

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AFRAI HARRIS,

Defendant-Appellant.

UNPUBLISHED

April 21, 2000

No. 221677

Wayne Circuit Court

LC No. 96-008261

Before: Gribbs, P.J., and Doctoroff and T.L. Ludington*, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted a five to twenty-year sentence imposed after he pleaded guilty to violating lifetime probation for possession with intent to deliver less than 50 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 asserts on appeal that his sentence was disproportionate where he had a minimal prior record, the charge involved less than a gram of cocaine, and he committed no new offenses while on probation. He violated his probation by failing to report, and failing to inform his agent about his change of address.

This Court reviews a sentence for abuse of discretion. A sentence constitutes an abuse of discretion if it is disproportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). Sentencing guidelines do not apply to probation violations. *People v Williams*, 223 Mich App 409, 411; 566 NW2d 649 (1997). The trial court is at liberty to consider defendant's actions and the seriousness and severity of the facts and circumstances surrounding the probation violation in arriving at the proper sentence to be given. *Id.*; *People v Peters*, 191 Mich App 159; 477 NW2d 479 (1991).

There is no showing that the trial court abused its discretion in sentencing defendant. Although his arrest involved a small quantity of cocaine, he had a prior drug conviction. Defendant failed to

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

comply with the terms of probation even after he was admonished and given a second chance. Under these circumstances, defendant has failed to show that his sentence

violates the principle of proportionality.

Affirmed.

/s/ Roman S. Gibbs

/s/ Martin M. Doctoroff

/s/ Thomas L. Ludington