

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN PHILLIP STEARNS,

Defendant-Appellant.

UNPUBLISHED

February 23, 1999

No. 202915

Allegan Circuit Court

LC No. 95-009830 FH

Before: Markman, P.J., and Bandstra and J. F. Kowalski*, JJ.

MEMORANDUM.

Defendant appeals as of right his guilty plea based conviction for attempted larceny by conversion of over \$100.00, MCL 750.362a; MSA 28.594. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with larceny over \$100.00 and receiving and concealing stolen property in connection with the theft of a chainsaw from his previous employer. These charges were dismissed as part of the plea agreement. The sentencing guidelines were scored at zero to three months. At sentencing, the trial court observed that defendant had failed to appear to enter a plea on two different dates, and that he failed to appear for the original sentencing date. Defendant also had been drinking prior to his probation interview. The court found that defendant had exhibited total contempt toward the court and the probation department. The court exceeded the sentencing guidelines in sentencing defendant to nine months in jail.

A trial court abuses its discretion when it imposes a sentence which is not proportionate to the seriousness of the matter. *People v Houston*, 448 Mich 312, 319; 532 NW2d 508 (1995). Sentencing judges are not required to adhere to the guidelines, and a court may properly consider a defendant's post-arrest behavior in departing from the guidelines range. *Id.* at 323. Here, the trial court properly considered defendant's inability to conform his conduct to the requirements of

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

the judicial system in imposing a nine month sentence. Defendant has failed to show that his sentence is disproportionate.

Affirmed.

/s/ Stephen J. Markman

/s/ Richard A. Bandstra

/s/ John F. Kowalski