowed on both the minimum and maximum, this Court nonetheless finds no abuse of the trial court's sentencing discretion on the whole record.

In the judgment of sentence, the trial court included certain recommendations to the Department of Corrections, suggesting that defendant not be paroled and that defendant not be allowed to

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

participate in the Special Alternative Incarceration Program (“Boot Camp”). Had the trial court purported to enter orders to this effect, such orders would have exceeded its sentencing authority and constituted reversible error. *People v Greenberg*, 176 Mich App 296, 310-311; 439 NW2d 336 (1989). However, the trial court’s non-binding sentence recommendations, having not been entered as orders, are purely advisory, *Lucas v Wayne County Bd of Road Commissioners*, 131 Mich App 642, 662-663; 348 NW2d 660 (1984), and in no way control the subsequent actions of the Department of Corrections. The trial court is free to make such recommendations as it sees fit, and the Department of Corrections is equally at liberty to ignore those recommendations in their entirety or to follow them to the extent the Department of Corrections finds them worthwhile. No basis for appellate relief from the trial court’s action is established.

Affirmed.

/s/ Peter D. O’Connell

/s/ Helene N. White

/s/ Carole F. Youngblood