

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN SHERMAN KISTLER,

Defendant-Appellant.

UNPUBLISHED

February 12, 1999

No. 199861

Manistee Circuit Court

LC No. 94-002374 FH

Before: Gribbs, P.J., and Saad and P.H. Chamberlain*, JJ.

MEMORANDUM.

Defendant appeals of right his sentence for probation violation after a plea-based conviction of breaking and entering an occupied dwelling, MCL 750.110; MSA 28.350. We affirm.

On January 28, 1994 defendant pleaded guilty to the underlying offense. In return for the plea, the prosecution dismissed a second count of breaking and entering an occupied dwelling. On April 18, 1994 the court sentenced defendant to five years' probation, with the first twelve months in the county jail. The court stated that defendant could be released to a community program after seven months if he enrolled in an intensive outpatient alcohol program.

On November 13, 1996 defendant pleaded guilty to the instant probation violation. Probation was violated as a result of defendant failing to report, beginning in February, 1995, and failing to notify his probation officer of a change of address. At sentencing, defense counsel noted that although defendant had absconded from probation, he had enrolled in an inpatient alcohol treatment program and had received a positive prognosis. The court sentenced defendant to thirty months to fifteen years in prison, with credit for 193 days. The court noted that defendant had failed on probation and in a treatment program. The court observed that at the original sentencing it had stated that it would have been justified in sentencing defendant to a prison term that exceeded the guidelines based on defendant's pattern of criminal behavior.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant argues that his sentence is disproportionate. He acknowledges that he violated probation, but emphasizes that he sought treatment for his alcohol problem and did not commit any new offenses during the time he did not report.

We disagree and affirm. Sentence length is reviewed pursuant to the principle of proportionality. A sentence must be “proportionate to the seriousness of the circumstances surrounding the offense and the offender.” *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The sentencing guidelines do not apply to a sentence for probation violation. *People v Williams*, 223 Mich App 409, 411; 566 NW2d 649 (1997). The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). In imposing sentence, the court emphasized that defendant had been given probation in order to allow him to deal with his alcohol problem and had failed on probation. He failed to report for nearly two years. The trial court’s articulation of reasons for imposing the sentence that it did was sufficient. *People v Sandlin*, 179 Mich App 540, 542-543; 446 NW2d 301 (1989).

Affirmed.

/s/ Roman S. Gibbs
/s/ Henry William Saad
/s/ Paul H. Chamberlain