

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STANLEY BRIDGES,

Defendant-Appellant.

UNPUBLISHED

May 21, 2002

No. 231254

Wayne Circuit Court

LC No. 90-008169

Before: Markey, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Defendant was found to have violated his probation and the trial court imposed a sentence of six to twenty years' imprisonment for defendant's original conviction of delivering a controlled substance less than 50 grams, MCL 333.7401(2)(a)(iv). Defendant appeals as of right,¹ challenging his sentence. We affirm.

I. Basic Facts and Procedure

In 1990, defendant was charged with one count of delivering a controlled substance less than 50 grams and one count of possession with intent to deliver a controlled substance less than 50 grams, MCL 333.7401(2)(a)(iv). Defendant pleaded guilty to the delivery charge and the remaining charge was dismissed pursuant to the plea agreement. Defendant was sentenced to lifetime probation.

Bench warrants were issued for defendant's arrest on September 20, 1994, August 21, 1995, and September 23, 1996, after defendant failed to report to the probation department for periods of several months. Despite those violations, defendant's probation was continued. A final warrant was issued February 12, 1999, again based on defendant's failure to report to the probation department. Following a hearing, defendant was found to have violated his probation as stated in the warrant. Thereafter, the trial court revoked defendant's probation and sentenced him to six to twenty years' imprisonment. This appeal ensued

¹ Although defendant was convicted pursuant to a guilty plea, that conviction occurred in 1990, prior to the amendment to the Michigan Constitution eliminating the right to appeal to this Court by claim from a plea-based conviction. Const 1963, art 1, § 20; see 1994 PA 374, amending MCL 770.3 and 1994 PA 375, amending MCL 600.308(2)(d).

II. Analysis

On appeal, plaintiff argues that he is entitled to resentencing because the trial court failed to sentence him under the statutory sentencing guidelines, MCL 769.34 *et seq.* Plaintiff claims that because the conduct that directly led to the revocation of his probation occurred after January 1, 1999, the trial court should have applied the statutory guidelines. We disagree.

The statutory sentencing guidelines apply to felonies committed on or after January 1, 1999. MCL 769.34(1) and (2). Here, the offense for which defendant was sentenced to imprisonment occurred in 1990. Defendant's probation violation was not a separate felony. As explained by our Supreme Court in *People v Kaczmarek*, 464 Mich 478; 628 NW2d 484 (2001):

"[P]robation violation" does not constitute a separate felony in the Penal Code or elsewhere.

As our Court of Appeals has explained, violation of probation is not a crime, and a ruling that probation has been violated is not a new conviction. See *People v Johnson*, 191 Mich App 222, 226-227, 477 NW2d 426 (1991); *People v Burks*, 220 Mich App 253, 256, 559 NW2d 357 (1996). "If a judge finds that a probationer violated his probation by committing an offense, the probationer is neither burdened with a new conviction nor exposed to punishment other than that to which he was already exposed" *Johnson, supra* at 226.

Instead, revocation of probation simply clears the way for a resentencing on the original offense. MCL 771.4. [*Kaczmarek, supra* at 482-483 (footnotes omitted).]

Because defendant committed the felony of delivering a controlled substance less than 50 grams in 1990, we reject defendant's argument that the trial court erred in failing to sentence him under the statutory sentencing guidelines.

We next consider defendant's claim that his sentence is disproportionate. Given that the offense at issue was committed in 1990, the judicial sentencing guidelines would apply. See *People v Hegwood*, 465 Mich 432, 438; 636 NW2d 127 (2001), and *People v Reynolds*, 240 Mich App 250, 254; 611 NW2d 316 (2000). However, such guidelines do not apply to probation violations. *People v Cotton*, 209 Mich App 82, 83-84; 530 NW2d 495 (1995); *People v Britt*, 202 Mich App 714, 71; 509 NW2d 914 (1993). In the case of a probation violation, the guidelines range for the underlying offense is used merely as a starting point for determining whether a sentence is appropriate. *Cotton, supra* at 84. In general, for offenses committed prior to the effective date of the statutory sentencing guidelines, the principle of proportionality controls; a trial court acts within its discretion in imposing a sentence that is proportionate to the offense and offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990); *People v Davis (On Rehearing)*, ___ Mich App ___, ___ NW2d ___ (Docket No. 220087, issued 3/8/02), slip op p 7.

Here, we conclude that that sentence imposed by the trial court was proportionate. The guidelines range for the delivery conviction was calculated at one to three years. The record establishes that during four lengthy periods between 1994 and 1999, defendant violated his

probation by failing to report to his probation officer.² The presentence investigation report states that defendant's prior criminal history includes a 1990 conviction for illegal use of a credit card and a 1996 conviction for disorderly conduct. Moreover, at the time the report was filed, a carrying a concealed weapon charge was pending against defendant in circuit court and a 1995 possession of narcotic paraphernalia case against defendant remained open in district court. According to the report, defendant admitted using cocaine and marijuana within one year prior to his sentence of imprisonment. Defendant now claims that his six-to twenty-year sentence is excessive given that it is based on conduct ten years prior. However, defendant has demonstrated that he could not adhere to the terms of his probation and has engaged in further criminal behavior while on probation. Under these circumstances, where the original guidelines range was one to three years and defendant was given several prior chances to continue his probation despite violations, we cannot say that the trial court abused its discretion in sentencing defendant to six to twenty years' imprisonment.

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Talbot
/s/ Brian K. Zahra

² The warrants in the lower court record state that defendant failed to report to the probation department between January 19, 1994 and September 20, 1994, May 1, 1995 and August 21, 1995, June 19, 1996 and September 23, 1996, and November 12, 1998 and February 12, 1999.