

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HOWARD LEE BAKER, JR.,

Defendant-Appellant.

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UNPUBLISHED

August 8, 2000

No. 219212

Berrien Circuit Court

LC No. 89-004054-FH

Before: Murphy, P.J., and Kelly and Talbot, JJ.

MEMORANDUM.

Defendant appeals as of right from his sentence of three to five years in prison for probation violation following his plea-based conviction of attempted breaking and entering an occupied dwelling with intent to commit larceny, MCL 750.110; MSA 28.305; MCL 750.92; MSA 28.287. We affirm.

On December 22, 1989, defendant pleaded guilty to attempted breaking and entering an occupied dwelling with intent to commit larceny, in exchange for dismissal of a count of breaking and entering an occupied dwelling with intent to commit larceny. When defendant failed to appear for sentencing, a bench warrant was issued for his arrest. He was arraigned on the warrant on August 20, 1990, and subsequently pleaded guilty and was sentenced to thirty days in jail. On September 10, 1990, defendant was sentenced on the underlying conviction to three years' probation, with the first sixty days in jail, and was ordered to pay \$600 in fines and costs.

On January 20, 1993, defendant was charged with probation violation, and a bench warrant was issued for his arrest. Defendant was arrested in early 1999, and on March 16, 1999, pleaded guilty to violating his probation by leaving the state without permission, failing to report as required, failing to live in an approved residence, and possessing marijuana and drug paraphernalia. The court sentenced defendant to three to five years in prison, with credit for sixty-eight 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). Notwithstanding the fact that defendant failed to appear on his original sentencing date, the court sentenced him to probation. Defendant then absconded and ignored the conditions of his probation for more than six years. He was arrested after he committed further offenses. Defendant's actions indicated an unwillingness to conform his conduct to the requirements of the law, in spite of the fact that he was given multiple opportunities to do so. His minimum term of imprisonment does not constitute an abuse of discretion under the circumstances.

Affirmed.

/s/ William B. Murphy

/s/ Michael J. Kelly

/s/ Michael J. Talbot