

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK HENNINGBURG,

Defendant-Appellant.

UNPUBLISHED

February 25, 1997

No. 189961

Kent Circuit Court

LC No. 89-024191-FH

89-024193-FH

Before: Sawyer, P.J., and Neff and A. L. Garbrecht,* JJ.

PER CURIAM.

Pursuant to defendant's guilty plea to probation violation, MCL 771.1 *et seq*; MSA 28.1131 *et seq.*, the trial court revoked defendant's probation for his 1990 convictions of negligent homicide, MCL 750.324; MSA 28.556 (docket no. 89-024191) and unlawful driving away of an automobile (UDAA), MCL 750.413; MSA 28.645 (docket no. 89-024193). Defendant subsequently was sentenced to sixteen to twenty-four months of imprisonment for negligent homicide and twenty-eight to sixty months for UDAA. Defendant now appeals as of right. We affirm.

I

Defendant first argues that the court lacked jurisdiction to revoke his probation. We disagree. A sentencing court retains jurisdiction to revoke a defendant's probation where, as here, a petition and bench warrant against the defendant alleging violations of the terms of probation are issued before the defendant's term of probation expires. *People v Ritter*, 186 Mich App 701, 708; 464 NW2d 919 (1991).

II

Defendant also argues that the sentences he received for probation violation violate the doctrine of proportionality. Again, we disagree.

* Circuit judge, sitting on the Court of Appeals by assignment.

Upon finding that a defendant violated the terms of his probation, a trial court may impose the same penalty as for the underlying offense. MCL 771.4; MSA 28.1134. Therefore, defendant could have received maximum sentences of two years for negligent homicide, MCL 750.324; MSA 28.556, and five years for UDAA, MCL 750.413; MSA 28.645. Defendant's minimum sentences of sixteen and twenty-eight months, respectively, are well within these statutory limits.

Nonetheless, defendant argues that his sentences are disproportionate because they exceed the guidelines ranges originally computed for his offenses. The sentencing guidelines do not apply to defendants convicted of probation violation. *People v Cotton*, 209 Mich App 82, 83-84 (1995). Moreover, we note that despite numerous opportunities, defendant has repeatedly demonstrated an unwillingness to comply with the terms of his probation. We have no hesitation in concluding that his sentences are proportionate to the circumstances surrounding the offenses and the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ David H. Sawyer

/s/ Janet T. Neff

/s/ Allen L. Garbrecht