

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACQUELINE FRANCINE BEN, a/k/a
JACKY FRANCINE BEN,

Defendant-Appellant.

UNPUBLISHED

April 4, 1997

No. 191619

Kalamazoo Circuit Court
LC Nos. 93-000824-FH;
93-001007-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

In No. 93-000824-FH, defendant pleaded guilty to carrying a concealed weapon, MCL 750.227; MSA 28.424, and was sentenced to four years' probation. In No. 93-001007-FH, defendant pleaded nolo contendere to resisting and obstructing a police officer, MCL 750.479; MSA 28.747, and was sentenced to two years' probation. Defendant was subsequently convicted at a bench trial of violating her probation after she was verbally abusive to probation personnel and threatened to blow up certain government buildings. She was sentenced to prison terms of two to five years and sixteen to twenty-four months, respectively. She now appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant's sole argument on appeal is that her sentences are disproportionate. Although the sentencing guidelines do not apply to a probation violation, they may be used as a starting point in determining the continuum within which the sentence should fall. *People v Smith*, 195 Mich App 147, 149-150; 489 NW2d 135 (1992). Although defendant's prison sentence for carrying a concealed

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

weapon was twice the recommended minimum sentence, the guidelines did not consider defendant's behavior while on probation which is a proper factor to consider in determining the proportionality of a sentence. *People v Hardy*, 212 Mich App 318, 321; 537 NW2d 267 (1995). Rather than taking advantage of probation and the opportunity to rehabilitate herself outside of prison, defendant engaged in behavior violative of her probation terms by verbally abusing probation personnel and threatening to blow up certain government buildings. In light of the seriousness of defendant's threats and her failure to rehabilitate herself despite having opportunities to do so, we hold that defendant's sentences are proportionate to the seriousness of the circumstances surrounding the offender, the underlying offenses and the probation violations. *People v Milbourn*, 435 Mich App 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar