

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANCE LEE SHEPHEARD, JR.,

Defendant-Appellant.

UNPUBLISHED

February 19, 1999

No. 203443

Recorder's Court

LC No. 93-010597

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

MEMORANDUM.

Defendant appeals by right his sentence for probation violation after a plea-based conviction of receiving and concealing stolen property over \$100, MCL 750.535; MSA 28.803. We affirm.

On April 11, 1994 defendant pleaded guilty to the underlying offense. On May 2, 1994 the court sentenced defendant to serve three years' probation, with the first ten months in jail. Defendant was given credit for 235 days. On June 5, 1996 defendant pleaded guilty to home invasion, MCL 750.110a; MSA 28.305(a). On August 8, 1996 the court sentenced defendant to one year in jail, with credit for 78 days.

On January 24, 1997 defendant pleaded guilty to the instant probation violation. Probation was violated as a result of defendant being convicted of home invasion. On February 21, 1997 the court sentenced defendant to thirty to sixty months in prison, with credit for 265 days. The court declined to follow the probation department's recommendation that defendant be sentenced to two years' probation, noting that defendant had failed on probation and had committed another offense.

Defendant argues that his sentence is disproportionate. He asserts that the court did not take into consideration the probation department's recommendation, and did not recognize that he was in need of substance abuse treatment.

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

We 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 failed on probation, had committed another offense while on probation, and had other charges pending. The trial court’s articulation of reasons for imposing the sentence that it did was sufficient. *People v Sandlin*, 179 Mich App 540, 542; 446 NW2d 301 (1989). The factors cited by defendant, i.e., the probation department’s recommendation and his substance abuse problem, do not establish that the sentence is disproportionate under the circumstances. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Affirmed.

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