

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID E. CUMMINGS,

Defendant-Appellant.

UNPUBLISHED
November 5, 1999

Nos. 206612; 208969
Genesee Circuit Court
LC No. 92-047385 FH

Before: Whitbeck, P.J., and Gribbs and White, JJ.

MEMORANDUM.

Defendant David E. Cummings claims an appeal from his sentence of three years in prison imposed upon his violation of his status as a youthful trainee under the Youthful Trainee Act (YTA), MCL 762.11 *et seq.*; MSA 28.853(11) *et seq.* We affirm.

I. Basic Facts And Procedural History

In 1992, the prosecutor charged Cummings with breaking and entering a building with intent to commit larceny, MCL 750.110; MSA 28.305, conspiracy to break and enter a building with intent to commit larceny, MCL 750.157a; MSA 28.354(1), and malicious destruction of a building over \$100, MCL 750.380; MSA 28.612. After several delays, the trial court granted Cummings YTA status and sentenced him to three years' probation. Cummings failed to report to his probation officer as required, and a warrant for his arrest was issued. Subsequently, Cummings pleaded guilty to violating probation after being on absconder status for three years. The court continued Cummings' YTA status, extended his probation for an additional three years, and ordered him to complete the Special Alternative to Incarceration ("SAI") boot camp program. Cummings quit the SAI program after approximately one day. The trial court found Cummings guilty of probation violation, continued his YTA status, and sentenced him to three years in prison, with credit for 125 days.

II. Disproportionate Sentencing

Cummings argues that his sentence of three years in prison is disproportionate to his circumstances and to those of the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1

(1990). We disagree. The “key test” of the proportionality of a sentence is “whether it reflects the seriousness of the matter.” *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). Cummings’ three-year prison term is the maximum a court can impose under the YTA, MCL 762.13; MSA 28.853(13), and while undeniably serious, it does not constitute an abuse of discretion under the circumstances. The trial court delayed sentencing on two occasions. After requesting and receiving YTA status, Cummings absconded from probation for three years. He voluntarily quit the SAI boot camp program after one day, and refused to participate in the program despite several chances to do so. In sum, Cummings repeatedly failed to take advantage of opportunities to reform his behavior outside the prison system. To conclude that the prison term imposed on Cummings in this case is disproportionate would be to reward the very behavior that brought Cummings before the trial court on multiple occasions in this case.

Affirmed.

/s/ William C. Whitbeck

/s/ Roman S. Gibbs

/s/ Helene N. White