

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM MADISON CARPENTER,

Defendant-Appellant.

UNPUBLISHED

March 2, 1999

No. 202096

Kalamazoo Circuit Court

LC No. 94-001222 FH

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

MEMORANDUM.

Defendant appeals by right his sentence for probation violation after plea-based convictions of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and habitual offender, second offense, MCL 769.10; MSA 28.1082. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On March 1, 1995, defendant pleaded guilty to the underlying charges and was granted delayed sentencing. On December 4, 1995, defendant was sentenced to three years' probation. On December 20, 1996, defendant pleaded guilty to probation violation. Probation was violated as a result of defendant being convicted of attempt retail fraud and failing to report for urine drops. On February 5, 1997, the court sentenced defendant to three to six years in prison with credit for 151 days. The four-year maximum term for the underlying offense was increased by fifty percent pursuant to MCL 769.10(1)(a); MSA 28.1082(1)(a). The court noted that in addition to violating his probation, defendant had not complied with other guidelines and had made no real effort to rehabilitate himself.

On appeal, defendant argues that his sentence is disproportionate. He acknowledges that he violated probation, but contends that a term of incarceration within the guidelines for the underlying substantive offense would have been appropriate. We disagree.

The sentencing guidelines do not apply to habitual offenders or probation violators. *People v Williams*, 223 Mich App 409, 412; 566 NW2d 649 (1997). A sentence imposed on an habitual offender is reviewed for an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324, 326; 562 NW2d 460 (1997). If an habitual offender's underlying criminal history and felony

history demonstrate that he is unable to conform his conduct to the law, a sentence within the statutory limits does not constitute an abuse of discretion. *Id.* at 326. Defendant had an extensive criminal record prior to committing the underlying offense, and committed another offense while on probation. Defendant failed to take advantage of the opportunities for rehabilitation offered to him while on probation. Defendant's sentence was within the statutory limits, and did not constitute an abuse of discretion under the circumstances.

Affirmed.

/s/ Gary R. McDonald

/s/ Harold Hood

/s/ Martin M. Doctoroff