

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STERLING S. ALEXANDER,

Defendant-Appellant.

UNPUBLISHED

May 21, 1999

No. 201167

Oakland Circuit Court

LC No. 94-133187 FH

Before: Griffin, P.J., and Cavanagh and Fitzgerald, JJ.

MEMORANDUM.

Defendant appeals by right his prison sentence of three to forty years for probation violation following plea-based convictions of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and habitual offender, third offense, MCL 769.11; MSA 28.1083. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On March 17, 1995, defendant pleaded guilty to the underlying charges. On May 31, 1995, the court imposed a sentence of lifetime probation, with the first year in jail. Defendant was granted credit for 273 days served. He was ordered to report to his probation officer on a monthly basis, or as often as the probation officer required. In October 1995 defendant's probation was violated for failure to report as ordered. Defendant acknowledged that he had failed to report, but stated that he could not miss work to report, and that in his opinion his agent was harassing him by requiring him to report on a weekly basis. The court continued him on lifetime probation. In April 1996 defendant pleaded guilty to violating his probation by failing to report as ordered. Defendant did not appear for sentencing, and was arrested on a bench warrant. On January 31, 1997, the court sentenced defendant to three to forty years in prison, with credit for 437 days served.

Defendant argues that his sentence is disproportionate. He acknowledges that he violated the terms of his probation, but contends that the violation was not of a serious nature, and was necessitated by his need to work to support his family.

We disagree. The sentencing guidelines do not apply to habitual offenders or probation violators. *People v Williams*, 223 Mich App 409, 412; 566 NW2d 649 (1997). The standard of review for a sentence imposed on an habitual offender is abuse of discretion. If an habitual offender's underlying criminal history demonstrates that he is unable to conform his conduct to the law, a sentence within the statutory limits does not constitute an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324, 326; 562 NW2d 460 (1997). Defendant had an extensive criminal record prior to committing the underlying offenses, and repeatedly failed to comply with the terms of his probation. Defendant's sentence is within the statutory limits, MCL 769.11(1)(a); MSA 28.1083(1)(a), and does not constitute an abuse of discretion under the circumstances.

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ E. Thomas Fitzgerald