

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARY COLLIER,

Defendant-Appellant.

UNPUBLISHED

December 1, 1998

No. 199296

Macomb Circuit Court

LC No. 86-000662 FH

Before: Young, Jr., P.J., and Wahls and Jansen, JJ.

MEMORANDUM.

Defendant appeals as of right her plea based conviction for probation violation, entered after a prior conviction for failure to report income to the Department of Social Services, MCL 400.60(2); MSA 16.260(2). We affirm.

Documents from defendant's original conviction noted that \$39,815.00 in restitution was owed by defendant. Due to defendant's financial condition, the order of probation only required her to pay \$20 per month in restitution. Defendant failed to make these payments, and she ceased reporting to her probation officer prior to the end of her probation. A bench warrant for defendant's arrest was issued in December 1991, but it was not executed until defendant was arrested on an unrelated traffic offense in 1996. Defendant pleaded guilty to probation violation, and was sentenced to 29 to 60 months' imprisonment, and ordered to pay restitution of \$39,815.00 upon her release.

Once a warrant for probation violation has been issued, the probation authorities must exercise due diligence in executing it. If the probation authorities did not act with reasonable dispatch under all the circumstances, there is a waiver of the probation violation. *People v Ortman*, 209 Mich App 251, 254; 530 NW2d 161 (1995). Defendant failed to move to withdraw her guilty plea to raise this issue before the trial court. Therefore, this issue is not preserved for appeal. MCR 6.311(C); *People v Vonins (After Remand)*, 203 Mich App 173; 511 NW2d 706 (1993).

MCL 769.1a(2); MSA 28.1073(2) requires a sentencing court to order that a defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction. While a defendant may not be incarcerated for failure to pay restitution when the defendant does not have the

resources to pay, MCL 769.1a(14); MSA 28.1073(13), that provision does not affect the initial judgment ordering restitution. The trial court did not abuse its discretion in ordering defendant to pay full restitution. *People v Letts*, 207 Mich App 479; 525 NW2d 171 (1994).

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Myron H. Wahls

/s/ Kathleen Jansen