

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WAYNE LEONARD JONES,

Defendant-Appellant.

UNPUBLISHED

July 27, 1999

No. 203789

Wayne Circuit Court

Criminal Division

LC No. 94-006413

Before: Sawyer, P.J., and Holbrook, Jr., and W. E. Collette,* JJ.

PER CURIAM.

Defendant pleaded nolo contendere to entering without breaking, MCL 750.111; MSA 28.305, and was sentenced to two years' probation, with the first six months of the probationary term to be served in the county jail. The trial court subsequently determined that defendant had violated a condition of his probation, revoked defendant's probation and sentenced defendant to two to five years' imprisonment. Defendant appeals as of right. We affirm.

Defendant raises several challenges to the validity of his underlying entering without breaking conviction. We decline to address those issues. Following a determination of probation violation and sentence, an appeal is necessarily limited to those matters relating to the probation violation and the hearing thereon. *People v Pickett*, 391 Mich 305, 316-317; 215 NW2d 695 (1974).

Defendant also advances numerous claims of ineffective assistance of counsel. Our review of these claims is limited to the record in the absence of an evidentiary record created in support of the claims. *People v Hedelsky*, 162 Mich App 382, 387; 412 NW2d 746 (1987). There is no record support for defendant's claims and, therefore, defendant has failed to establish that he received the ineffective assistance of counsel at his probation revocation hearing. *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997); *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997).

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

Likewise, defendant's due process arguments fail for lack of record support. Defendant's probation revocation hearing conformed to due process requirements. MCR 6.445(E); *People v Rial*, 399 Mich 431, 435-436; 249 NW2d 114 (1976); *People v Ritter*, 186 Mich App 701, 705-706; 464 NW2d 919 (1991).

We reject defendant's claim that his probation revocation hearing was tainted by judicial bias against defendant. The trial court's determination that defendant's witnesses were not credible and the court's determination that defendant had violated a condition of his probation does not establish actual bias. See, e.g., *Wayne Co Prosecutor v Parole Board*, 210 Mich App 148, 155; 532 NW2d 899 (1995).

Finally, the trial court did not err in finding that defendant violated a condition of his probation by carrying a firearm before defendant had actually been convicted of the related weapons charge. Although probation cannot be revoked solely on the basis of an arrest, it can be revoked where verified facts are placed on the record and are sufficient to allow the trial court to conclude by a preponderance of the evidence that the violation was committed. *People v Buckner*, 103 Mich App 301, 303; 302 NW2d 848 (1980). We have reviewed the record and we conclude that the prosecutor established by a preponderance of the evidence that defendant violated a condition of his probation by carrying a firearm. MCR 6.445(E)(1).

Affirmed.

/s/ David H. Sawyer

/s/ Donald E. Holbrook, Jr.

/s/ William E. Collette