

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARY LYNN HOUSE,

Defendant-Appellant.

UNPUBLISHED
October 12, 1999

No. 205211
Macomb Circuit Court
LC No. 94-001782 FC

Before: Griffin, P.J., and Zahra and S.L. Pavlich*, JJ.

MEMORANDUM.

Defendant claims an appeal from his conviction of probation violation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded nolo contendere to kidnapping, MCL 750.349; MSA 28.581. The victim was his former wife. The court sentenced defendant to five years' probation.

On June 3, 1996 defendant was charged with probation violation for the reason that he had been charged with various criminal offenses in Wayne County. Defendant also faced other, unrelated charges in Oakland County. Defendant was arraigned on the probation violation warrant on July 3, 1997, after he was released from the Wayne County jail. On July 23, 1997 defendant freely and voluntarily pleaded guilty to probation violation. The court sentenced defendant to three to ten years in prison, with credit for twenty-three days. Defendant contends he was entitled to dismissal of the probation violation because it was not served on him timely.

This Court has consistently held that probation authorities must exercise due diligence in the execution of a probation violation warrant. *People v Ortman*, 209 Mich App 251, 254 (1995); 530 NW2d 161 (1995). Failure to act with due dispatch may constitute a waiver of the probation violation. In determining whether there was undue delay in the execution of a probation violation warrant, the court should consider: (1) the length of the delay; (2) the reason for the delay; and (3) the prejudice, if

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

any, to the defendant. In this case, the delay between the signing of the warrant and defendant's plea to the violation of probation was 14 months.

We need not decide whether there was undue delay in the execution of the warrant. Defendant pled guilty to violating probation. In so doing he was informed of his right to a hearing to contest any aspect of the alleged violation of probation. Defendant's failure to raise the delay in executing the warrant before pleading guilty to violating probation constituted a waiver of defendant's right to challenge the timeliness of the probation violation proceedings. See *People v Eaton*, 184 Mich App 649; 459 NW2d 86 (1990), aff'd 439 Mich 919 (1992).

Defendant is not entitled to credit for time served while the probation violation was pending. Defendant was incarcerated for unrelated offenses. *People v Prieskorn*, 424 Mich 327, 344; 381 NW2d 646 (1985).

Affirmed.

/s/ Richard Allen Griffin

/s/ Brian K. Zahra

/s/ Scott L. Pavlich