

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BARRY LOFTMAN, a/k/a CHARLES PORTER,

Defendant-Appellant.

UNPUBLISHED

August 10, 1999

No. 207256

Wayne Circuit Court - Criminal
Division

LC No. 92-001935

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

MEMORANDUM.

Defendant appeals by right from his conviction and sentence as a probation violator. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred in failing to grant his motion to quash the probation violation warrant, given that the eighteen-month delay between defendant's failure to appear at the probation violation hearing in August 1995 and defendant's rearrest in March 1997 evidences a lack of due diligence on the part of the prosecution. We agree. While due diligence may have been exercised in executing the original probation violation bench warrant issued in June 1994, due diligence was not exercised in executing the capias issued for defendant's rearrest in September 1995. Court records were available to the probation authorities showing defendant's correct name (and alias), correct address, and the outstanding capias. Moreover, defendant continued reporting to a probation officer and was ultimately discharged from probation in another Recorder's Court case. Although defendant's probation officer in the other case claimed that he did not become aware of the capias in this case until he prepared the petition to discharge defendant from probation in July 1996, virtually no justification was shown for the failure to arrest defendant for several months afterward.

That defendant may have had notice of the capias and might have turned himself in sooner does not operate to place the blame on defendant for the delay in his rearrest on the capias. See *People v*

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

Ortman, 209 Mich App 251, 256; 530 NW2d 161 (1995). Although at defendant's request the probation violation hearing had been adjourned several times from February 1995 to August 1995, the fact remains that despite ample opportunity to do so, the prosecuting authorities made no effort to bring defendant before the court for approximately eighteen months after August 1995. This lack of due diligence operates as a waiver of the probation violation. *Ortman, supra* at 257. Therefore, we reverse the trial court's order denying defendant's motion to quash and reverse defendant's conviction and sentence as a probation violator in this case. We do not retain jurisdiction.

Reversed.

/s/ David H. Sawyer

/s/ Donald E. Holbrook, Jr.

/s/ William E. Collette