

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JASH ELI LARDIE,

Defendant-Appellee.

UNPUBLISHED

March 20, 1998

No. 200924

Grand Traverse Circuit Court

LC No. 93-006347-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASH ELI LARDIE,

Defendant-Appellant.

No. 203127

Grand Traverse Circuit Court

LC No. 93-006347-FH

Before: Markey, P.J., and Griffin and Whitbeck, JJ.

PER CURIAM.

A jury convicted defendant of three counts of OUIL causing death, MCL 257.625(4); MSA 9.2325(4), and one count of furnishing alcohol to minors, MCL 436.33; MSA 18.1004. He was sentenced to twelve months in the Grand Traverse County Jail and placed on probation for five years under extensive probation requirements. Defendant was subsequently charged with violating his probation. Following a probation revocation hearing, the trial court revoked defendant's probation and resentenced defendant to six to fifteen years' imprisonment. In Docket No. 200924, the prosecutor appeals as of right, claiming that defendant's original sentence was disproportionately lenient. In Docket No. 203127, defendant appeals as of right, claiming that the probation violation was not adequately established and that the subsequent sentence was disproportionate. We affirm defendant's probation violation and the subsequent sentence and therefore find it unnecessary to address the proportionality of

defendant's original sentence because the issue is moot. *Michigan National Bank v St Paul Fire & Marine Ins Co*, 223 Mich App 19, 21; 566 NW2d 7 (1997).

Defendant argues that the trial court erred in finding that he had violated the conditions of his probation. This Court reviews such findings to determine whether the trial judge could have found by a preponderance of the evidence that the probation order had been violated. *People v Williams*, 66 Mich App 67, 71; 238 NW2d 407 (1975). "A sentence of probation is an alternative to confining a defendant in jail or prison and is granted as a matter of grace in lieu of incarceration." *People v Johnson*, 210 Mich App 630, 633; 534 NW2d 255 (1995). Because probation is a matter of grace conferring no vested right to its continuance, a probation order is revocable. MCL 771.4; MSA 28.1134.

Among the seven-count petition alleging probation violations, Counts VI and VII charged that defendant had violated condition 18 of his amended probation order by sending correspondence to family members of the accident victims. Defendant conceded that he sent letters to two family members after being advised that under his probation order this was forbidden. On the envelope of the letters, defendant had written "P.S. I have just been told I cannot write you any longer but that you can write me," further evidencing his understanding of the probation order. This evidence alone constituted sufficient proof to establish by a preponderance of the evidence that defendant twice violated condition eighteen of his probation order. Accordingly, we need not address whether a preponderance of the evidence established the probation violation charges outlined in Counts II through V. Any finding of a probation violation is sufficient for probation to be revoked and for a defendant to be resentenced.

Defendant also argues that the trial court abused its discretion by sentencing him to a disproportionate term of six to fifteen years in prison. Under MCL 771.4; MSA 28.1134, a sentence imposed as a result of a probation violation essentially amounts to a revocation of the original probation order and a resentencing on the original offense as if the probation order had never existed. *People v Burks*, 220 Mich App 253, 258; 559 NW2d 357 (1996). In reviewing the proportionality of this sentence, the court shall examine the seriousness of the crime and defendant's prior record. *People v Milbourn*, 435 Mich 630, 650; 461 NW2d 1 (1990). With regard to the seriousness of this crime, it is undisputed that three teenagers died as a result of this crime. We note that this state has set forth a policy under which harsh sentences are given for those who drive while intoxicated. See, e.g., *People v Price*, 214 Mich App 538, 548; 543 NW2d 49 (1995) (ten to fifteen years for OUIL causing death found to be proportionate); *People v Haker*, 158 Mich App 570, 577-578; 405 NW2d 204 (1987) (three to five years for OUIL, third offense, found to be proportionate). Defendant's prior record shows that he pleaded guilty to attempted illegal entry and was sentenced to three days in jail, and that while a juvenile he was found guilty of marijuana use and placed on probation. The court also correctly considered defendant's lack of cooperation with probation officials and his subsequent violation of his probation as part of his prior record in determining proportionality. In light of the seriousness of the crime as evidenced by the three deaths and defendant's prior record, we find the sentence of six to ten years to be proportionate.

Finally, defendant argues that the trial court improperly considered his failure to admit guilt during sentencing. It is improper for a trial court to consider a defendant's failure to admit guilt or to

give the appearance that if defendant were to admit guilt, his sentence would be reduced. *People v Wesley*, 428 Mich 708, 713-714; 411 NW2d 159 (1987). The trial court does not err, however, if it considers the defendant's lack of remorse as it bears upon defendant's rehabilitation. *Id.*; see *People v Stewart (On Remand)*, 219 Mich App 38, 44-45; 555 NW2d 715 (1996). The trial court's comments cited by defendant address the rehabilitative concerns that the court had regarding defendant and the futility of a probationary sentence when defendant was unwilling to cooperate with the probation department. Because the trial court merely considered defendant's lack of remorse as it related to his rehabilitation, there was no error.

We affirm.

/s/ Jane E. Markey

/s/ Richard Allen Griffin

/s/ William C. Whitbeck