

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLARD EVERETT PENNINGTON,

Defendant-Appellant.

UNPUBLISHED

January 4, 2002

No. 224732

Macomb Circuit Court

LC No. 95-002936-FH;

95-002937-FH;

95-002938-FH;

96-000312-FH

Before: K.F. Kelly, P.J., and Hood and Doctoroff, JJ.

PER CURIAM.

Defendant plead guilty to violating probation. Following a sentencing hearing, defendant was sentenced to six to ten years' imprisonment for three counts of conspiracy to pass false title to a motor vehicle, MCL 257.254, and six to twenty years' imprisonment for one count of home invasion in the first degree, MCL 750.110a. The court denied defendant's motion for relief from judgment. Defendant appeals by leave granted. We affirm.

A defendant is not entitled to relief from judgment where he alleges grounds for relief that could have been raised on direct appeal or in a prior motion, unless the defendant demonstrates good cause for failure to raise such grounds in the past, and actual prejudice from the alleged irregularities. MCR 6.508(D)(3). A defendant may establish actual prejudice if the defendant successfully demonstrates that the sentence is invalid. MCR 6.508(D)(3)(b)(iv). Further, to obtain relief from judgment in accord with MCR 6.508(D), the defendant bears the exacting burden of establishing entitlement to such relief.

First, defendant argues that the trial court's failure to apprise him of his appellate rights entitles defendant to resentencing. We agree that the trial court erred in failing to advise the defendant of his appellate rights. However, defendant cites no authority to support his assertion that such an error entitles him to resentencing. A mere statement of position without supporting authority is insufficient to bring an issue before an appellate court. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Indeed, a party may not leave it to this Court to search for authority to sustain or reject its position. *Staff v Johnson*, 242 Mich App 521, 529; 619 NW2d 57 (2000). Notwithstanding, defendant's claim fails because there was no prejudice to defendant because this Court granted leave to appeal.

Next, defendant argues that the trial court did not review the updated presentence report and contends further that neither he nor his attorney were given an opportunity to review the

report or object to inaccuracies contained therein. However, a review of the record belies defendant's position. While the sentencing court did not specifically state that it reviewed the updated presentence report, the court's comments nevertheless indicate that it did indeed review the report. Similarly, although the court did not expressly comply with MCR 6.425(D)(2)¹, it is reasonable to infer from the record that the parties had an opportunity to review the report and object to any inaccuracies.

Finally, defendant argues that because he was sentenced pursuant to a court policy, his sentence was not individualized, thus rendering it disproportionate. Indeed, a sentence is invalid if it conforms to local sentencing policy rather than individualized facts. *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997); *People v Whalen*, 412 Mich 166, 169-170; 312 NW2d 638 (1981). However, we do not find that defendant was sentenced according to a court policy. Rather, the court's comments were merely a warning, cautioning defendant to take advantage of the sentencing grace bestowed upon him.

Additionally, we find defendant's sentences to be proportionate. As an initial matter, we note that "[a] trial court enjoys broad discretion in imposing sentence so that it can tailor each sentence to the circumstances of the case, the particular characteristics of the defendant, and the interests of society in rehabilitating the defendant and deterring others from committing similar offenses." *People v Poppa*, 193 Mich App 184, 187; 483 NW2d 667 (1992). A sentence imposed for a probation violation essentially is a revocation of the probation order and a resentencing on the original offense as if the probation order was never made. MCL 771.4; *People v Burks*, 220 Mich App 253, 256; 559 NW2d 357 (1996). To arrive at an appropriate sentence, the court may consider the defendant's actions and the seriousness and severity of the facts and circumstances surrounding the probation violation. *People v Smith*, 195 Mich App 147, 150; 489 NW2d 135 (1992). Additionally, a sentencing court may consider a pending charge when sentencing the defendant. *People v Durfee*, 215 Mich App 677, 683; 547 NW2d 344 (1996).

According to the updated presentence report, at the time of defendant's probation violation he had been released from jail for less than two months. At the time of sentencing, defendant was recently charged with three other crimes: possession of marijuana, frequenting a place where narcotics are used, and possession of narcotics paraphernalia. At the time of sentencing, defendant was nineteen. Given these factors, this Court concludes that the trial court did not abuse its sentencing discretion.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Harold Hood
/s/ Martin M. Doctoroff

¹ Made applicable to probation revocation hearings through MCR 6.445(G).