STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 22, 1999
v	No. 210637 Oakland Circuit Court
JEFFREY KENDALL, Defendant-Appellant.	LC No. 95-142816 FH

Before: Doctoroff, P.J., and Markman and J.B. Sullivan*, JJ.

PER CURIAM.

Defendant pleaded no contest to operating a motor vehicle while under the influence of intoxicating liquor causing injury, MCL 257.625(5)(a); MSA 9.2325(5)(a), and driving with a suspended license, second offense, MCL 257.904(1)(c); MSA 9.2604 (1)(c).[1] He also pleaded guilty to being a second habitual offender, MCL 769.10; MSA 28.1082. On May 24, 1996, the trial court sentenced defendant to five years' probation, with the first year to be served in prison and the second year to be served on a tether. On November 11, 1997, a bench warrant was issued charging defendant with violating the terms of his probation by operating a motor vehicle. On December 12, 1997, the trial court found defendant guilty of violating his probation and sentenced him to three to 7½ years' imprisonment for the original convictions on January 8, 1998. Defendant appeals as of right. We affirm.

Defendant first contends that he was denied due process at his probation revocation hearing because the trial court was not impartial. The minimum due process requirements for a probation revocation hearing require, *inter alia*, a "neutral and detached hearing body." *Gagnon v Scarpelli*, 411 US 778, 786; 93 S Ct 1756; 36 L Ed 2d 656 (1973), applying the standards set forth in *Morrissey v Brewer*, 408 US 471, 489; 92 S Ct 2593; 33 L Ed 484 (1972), to probation violation hearings. See also *People v Rial*, 399 Mich 431, 438-439 n 7 (Levin, J.); 249 NW2d 114 (1976); *People v Rocha (After Remand)*, 99 Mich App 654, 656; 299 NW2d 16 (1980).

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

After review, we hold that defendant has failed to show "that the trial judge's views controlled his decision-making process." *In re Forfeiture of $1,159,420*, 194 Mich App 134, 153; 486 NW2d 326 (1992) (addressing the alleged bias of a trial court during a bench trial). First, there is no record evidence to support defendant's allegation that the trial court told defense counsel that defendant was either "exacerbating the situation" or would be penalized for exercising his right to a hearing. Nor can such comments be inferred in any way from the record. Second, it is entirely proper for a trial court to question witnesses during trial and there is no record support for defendant's claim that the trial court's questioning evidenced a bias toward the prosecutor. *Id; People v Davis*, 216 Mich App 47, 52; 549 NW2d 1 (1996) (a trial court is free to ask questions of witnesses that assist in the search for truth as long as the questions would be appropriate if asked by either party and, further, do not give the appearance of partiality). Additionally, a trial court has more discretion to question witnesses in proceedings conducted without a jury. *In re Forfeiture of $53*, 178 Mich App 480, 497; 444 NW2d 480 (1989); *People v Meatte*, 98 Mich App 74, 78; 296 NW2d 190 (1980). Third, there is no merit to defendant's claim that the trial court evidenced a bias against him by resolving a credibility dispute in favor of the prosecutor. Credibility is a matter for the trial court and the court did not clearly err in reaching its conclusions. See *People v Fetterley*, 229 Mich App 511, 545; 583 NW2d 199 (1998).

Next, defendant challenges the sentence imposed by the trial court on several grounds. First, defendant claims that the trial court improperly based his sentence on the fact that he refused to plead guilty to the probation violation and exercised his right to a hearing. We disagree. A sentence may not be based, in whole or in part, on a defendant's refusal to admit guilt. *People v Yennior*, 399 Mich 892; 282 NW2d 920 (1977); *People v Hogan*, 105 Mich App 473, 486; 307 NW2d 72 (1981). In addition, a defendant may not be penalized for exercising his right to a trial. *People v Partridge*, 211 Mich App 239, 241; 535 NW2d 251 (1995). However, the record does not support defendant's claim. Once again, the alleged comments by the trial court, that defendant was "exacerbating the situation" by requesting a hearing or that it intended to send defendant to prison if he asserted his right to a hearing, do not appear on and cannot be inferred from the record. Moreover, defendant has failed to demonstrate any connection between his request for a hearing and the probation department's decision to change the sentencing recommendation from continued probation to prison time. To the contrary, the record establishes that defendant's sentences were premised on the fact that he ignored the court's explicit warning concerning the consequences of violating his probation.

Defendant further argues that the trial court abused its discretion by failing to inform him of his potential maximum sentence when he pleaded guilty to the underlying offenses and by failing to recognize that it had discretion in determining the maximum sentence on the habitual offender enhancement. We disagree. Contrary to defendant's claim, the trial court, in accordance with MCR 6.302(B)(2), advised defendant on the record that although there was a five-year maximum sentence on the underlying OUIL charge, it had discretion to sentence defendant a sentence of up to 7½ years due to his status as a second habitual offender. Nor is there any record evidence to support defendant's allegation that the trial court failed to recognize that it had discretion to sentence him to a term of less than 7½ years. See *People v Gomer*, 206 Mich App 55, 59; 520 NW2d 360 (1994); *People v Beneson*, 192 Mich App 469, 471; 481 NW2d 799 (1992).

Finally, defendant contends that his sentence was disproportionate. However, again after review, we hold that defendant's 3 to 7½year sentences are fully proportionate to the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Defendant, while he was on probation for one of his fourteen prior driving-related offenses, drove his vehicle while intoxicated and on a suspended license and crashed into a vehicle occupied by a couple driving to the hospital to deliver a baby. Accordingly, we conclude that the trial court did not abuse its discretion in imposing defendant's sentence.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Stephen J. Markman
/s/ Joseph B. Sullivan

[1] 1994 PA 450, § 1, eff. May 1, 1995, redesignated subsection (1)(c) as (1)(b).