

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIFFANY S. WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

June 4, 2002

No. 233590

Calhoun Circuit Court

LC No. 93-001444-FH

Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

PER CURIAM.

Defendant appeals as of right her plea-based conviction of probation violation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In July 1993 defendant pleaded guilty of embezzlement by an agent, MCL 750.174, and was sentenced under the Holmes Youthful Training Act to serve a term of two years' probation. On April 18, 1994 defendant was charged with violating her probation by failing to report, and a bench warrant was issued for her arrest. She was arrested on the warrant in January 2001. At the arraignment the trial court advised defendant that she had the right to have a hearing on the charge of probation violation, that she had the right to have an attorney assist her at the hearing, and that if she could not afford an attorney, one would be appointed to represent her. Defendant indicated that she wished to plead guilty, and that she understood that if the court accepted her plea, she would not have a hearing. The trial court accepted the plea. At sentencing the court terminated defendant's youthful trainee status and sentenced her to serve eighteen months' probation.

Defendant, through counsel, moved to vacate her probation violation conviction and sentence, arguing that the trial court lacked jurisdiction because the authorities failed to exercise due diligence in executing the bench warrant, and that the trial court failed to adequately advise her of her right to counsel and to obtain a valid waiver of that right. The trial court denied the motion on the ground that it lacked jurisdiction, noting that defendant failed to report to her probation agent as required, and that she took no steps to rectify that situation. However, the trial court granted the motion to vacate defendant's sentence and set the matter for resentencing, acknowledging that it failed to inform defendant that she had the right to be represented by counsel at that proceeding.

The authorities must exercise due diligence in executing an arrest warrant for probation violation. In determining whether the authorities exercised due diligence, it is appropriate to consider the length of the delay, the reason for the delay, and the prejudice to the defendant, if any. If the authorities do not act with reasonable dispatch under all the circumstances, the probation violation is waived. *People v Ortman*, 209 Mich App 251, 254-255; 530 NW2d 161 (1995).

Defendant argues that the trial court erred by denying her motion to vacate her conviction of probation violation on the ground that the violation was waived due to a lack of diligence in executing the bench warrant. We disagree. Defendant was charged with violating her probation by failing to report as required. It was undisputed that the delay between the issuance of the warrant and its execution was nearly seven years. Defendant changed her address one year after the warrant was issued, and did not inform her agent of that fact. During the period of delay, defendant worked and attended school. No evidence showed that the authorities deliberately delayed in executing the warrant, or that defendant was prejudiced in any way by the delay. We conclude that the trial court did not err in finding that because authorities acted with reasonable dispatch under all the circumstances, the probation violation was not waived. *Id.*

A defendant has the right to be represented by counsel at probation revocation proceedings. This right is satisfied if the trial court advises the defendant of that right, advises the defendant that counsel will be appointed if the defendant is indigent, and determines that there has been a knowing and intelligent waiver of that right. MCR 6.445(B); *People v Belanger*, 227 Mich App 637, 647; 576 NW2d 703 (1998).

Defendant argues that the trial court erred by denying her motion to vacate her probation violation conviction on the ground that the trial court neither properly advised her of her right to counsel nor obtained a proper waiver of that right. We disagree. At the arraignment the trial court informed defendant that she had the right to a hearing on the charge of probation violation, that she had the right to be represented by counsel at that hearing, and that if she could not afford an attorney one would be appointed to represent her. The advice given to defendant by the trial court satisfied the requirements of MCR 6.445(B) and *Belanger, supra*.

The trial court acknowledged that at the time of the original sentencing it did not inform defendant that she had the right to be represented by counsel at that proceeding, as required. MCR 6.445(D). The trial court appropriately tailored the remedy to the injury by vacating the sentence and setting the matter for resentencing. See *People v Whitfield*, 214 Mich App 348, 354; 543 NW2d 347 (1995).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff