

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BILL WARE,

Defendant-Appellant.

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UNPUBLISHED

May 25, 2001

No. 223462

Calhoun Circuit Court

LC No. 98-004315-FH

Before: Jansen, P.J., and Zahra and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right from his conviction of probation violation and the revocation of his probation. We affirm.

Defendant pleaded guilty of use of a controlled substance, MCL 333.7404(2)(a); MSA 14.15(7404)(2)(a), and was sentenced to probation for one year. Several months later defendant was charged with violating probation by failing to report and by using cocaine. Defendant's probation agent did not testify at the hearing. Another agent, who based his testimony on the contents of defendant's file and on his personal conversation with defendant's agent regarding the charges, testified that defendant failed to report as required on two separate occasions, and tested positive for the use of cocaine. The trial court found defendant guilty, revoked his probation, and sentenced him to one year in jail, with credit for twenty-four days.

A probation violation hearing is summary and informal, and is not subject to the rules of evidence. The full scope of constitutional rights applicable in a criminal trial do not attach. Nevertheless, a probationer is afforded certain due process rights. A probationer has the right to a procedure consisting of: (1) a factual determination that he is guilty of violating the terms of his probation; and (2) a discretionary determination of whether the violation warrants revocation of probation. The record must contain verified facts from which the court can find by a preponderance of the evidence that a violation occurred. *People v Pillar*, 233 Mich App 267, 269-270; 590 NW2d 622 (1998).

Defendant argues that he was denied due process because the prosecution's only witness lacked personal knowledge of the charges against him. We disagree and affirm the trial court's finding that a violation occurred. Defendant's file contained verification that he received notice of his scheduled report dates, and that he failed to report on those dates. The file also contained

the results of the field test for narcotics. Those results were recorded immediately after the test was conducted. The witness's testimony regarding his review of defendant's agent's notes and his conversation with that agent was admissible evidence under the circumstances. MRE 1101(b)(3). Defendant does not challenge the accuracy of the information contained in the file, and does not indicate what different information his agent could have provided had he testified. The record contained verified facts from which the trial court could find by a preponderance of the evidence that defendant violated his probation as charged. Defendant was not denied due process. *Pillar, supra*.

Affirmed.

/s/ Kathleen Jansen

/s/ Brian K. Zahra

/s/ Donald S. Owens