

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN CHARLES SHAY,

Defendant-Appellant.

UNPUBLISHED

May 28, 1999

No. 207994

Saginaw Circuit Court

LC Nos. 94-009888 FH

94-009937 FH

94-009938 FH

94-009939 FH

94-009940 FH

94-009941 FH

94-009947 FH

94-009948 FH

94-009949 FH

94-009950 FH

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

MEMORANDUM.

In 1995, defendant pleaded guilty to ten counts of false pretenses over \$100, MCL 750.218; MSA 28.415, and was sentenced to five years' probation. Later that same year, defendant was found guilty of violating the terms of his probation, but his probation was not revoked at that time. Subsequently, in 1997, defendant was convicted of second-degree retail fraud, and he pleaded guilty to again violating the terms of his probation by committing that subsequent offense. The trial court then revoked defendant's probation and imposed concurrent sentences of 80 to 120 months' imprisonment, with credit for 291 days already served. Defendant appeals as of right.¹ We affirm.

Defendant contends that his concurrent prison sentences are disproportionately harsh. We disagree. While defendant notes that the original sentencing guidelines recommendation was for a minimum sentence within the range of 12 to 36 months, the sentencing guidelines do not apply to probation violation sentences, and this Court may not use the guidelines in any manner in determining whether defendant's sentences are proportionate. *People v Williams*, 223 Mich App 409, 413; 566 NW2d 649 (1997).

The circumstances of the underlying false pretense charges are quite serious, involving repeated misconduct over a period of several years, with numerous victims and investments of hundreds of thousands of dollars. While the circumstances of defendant's subsequent retail fraud offense are less serious, defendant's continued probation violations and criminal misconduct less than three years from the time he was originally sentenced to probation substantially aggravates the seriousness of the matter. In light of the underlying offenses, defendant's repeated postconviction misconduct and the fact that the sentencing guidelines do not apply to probation violators, we conclude that defendant's sentences are proportionate to the offenses and the offender. See *id.* at 412.

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ E. Thomas Fitzgerald

¹ Although plaintiff rejects defendant's statement of appellate jurisdiction, plaintiff states that "Defendant has a right to appeal his sentence pursuant to MCR 6.445(H)."