

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRIE BALINDA MOTLEY,

Defendant-Appellant.

UNPUBLISHED

May 7, 1999

No. 201745

Calhoun Circuit Court

LC No. 95-000362 FH

Before: Gage, P.J., and Gribbs and Hoekstra, JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to unlawfully possessing a financial transaction device of another with intent to use, MCL 750.157p; MSA 28.354(15), and was sentenced to five years' probation and ninety days in jail, the jail time to be suspended upon successful completion of the term of probation. Defendant subsequently pleaded guilty to violating the terms of her probation. Defendant's probation was continued and she was ordered to spend six months in jail to be suspended upon defendant's successful completion of "K-PEP," a probation enhancement program. Thereafter, she pleaded guilty a second time to violating the terms of her probation. The trial court revoked her probation and sentenced defendant to eighteen to forty-eight months' imprisonment. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court sentenced defendant in violation of the terms of a sentencing agreement and then compounded the error by failing to allow defendant to withdraw her plea in light of the court's refusal to honor the sentence agreement. A review of the record reveals that the prosecutor offered a sentence agreement the terms of which included an eighteen-month cap on defendant's minimum sentence. Defendant and her counsel misunderstood the prosecutor's offer to be a cap on the length of defendant's maximum sentence. Absent a meeting of minds, there was no sentence agreement and, hence, no entitlement to be sentenced in accordance with an agreement that did not exist. Instead, defendant's argument is more accurately cast as a claim that her plea to the probation violation was not knowingly, understandingly and voluntarily entered. Defendant has waived appellate consideration of this challenge to the validity of her plea by failing to move to withdraw her

plea in the trial court on this ground. MCR 6.311(C); *People v Beasley*, 198 Mich App 40, 42-43; 497 NW2d 200 (1993).

Defendant may not challenge the validity of the amended order of probation entered after defendant's plea to her first probation violation. *People v Pickett*, 391 Mich 305, 316-317; 215 NW2d 695 (1974). Additionally, the trial court was authorized to sentence defendant to prison upon a determination that defendant violated the terms of her probation. MCL 771.4; MSA 28.1134; *Pickett*, *supra* at 316.

Defendant's remaining sentencing issues are moot because defendant has served her minimum sentence. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Affirmed.

/s/ Hilda R. Gage
/s/ Roman S. Gibbs
/s/ Joel P. Hoekstra