STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND LAMAR JACKSON,

Defendant-Appellant.

UNPUBLISHED
July 24, 1998

No. 203344
Bay Circuit Court
LC No. 93-001024 FH

Before: Bandstra, P.J., and Griffin, and Young, Jr., JJ.

PER CURIAM.

Defendant pleaded guilty on April 27, 1993, to the offenses of assault with a dangerous weapon, MCL 750.82; MSA 28.277, and habitual offender, fourth offense, MCL 769.12; MSA 28.1084. Defendant was sentenced to a year in jail and five years' probation. Defendant was subsequently found guilty of violating three conditions of his probation and, on May 13, 1997, the trial court revoked defendant's probation and sentenced him to serve from seven to fifteen years in prison. Defendant appeals, challenging his sentence on the basis that it was disproportionate in light of *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We affirm.

This Court reviews sentences for an abuse of discretion. *People v Williams*, 223 Mich App 409; 566 NW2d 649 (1997). A sentence constitutes an abuse of discretion if it is disproportionate to the seriousness of the circumstances surrounding the offense and the offender. *Milbourn, supra*. To facilitate review of a trial court's decision, the trial court must state the reasons on the record for imposing the sentence. *People v Coles*, 417 Mich 523, 549; 339 NW2d 440 (1983).

The sentencing guidelines do not apply to habitual offenders. *People v Hansford (After Remand)*, 454 Mich 320, 323; 562 NW2d 460 (1997). The guidelines are likewise inapplicable when sentencing probation violators. *Williams, supra* at 411. The granting of probation is a matter of grace. MCL 771.4; MSA 28.1134. When a defendant's probation is revoked, the court may sentence the violator as though the probation order had never existed. *People v Crook*, 123 Mich App 500, 502-503; 333 NW2d 317 (1983); MCL: 771.4; MSA 28.1134. The length of the sentence imposed for violating probation must be in accord with the same range of punishment that would have applied to the

underlying offense. *People v Vancil*, 186 Mich App 665, 666; 465 NW2d 49 (1991). The trial court "is at liberty to consider defendant's actions and the seriousness and severity of the facts and circumstances surrounding the probation violation in arriving at the proper sentence to be given." *Williams, supra* at 411, quoting *People v Peters*, 191 Mich App 159, 167; 477 NW2d 479 (1991).

In *People v Phillips (After Second Remand)*, 227 Mich App 28, 36-37; 575 NW2d 784 (1997), this Court observed that because the Michigan Supreme Court "has only found two [habitual offender] sentences" to be disproportionate, the law appears to indicate "that fewer sentences" will be found to be disproportionate. In fact, the recent decision in *Hansford, supra*, supports this observation. The *Hansford* Court, *supra* at 326, stated:

> We believe that a trial court does not abuse its discretion in giving a sentence within the statutory limits established by the Legislature when an habitual offender's underlying felony, in the context of his previous felonies, evidences that the defendant has an inability to conform his conduct to the laws of society. The sentence in this particular case was within the limits authorized by the Legislature for an habitual offender, fourth offense, under MCL 769.12(1)(a); MSA 28.1084(1)(a). The serious nature of this crime, defendant's extensive criminal history, and his clear inability to reform, convince us that the trial court did not abuse its discretion in imposing defendant's sentence.

In the instant case, we similarly conclude that the trial court did not abuse its discretion in its sentencing of defendant. Applying the principles set forth above, defendant's sentence for violating his probation is not subject to the sentencing guidelines not only because he violated his probation but also because he was an habitual offender. Moreover, the sentence imposed by the trial court was permitted by the habitual offender statute. That statute, MCL 769.12(1)(b); MSA 1084(1)(b), permits a maximum sentence of fifteen years in prison where, as here, a first conviction for the underlying offense exposed defendant to less than five years' imprisonment.

Contrary to defendant's contention, the record indicates that the trial court properly focused on the underlying offense, not the infraction for which defendant's probation was revoked, in sentencing defendant. *People v Maxson*, 163 Mich App 467, 470; 415 NW2d 247 (1987). In imposing the sentence, the trial court noted that defendant had been given more than one chance to conform his conduct to the law and concluded that continued probation would be inappropriate. The trial court recognized that there was no jail time left for this defendant. Further, defendant was an habitual offender. Defendant's criminal history indicated prior convictions for assaultive behavior, and the underlying offense, assault with a dangerous weapon, was a serious crime of violence. Although defendant asserted at the time of sentencing that he was seeking help for his substance abuse problem, he had already violated his probation twice by using cocaine, and the trial court was not persuaded. As the court noted, defendant had already been placed on probation and sent to prison and still was unable to conform his conduct to the law.

Based on these circumstances, we hold that the trial court's sentencing of defendant did not constitute an abuse of discretion. We are satisfied that defendant's seven to fifteen year

sentence is proportionate, considering the offense and the offender. *Hansford*, *supra*; *Phillips, supra*.

Affirmed.

/s/ Richard A. Bandstra
/s/ Richard Allen Griffin
/s/ Robert P. Young, Jr.