STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 19, 1999
v	No. 210255 Missaukee Circuit Court
JODY WAYNE ROLLAND, Defendant-Appellant.	LC No. 96-101246 FH

Before: Gage, P.J., and MacKenzie and White, JJ.

PER CURIAM.

In 1996, defendant pleaded guilty to possession with intent to deliver marijuana in an amount less than five kilograms or fewer than twenty plants, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii). He was originally sentenced to four years' probation, but was later ordered to serve one of those years in jail. Shortly after his release from jail, defendant was charged with violating the terms of his probation order. Following a February, 1998 contested hearing, the trial court found defendant guilty of four counts of violating probation. Defendant was sentenced to thirty-two months' to four years' imprisonment, with credit for time served. Defendant subsequently filed a claim of appeal in this Court. We affirm.

This Court previously directed the parties to address the question whether a defendant has an appeal as of right following a contested probation violation hearing where the underlying conviction resulted from a guilty plea to a crime that was committed after December 27, 1994, the effective date of the legislation implementing "Proposal B" and eliminating appeals as of right from guilty pleas. Applying varying lines of reasoning, the parties, along with amici curiae Michigan Appellate Assigned Counsel System, the State Appellate Defender Office, and the Criminal Defense Attorneys of Michigan, all agree that a defendant has an appeal of right following a contested probation violation hearing, even though the underlying plea-based conviction involved a crime committed after December 27, 1994. In an amendment to MCR 6.445(H), effective January 1, 1999, the Supreme Court has clarified that probationers have an appeal as of right if they are convicted of a probation violation after a contested hearing; they may apply for leave to appeal if the probation violation conviction is the result of a guilty

plea. See 459 Mich xliv 1998. Under these circumstances, we need not consider the question further. Defendant in this case has an appeal as of right.

Defendant contends that his sentence was disproportionately harsh under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Defendant's thirty-two-month minimum sentence was not a disproportionately harsh response to the circumstances surrounding defendant and his crime. Defendant has a history of alcohol abuse, marijuana abuse, and small-scale marijuana distribution. He was initially arrested for assaulting his girlfriend and possessing marijuana. While on probation, he assaulted a woman and was ordered to attend a substance abuse program. He did not complete this program, tested positive for marijuana use, and was placed in jail. Fifteen days after his release from jail, defendant again engaged in substance abuse and assaulted a woman. Defendant has shown himself to be a violent man who is either unwilling or unable to control his behavior, and a thirty-two-month minimum sentence is not a disproportionately severe response to that behavior.

Affirmed.

/s/ Hilda R. Gage
/s/ Barbara B. MacKenzie
/s/ Helene N. White