

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALONZO DEON CHAMBRY,

Defendant-Appellant.

UNPUBLISHED

March 23, 1999

No. 202825

Macomb Circuit Court

LC No. 91-000720 FH

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

PER CURIAM.

Defendant appeals by leave granted a judgment of sentence entered following his plea of guilty to violating the terms of his probation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1993, defendant pleaded guilty to possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He was placed on lifetime probation. Among other things, defendant’s probation terms required him to report regularly to his probation officer and not to violate the criminal law of any unit of government. On September 7, 1995, an arrest warrant for violation of probation was sought on grounds that defendant had failed to “appear” during July and August of that year, and that a new “active warrant for Dangerous Drugs” had been issued by the 42-2 District Court in July.

Initially, the probation violation proceedings were adjourned pending disposition of defendant’s new criminal charges in the 42-2 District Court. Ultimately defendant pleaded guilty to violating the terms of his probation in exchange for dismissal of his new criminal charges, which included both drug and weapons charges. The trial court revoked defendant’s probation and sentenced him to five to twenty years’ imprisonment, stating that it could not understand defendant’s continued “activities” with “dope and weapons” despite having received a “big break” with his original lifetime probation sentence.

On appeal, defendant contends that this Court should reverse and remand for a new probation revocation decision because he was deprived of his due process rights to notice of the conduct upon

which his probation might be revoked and to have disputed sentencing information proven by a preponderance of the evidence. We disagree.

It is true that the probation violation petition did not actually allege that defendant violated the terms of his probation by committing the new offenses, but only that defendant had an active warrant. However, the record indicates defendant's awareness that it was his actual involvement in the new offenses, not the mere issuance of a warrant, that was considered to be a violation of his probation (indeed, the mere issuance of a warrant did not constitute a violation of defendant's probation). For example, the record contains a written plea agreement form signed by defendant and his counsel in which defendant's probation violation is described by stating that he "committed subsequent offense of possession w/intent to manufacture or deliver less than 50 grams of cocaine." Similarly, defendant admitted to the trial court that he also violated his probation by having a weapon at his residence, which probation violation admission was listed as a reason for the subsequent dismissal of defendant's new drug and weapons charges. Assuming, arguendo, the trial court relied on defendant's new drug and weapons offenses as a basis for revoking probation (as opposed to merely determining an appropriate sentence of imprisonment), we do not believe that defendant was deprived of adequate notice.

As for defendant's contention that the sentencing court improperly considered disputed conduct that was not proven by a preponderance of the evidence, defendant waived this issue by failing to request an evidentiary hearing below. *People v Lawrence*, 206 Mich App 378, 380; 522 NW2d 654 (1994). During the plea and sentencing hearing, neither defendant nor his attorney alleged that the new charges were inaccurate or that defendant was innocent of them. To the contrary, defendant admitted having a gun at his residence, and defendant's only claim of innocence at that time was that he had not been dealing drugs continuously since 1991. Although the presentence investigation report indicates that defendant denied any knowledge that drugs were being sold from his home, that interview took place before defendant signed the plea agreement form indicating that he violated his probation by committing a new drug offense. Because defendant did not sufficiently dispute the conduct in question at the plea and sentencing hearing, the trial court was entitled to consider it. See *People v Ewing (After Remand)*, 435 Mich 443; 458 NW2d 880 (1990); *People v Granderson*, 212 Mich App 673, 678-679; 538 NW2d 471 (1995).

Affirmed.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins