

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAMUEL MILES,

Defendant-Appellant.

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UNPUBLISHED

March 1, 2002

No. 227326

Wayne Circuit Court

Criminal Division

LC No. 98-010428

Before: Whitbeck, C.J., and Markey and K.F. Kelly, JJ.

PER CURIAM.

Defendant was found guilty of violating his probation, following which the trial court revoked defendant's probation and sentenced him to a term of 1-1/2 to 4 years' imprisonment on his underlying conviction of felonious assault, MCL 750.82. Defendant appeals by right. We affirm.

Defendant first argues that the trial court failed to make sufficient findings at the conclusion of his probation violation hearing. Although the prosecution supports defendant's request to remand for additional findings, we conclude that a remand is unnecessary.

The prosecution bears the burden of establishing a probation violation by a preponderance of the evidence. MCR 6.445(E)(1). Evidence is sufficient to sustain a conviction for a probation violation if, "viewed in the light most favorable to the prosecution, it would enable a rational trier of fact to conclude that the essential elements of the charge were proven by a preponderance of the evidence." *People v Ison*, 132 Mich App 61, 66; 346 NW2d 894 (1984). There must be verified facts in the record from which the trial court can find by a preponderance of the evidence that a violation occurred. *People v Pillar*, 233 Mich App 267, 270; 590 NW2d 622 (1998). Only evidence related to the charged violation may be considered at the hearing and only that evidence may be the basis for the court's decision to revoke probation. *Id.*

The prosecution presented one witness at the probation violation hearing. That witness testified that defendant was discharged from a drug treatment program after he tested positive for both cocaine and heroin. Defense counsel then argued to the court that the witness' testimony did not establish that defendant was properly removed from the program because the witness could not testify with certainty about the accuracy of the drug tests that are administered. The court

rejected this argument, noting that defendant had tested positive for two illegal substances, and finding that it was unlikely both test results would be inaccurate. The court then allowed defendant to explain on the record why he left the treatment program. According to defendant, he left the program because the staff asked him to illegally apply for food stamps.

At the conclusion of the hearing, the trial court simply remarked that defendant had violated the terms of his probation. While, perhaps, the trial court could have detailed its findings, it is apparent from the record that the court's determination that defendant violated the terms of his probation was based on the charge in the petition, i.e., for failing to complete the drug treatment program. Defendant's explanation regarding why he left the program voluntarily was offered as a defense to the probation violation charge. It did not permit the court to find that defendant violated his probation on other grounds. Accordingly, it is apparent that the trial court determined that defendant violated his probation because he did not complete the drug treatment program as charged in the petition. Under these circumstances, a remand for additional findings is unnecessary.

The trial court's finding that defendant violated his probation is also amply supported by the record. Defendant was charged with violating his probation by being discharged from the drug treatment program for violating the program's rules. A preponderance of the evidence showed that defendant was removed from the treatment program before completing it because he tested positive for both cocaine and heroin. The terms of defendant's probation required that he seek inpatient treatment at that program. The fact that the treatment program made the decision to discharge defendant for violating its rules was sufficient evidence of a probation violation. Moreover, the record does not support defendant's claim that the trial court may have actually determined that he violated his probation by leaving the treatment program because he was required to illegally apply for food stamps.

We are persuaded that the hearing conducted by the trial court satisfied due process requirements. *Gagnon v Scarpelli*, 411 US 778, 786; 93 S Ct 1756; 36 L Ed 2d 656 (1973); *People v Ritter*, 186 Mich App 701, 706; 464 NW2d 919 (1991); *People v Laurent*, 171 Mich App 503, 505; 431 NW2d 202 (1988).

Defendant also argues that the trial court improperly revoked his probation for reasons other than those charged in the petition. We disagree.

Defendant is correct that a trial court may not revoke a person's probation for reasons other than those that were the basis for finding a probation violation. *Pillar, supra* at 270; see, also, *Laurent, supra* at 506. In the case at bar, it is apparent from the record that the court revoked defendant's probation solely because of his failure to successfully complete drug treatment. The record does not indicate that the court considered any other uncharged conduct in deciding whether to revoke defendant's probation. Cf. *Pillar, supra* at 270 (the court's repeated references to conduct not charged as a violation of probation as a reason for revoking probation was erroneous). Furthermore, the court properly considered defendant's past record and attempts at drug treatment before sentencing him to prison. On the facts of this case, the trial court did not

abuse its discretion in revoking defendant's probation and sentencing him to prison. *Ritter, supra* at 706.

We affirm.

/s/ William C. Whitbeck

/s/ Jane E. Markey

/s/ Kirsten Frank Kelly