

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARCHIE LAMONT PORTER,

Defendant-Appellant.

UNPUBLISHED

January 26, 2001

No. 224712

Genesee Circuit Court

LC No. 96-053439-FC

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his sentence of six and one-half to fifteen years in prison for probation violation following his plea-based conviction of unarmed robbery, MCL 750.530; MSA 28.798. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On April 23, 1996, defendant pleaded nolo contendere to unarmed robbery in exchange for dismissal of the original charge of armed robbery, MCL 750.529; MSA 28.797. Defendant pleaded nolo contendere because his level of intoxication at the time of the incident left him without sufficient recollection to provide a factual basis to support another plea. The sentencing guidelines recommended a minimum term range of zero to twenty-four months. The trial court sentenced defendant to five years' probation, with the first year in jail. The trial court authorized defendant's participation in the Special Alternative Incarceration Program, i.e., boot camp. Defendant successfully completed boot camp, made restitution as ordered, and remained employed for a time. However, on April 20, 1999, defendant was sentenced to four to ten years in prison for his plea-based conviction of larceny from a person, MCL 750.356; MSA 28.588.

Defendant pleaded guilty to violating his probation based on his conviction of another felony offense. On July 20, 1999, the court sentenced defendant to six and one-half to fifteen years in prison, with credit for 277 days. In imposing sentence, the court noted that defendant was under a sentence of four to ten years for the conviction of larceny, and reasoned that to impose a minimum term of four years or less for the conviction of unarmed robbery would be

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

inconsequential. In addition, the court noted that defendant pleaded nolo contendere to a reduced charge and did not take advantage of an opportunity to reform while on probation.

Defendant argues that his minimum term of six and one-half years 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 defendant's sentence. 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). Defendant's assertion that the legislative sentencing guidelines should be considered to determine the proportionality of his sentence is without merit. The legislative sentencing guidelines apply only to offenses committed on or after January 1, 1999. MCL 769.34(1); MSA 28.1097(3.4)(1). Application of guidelines by analogy is improper. *People v Laube*, 155 Mich App 415, 417; 399 NW2d 545 (1986). The trial court's assertion that imposition of a minimum term of four years or less for unarmed robbery would be inconsequential was technically inaccurate in that the court imposed a sentence with a maximum term of fifteen years, five years longer than the maximum term defendant received for the conviction of larceny from a person. That fact notwithstanding, we cannot conclude that defendant's minimum sentence of six and one-half years is disproportionate. 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 violated the terms of his probation by using alcoholic beverages, failing to maintain employment, and committing another felony. Defendant's actions indicated an unwillingness to conform his conduct to the requirements of the law. He should expect to serve a sentence longer than that imposed for the other felony in light of his failure to reform while on probation. His minimum term of imprisonment does not constitute an abuse of discretion under the circumstances.

We affirm.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey C. Martlew