

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTINA MARIE HAYNES,

Defendant-Appellant.

UNPUBLISHED

February 10, 1998

No. 200979

Lenawee Circuit Court

LC No. 94-006040 FH

Before: Gage, P.J., and Murphy and Reilly, JJ.

MEMORANDUM.

Defendant appeals by right her adjudication of probation violation based on a contested hearing, which was combined with her guilty plea to probation violation charges arising from conviction of three misdemeanors, assault on a police officer, resisting and obstructing a police officer, and possession of marijuana, culminating in a 5 to 14 year sentence on the underlying offense of forgery, MCL 750.249; MSA 28.446.

Defendant first contends that the delay between issuance of the probation violation warrant for use of marijuana, the warrant being issued on January 3, 1996, and effectuation of the warrant by her arrest some eight months later, effectuated a waiver of the right of the State to prosecute this probation violation charge. *People v Ortman*, 209 Mich App 251, 254; 530 NW2d 161 (1995), and cases there cited. This issue is unpreserved, the record reflects that, although at the probation violation hearing defendant's attorney touched on the issue, the record is deliberately undeveloped in this regard. Only defendant, and not the probation officer, was asked what efforts were made to effectuate the probation violation warrant. The trial judge found that defendant's testimony was generally not credible, so there is no reliable indication as to the extent of the efforts made. However, the record is clear that at least one such effort was made, but defendant was not home when the attempt was made to arrest her, and in the meantime defendant not only failed to report eight times between January and September, 1996, to her probation officer, but she specifically violated his instructions to report to deal with the urinalysis revealing marijuana use, which thereupon rendered her a fugitive. Moreover, the delay in this case is much shorter than that in such cases as *Ortman*, *supra*, where the delay was nearly two years and no efforts were made to effectuate the arrest warrant. Defendant has failed to

demonstrate a lack of due diligence sufficient to vitiate the State's right to pursue this aspect of the probation violation charges. It might be noted that, in any event, defendant's probation would be subject to revocation for the three misdemeanor convictions.

Defendant contends that her sentence was not individualized and that the trial judge imposed a disproportionate sentence. Her argument is founded upon the notion that the sentence guideline range for the underlying offense, as calculated at the time she was placed on probation, has some relevance to an evaluation of the sentence imposed following revocation of her probationary status. That assumption is entirely incorrect; the use of the guidelines for any purpose whatsoever in conjunction with a sentence following probation violation is improper. *People v Williams*, 223 Mich App 409; ___ NW2d ___ (1997).

In evaluating the proportionality of defendant's sentence, it should be noted that her conviction of one count of forgery was the product of a plea bargain, whereby five additional counts of forgery and six of uttering and publishing were dismissed. Despite being accorded the privilege of probation in lieu of initial incarceration, defendant egregiously violated the terms of her probation and ignored the authority of the court and its probation agent repeatedly within the first two years of her five year probation. The presentence report also reflects that the underlying offenses were not defendant's first; the victims were her parents, and she had stolen checks from them previously and signed her name to them without authority, although they had not opted to prosecute these earlier violations. On this record, a 5 to 14 year sentence is not disproportionate to the offense or the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Hilda R. Gage
/s/ William B. Murphy
/s/ Maureen Pulte Reilly