

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARIOUS LAMONT ROYAL,

Defendant-Appellant.

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UNPUBLISHED

May 21, 1999

No. 207468

Recorder's Court

LC No. 95-005569

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

PER CURIAM.

Following a bench trial in 1995, defendant was convicted of carrying a concealed weapon, MCL 750.227; MCL 28.424, and he was sentenced to three years' probation. Defendant subsequently pleaded guilty to violating the terms of his probation and he was resentenced to forty to sixty months' imprisonment. Defendant now appeals by right.<sup>1</sup> We affirm.

On appeal, defendant challenges the trial court's denial of his postsentence motion to withdraw his guilty plea on grounds that his waiver of his right to a probation violation hearing was induced by his attorney's representation that he would receive a sentence of lifetime probation. We will not reverse the trial court's decision unless there is a clear abuse of discretion resulting in a miscarriage of justice. *People v Haynes (After Remand)*, 221 Mich App 551; 562 NW2d 241 (1997).

Here, there is no support in the record for the claim that defendant was promised a lifetime probation sentence by defense counsel, only the unsworn allegations of defendant's appellate counsel. In addition, contrary to defendant's argument, the trial court was not obliged to inquire as to any promises of leniency prior to accepting defendant's plea of guilty to probation violation. Probation violation proceedings are not subject to the same rules of evidence or of pleadings applicable in criminal prosecutions. *People v Johnson*, 191 Mich App 222, 225; 477 NW2d 426 (1991). The applicable court rule is MCR 6.445(F), not MCR 6.302. Moreover, the trial court indicated that it had already heard evidence at defendant's homicide trial that was sufficient to establish the probation violation charges. Under these circumstances, we find no clear abuse of discretion or miscarriage of justice.

We also reject defendant's challenge to the proportionality of his sentence. Although the sentencing guidelines do not apply to probation violators, we note that defendant has failed to identify any mitigating factors sufficient to rebut the presumptive proportionality of his sentence within the guidelines range. See *People v Crawford*, 232 Mich App 608, 622; \_\_\_ NW2d \_\_\_ (1998); *People v Warner*, 190 Mich App 26, 29; 475 NW2d 397 (1991).

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ E. Thomas Fitzgerald

<sup>1</sup> When defendant's claim of appeal was filed, MCR 6.445(H) provided that probationers had a "right to appeal" from sentences of incarceration imposed for probation violation. The court rule was subsequently amended, effective January 1, 1999, to clarify that an appeal is available only by leave when the probation violation is established as a result of a plea of guilty, even in cases where, as here, the original criminal conviction was not itself plea-based. However, even if we were to hold that defendant has no appeal of right in this case, we would still exercise our discretion to consider the appeal as if it were by leave granted. See *Jackson Printing Co, Inc v Mitan*, 169 Mich App 334, 336 n 1; 425 NW2d 791 (1988).