

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY SCOTT RAPP,

Defendant-Appellant.

UNPUBLISHED

February 26, 1999

No. 196834, 201794

Livingston Circuit Court

LC No. 94-008519 FH

Before: McDonald, P.J., and Hood and Doctoroff, JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to manufacturing marijuana, MCL 333.7401(1) and (2)(c); MSA 14.15(7401)(1) and (2)(c), and guilty to status as a second habitual offender, MCL 769.10; MSA 28.1082, and received a sentence of three years' probation with the first ninety days to be served in the county jail. Defendant subsequently pleaded guilty to violating the terms of his probation and was sentenced to two to six years' imprisonment. Defendant appeals as of right from both his underlying conviction and sentence (Docket No. 196834) and his probation violation conviction and sentence (Docket No. 201794). We affirm. These consolidated cases are being decided without oral argument pursuant to MCR 7.214(E).

Defendant has waived appellate consideration of his challenges to the validity of his pleas by failing to move to withdraw those pleas in the trial court on the grounds now asserted and by reaffirming his pleas at sentencing. MCR 6.311(C); *People v Dixon*, 217 Mich App 400, 410; 552 NW2d 663 (1996). Additionally, it is not apparent from the record that defendant's trial counsel rendered a constitutionally deficient performance or that any such performance prejudiced defendant. *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997); *People v Hurst*, 205 Mich App 634, 641-642; 517 NW2d 858 (1994). The trial court did not err when it considered a conviction that was over ten years old in determining whether defendant is an habitual offender. *People v Zinn*, 217 Mich App 340, 349; 551 NW2d 704 (1996).

In Docket No. 201794, defendant may not challenge the scoring of the sentence information report prepared for sentencing on the underlying offense, particularly where the sentencing guidelines

have no relevance in probation violation sentencings. *People v Pickett*, 391 Mich 305, 308; 215 NW2d 695 (1974); *People v Williams*, 223 Mich App 409, 411; 566 NW2d 649 (1997). Additionally, the trial court did not abuse its sentencing discretion when it imposed a two-year minimum sentence, particularly where defendant twice absconded from the jurisdiction of the court, failed to complete substance abuse treatment, used marijuana while on probation and failed to pay costs ordered by the court. *People v Hansford (After Remand)*, 454 Mich 320, 323-326; 562 NW2d 460 (1997); *People v Hardy*, 212 Mich App 318, 321; 537 NW2d 267 (1995); *People v Peters*, 191 Mich App 159, 167; 477 NW2d 479 (1991). Defendant's remaining issue has been rendered moot by our affirmance of his underlying conviction and sentence. *People v Greenberg*, 176 Mich App 296, 302; 439 NW2d 336 (1989).

Affirmed.

/s/ Gary R. McDonald

/s/ Harold Hood

/s/ Martin M. Doctoroff