

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
October 25, 2012

v

DENNIS LLOYD FRASER, JR.,
Defendant-Appellant.

No. 305276
Livingston Circuit Court
LC No. 10-018773-FH

Before: SHAPIRO, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant pleaded guilty to distributing or promoting child sexually abusive material, MCL 750.145c(3); possession of child sexually abusive material, MCL 750.145c(4); and two counts of using a computer to commit a crime, MCL 752.796. Defendant was sentenced to five years' probation with one year of imprisonment in the Livingston County Jail. After sentencing, but before the order of probation was signed, defendant assaulted another inmate at the jail. A probation violation was initiated. The trial court revoked defendant's probation and sentenced defendant to concurrent sentences of 23 months to 7 years' imprisonment for distributing or promoting child sexually abusive material and for both convictions of using a computer to commit crimes. Defendant was also sentenced concurrently to 23 months to 4 years' imprisonment for possession of child sexually abusive material. Defendant's motion for correction of sentence was denied by the trial court. Defendant filed a delayed application for leave to appeal to this Court, which was granted. We affirm.

Defendant argues the revocation of probation must be reversed because the alleged violation occurred before defendant was aware of the conditions of probation. This Court reviews the decision to revoke probation for an abuse of discretion. *People v Breeding*, 284 Mich App 471, 479; 772 NW2d 810 (2009). A trial court abuses its discretion when it "chooses an outcome falling outside this principled range of outcomes." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

MCL 771.4 provides in relevant part:

If during the probation period the sentencing court determines that the probationer is likely again to engage in an offensive or criminal course of conduct or that the public good requires revocation of probation, the court may revoke probation. All probation orders are revocable in any manner the court that imposed probation

considers applicable either for a violation or attempted violation of a probation condition or for any other type of antisocial conduct or action on the probationer's part for which the court determines that revocation is proper in the public interest.

Certain conditions of probation are required by statute. One mandatory condition is that “[d]uring the term of his or her probation, the probationer shall not violate any criminal law of this state, the United States, or another state or any ordinance of any municipality in this state or another state.” MCL 771.3(1)(a). While a defendant had a right to know the conditions with which he was required to comply, “[h]e is presumed to know the conditions prescribed by law.” *People v George*, 318 Mich 329, 332; 28 NW2d 86 (1947) (quotation omitted).

Revocation proceedings were initiated because defendant had allegedly violated conditions one and 20 of his probation. Condition one was that defendant would not violate any criminal law. This is a mandatory condition. MCL 771.3(1)(a). The judgment of sentence entered on June 2, 2010, and provides that defendant was on probation. The alleged violation occurred on June 4, 2010. The order of probation and conditions of probation did not enter until June 8, 2010, but because condition one of defendant’s probation is a mandatory condition, defendant was presumed to know it. *George*, 318 Mich at 332. Thus, the trial court did not abuse its discretion when it revoked defendant’s probation for a violation of a mandatory condition that occurred after sentencing but before the order of probation entered.

Defendant also argues the trial court erred in scoring Offense Variable (OV) 13 at 25 points. “If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant’s sentence.” MCL 769.34(10). Interpretation and application of the statutory sentencing guidelines is reviewed de novo. *People v Francisco*, 474 Mich 82, 85; 711 NW2d 44 (2006) (citation omitted). A scoring decision should be upheld if any evidence exists supporting the challenged score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002) (citations omitted). “A presentence report is presumed to be accurate and may be relied on by the trial court unless effectively challenged by the defendant.” *People v Callon*, 256 Mich App 312, 334; 662 NW2d 501 (2003) (citation omitted).

OV 13 is scored 25 points if “[t]he offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person” within a five-year period, including the sentencing offense. MCL 777.43. MCL 777.43(2) limits the scoring of OV 13 for controlled substance offenses, but there is no similar limitation for child pornography offenses.

Two of defendant’s convictions, distribution or promotion of child sexually abusive material and possession of child sexually abusive material, are crimes against persons, MCL 777.16g, and are properly scored under OV 13. Additionally, defendant’s description of the offense as stated in the PSIR indicates defendant had downloaded thousands of pictures and about 100 videos of child pornography. The information in a PSIR is presumed to be accurate and the trial court may rely on it in making scoring decisions. *Callon*, 256 Mich App at 334. Thus, scoring OV 13 at 25 points was not error as the record supports the finding that defendant committed three or more crimes against a person within a five-year period. *Hornsby*, 251 Mich App at 468. Because there is no error in the scoring of OV 13, the recommended minimum

sentence range under the legislative guidelines does not change, and defendant is not entitled to resentencing. *Francisco*, 474 Mich at 92.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Elizabeth L. Gleicher
/s/ Amy Ronayne Krause