

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HARRY FRANKLIN LESTER,

Defendant-Appellant.

UNPUBLISHED

March 19, 1999

No. 204512

St. Clair Circuit Court

LC No. 92-002342 FH

Before: O'Connell, P.J., and Jansen and Collins, JJ.

MEMORANDUM.

Defendant appeals by right his sentence for probation violation after a plea-based conviction of attempt breaking and entering an occupied dwelling, MCL 750.92; MSA 28.287; MCL 750.110; MSA 28.305. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with breaking and entering an occupied dwelling in 1992, when he was eighteen years old. He was granted Holmes Youthful Trainee status; however, that status was revoked in 1993 when he was convicted of a felony. On July 12, 1993 defendant pleaded guilty to attempt breaking and entering an occupied dwelling. This offense carries a maximum penalty of five years in prison. On August 23, 1993 defendant was sentenced to 36 months' probation. On July 30, 1996 that probation was extended by 24 months.

On June 12, 1997 defendant pleaded guilty to probation violation. Probation was violated as a result of defendant being convicted of two misdemeanors: attempted impersonation of a police officer and accosting children for immoral purposes. On June 20, 1997 the court sentenced defendant to 36 to 60 months in prison, with credit for 475 days.

Defendant argues that his sentence is disproportionate. He asserts that the trial court did not take into consideration that he was immature for a 23-year-old, and that the program Teen Ranch, a rehabilitation program for young persons, was available.

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 trial court emphasized that defendant had not taken responsibility for his action, and had made no effort to conform his conduct to the requirements of the law. 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., his immaturity and the availability of an alternative program, do not establish that the sentence is disproportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Affirmed.

/s/ Peter D. O’Connell

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins