

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY WAYNE LAMBORN,

Defendant-Appellant.

UNPUBLISHED

April 30, 1999

No. 205823

Ingham Circuit Court

LC No. 94-067336 FC

Before: Kelly, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

In 1994, defendant pleaded guilty to attempted third-degree criminal sexual conduct using force or coercion, MCL 750.92; MSA 28.287 and 750.520d(1)(b); MSA 28.788(4)(1)(b), in connection with an incident in which defendant held down his estranged wife while defendant's girlfriend performed cunnilingus on her. The trial court sentenced defendant to three years' probation, with the first year to be served in jail. Sex offender and substance abuse counseling was also ordered at that time. In mid-1997, defendant pleaded guilty to violating the terms of his probation by testing positive for marijuana and cocaine, and he was placed on electronic tether for one year. A few months later, defendant pleaded guilty to new probation violation charges, again based upon cocaine use and testing positive for marijuana. The trial court then revoked defendant's probation and sentenced him to three to five years in prison, with credit for 317 days already served. Defendant now appeals by right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the trial court abused its discretion by imposing a disproportionate and non-individualized prison sentence. Defendant contends there was no cause or reason to impose a sentence beyond his original guidelines sentence range of zero to twenty-four months, noting his lack of a prior criminal record, his problems with mental illness and alcohol/drug dependency, and the fact that his probation violations involved the use of alcohol or illicit drugs rather than any "further criminal activity." We disagree.

The sentencing guidelines do not apply to probation violators and therefore cannot be used in any manner for determining whether a defendant's probation violation sentence is proportionate. *People v Williams*, 223 Mich App 409, 412-413; 566 NW2d 469 (1997). The imposition of the

maximum possible sentence upon an offender with no prior record is not automatically disproportionate. See *People v Granderson*, 212 Mich App 673, 681; 538 NW2d 471 (1995). Here, defendant's repeated probation violations attributable to illicit drug use, despite opportunities for counseling and rehabilitation, cannot be minimized as mere "non-criminal activity." That a defendant may be in need of substance abuse and mental health treatment does not necessarily render a prison sentence improper. See *People v Rettelle*, 173 Mich App 196, 201; 433 NW2d 401 (1988). Given the circumstances of the underlying offense, as well as defendant's post-conviction conduct, we are persuaded that defendant's sentence is proportionate to the offense and the offender.

Affirmed.

/s/ Michael J. Kelly

/s/ Janet T. Neff

/s/ Michael R. Smolenski