

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK ROBERT HEMING,

Defendant-Appellant.

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UNPUBLISHED

April 30, 1999

No. 207427

St. Clair Circuit Court

LC No. 95-003204

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

MEMORANDUM.

Defendant appeals, by delayed leave granted, from his guilty plea based probation violation conviction and sentence, based upon his underlying conviction of delivery/manufacture of a controlled substance (LSD), MCL 333.7401(2)(b); MSA 14.15(7401)(2)(b). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant contends his sentence of three to seven years' imprisonment is disproportionate, noting that the original sentencing guidelines range for the underlying drug offense was only six to eighteen months. However, the sentencing guidelines do not apply to probation violators and cannot be used by this Court in any manner for determining whether defendant's probation violation sentence is proportionate. *People v Williams*, 223 Mich App 409, 413; 566 NW2d 469 (1997). Cf. *People v Cervantes*, 448 Mich 620, 625-626; 532 NW2d 831 (1995).

Defendant notes that his probation was not revoked on the basis of any new offenses or violent behavior, but for failing to abide by the rules of the Huron House program. However, defendant offers no mitigating circumstances in connection with his repeated rule violations. Moreover, the circumstances of defendant's underlying drug offense, though "nonassaultive," are quite serious, involving trafficking of relatively large quantities of drugs to students at defendant's high school. Given the quantity of drugs defendant handled (hundreds of individual doses or "hits" according to defendant's statements in the PSIR), and his prior record as a juvenile,

defendant cannot be characterized as a mere first time offender. The sentence imposed is proportionate to the offense and the offender.

Affirmed.

/s/ Michael J. Kelly

/s/ Janet T. Neff

/s/ Michael R. Smolenski