

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARNOLD PLAMONDON,

Defendant-Appellant.

UNPUBLISHED

May 13, 1997

No. 189990

Leelanau Circuit Court

LC No. 94-765 FH

Before: Corrigan, C.J., and Young and M.J. Talbot*, JJ.

MEMORANDUM.

Defendant appeals by right his conviction for resisting and obstructing a peace officer in the performance of his duties, MCL 750.479; MSA 28.747.

Defendant was stopped for a traffic violation. In the course of routinely processing the matter, the police officer involved ascertained that there was an outstanding warrant against defendant for violation of probation. Defendant was informed he would have to accompany the officer to the county jail.

Defendant remonstrated with the officer, asserting that the warrant was invalid and that he had not violated his probation. The officer explained that he had no means of verifying the validity of the warrant, but since it existed he intended to arrest defendant. Defendant refused to acquiesce and submitted to arrest only after twice being sprayed with pepper gas. Defendant first contends that he was deprived of the effective assistance of trial counsel because his attorney failed to challenge the validity of the arrest; if the arrest was illegal, defendant cannot be guilty of resisting an officer *lawfully* engaged in the performance of his duties. *People v Landrie*, 124 Mich App 480; 335 NW2d 11 (1983).

Issuance of a warrant for probation violation is not tantamount to a finding that defendant violated probation, but merely the means of initiating the process for making that determination.

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

Therefore, that defendant may not have actually violated his probation does not invalidate the arrest warrant. In any event, the warrant was issued by a court of competent jurisdiction, and even if its issuance was irregular, it was not absolutely void, and it constituted a justification to the police officer relying on it to effectuate an arrest pursuant to its command. *Dallas v Garras*, 306 Mich 313; 10 NW2d 897 (1943). Accordingly, the validity of the warrant was not a defense to a charge of resisting and obstructing a police officer, and defendant's trial counsel cannot have been ineffective for failing to rely on such an invalid defense. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

In articulating its reasons for the sentence imposed, the trial court reflected that defendant had previously indicated by his conduct that probation would not be a viable sentencing alternative. Any speculation about the trial court's response to a future probation violation was in no way determinative, and on this record there is no abuse of the trial court's sentencing discretion. *People v Houston*, 448 Mich 312; 532 NW2d 508 (1995). Moreover, any sentencing issue is moot because defendant has now served his entire determinate sentence. *People v Briseno*, 211 Mich App 11, 17; 535 NW2d 559 (1995).

Affirmed.

/s/ Maura D. Corrigan
/s/ Robert P. Young, Jr.
/s/ Michael J. Talbot