

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARCEY LEE HAYES,

Defendant-Appellant.

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UNPUBLISHED

March 24, 2000

No. 214171

St. Clair Circuit Court

LC No. 93-003122 FH

Before: Wilder, P.J., and Sawyer and Markey, JJ.

MEMORANDUM.

Defendant appeals from his sentence of seven to twenty years in prison for probation violation following his plea-based conviction of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty to one count of delivery of less than fifty grams of cocaine in exchange for dismissal of a second count charging the same offense, and was sentenced to lifetime probation. Subsequently, defendant pleaded guilty to violating his probation by failing to report and testing positive for cocaine on four occasions. He was sentenced to the SAI boot camp program, and was ordered to complete a residential substance abuse program. Defendant completed the boot camp, but then left the substance abuse program without permission. He traveled to Florida, where he was arrested for making a lewd proposition to an undercover officer. Defendant pleaded guilty to violating his probation by failing to complete the substance abuse program and by leaving the state without permission. The court sentenced him to seven to twenty years in prison, with credit for 268 days.

Defendant argues that his sentence is disproportionate to his circumstances and those of the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree and affirm. The sentencing guidelines do not apply to probation violators, and are not to be considered when fashioning a sentence for probation violation. *People v Williams*, 223 Mich App 409, 412-413; 566 NW2d 649 (1997). 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). Defendant had a prior criminal record and a history of abusing alcohol and narcotics. He failed or

refused to comply with the terms of his lifetime probation. His actions indicated an unwillingness to conform his conduct to the requirements of the law, notwithstanding the fact that he was given multiple opportunities to do so. Defendant's minimum term of imprisonment does not constitute an abuse of discretion under the circumstances.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ David H. Sawyer  
/s/ Jane E. Markey