

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VINCENT RAYSHAWN CANADA,

Defendant-Appellant.

UNPUBLISHED

August 22, 1997

No. 189079

Kent Circuit Court

LC No. 94-002483-FH;

94-002487-FH

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Defendant appeals by right the Kent Circuit Court's determination that defendant violated his probation, resulting in sentences of thirty-two to forty-eight months on each of the underlying crimes, of which defendant was initially convicted on pleas of guilty, of malicious destruction of property over \$100 and possession of cocaine under twenty-five grams.

Defendant first contends that the notice of probation violation was insufficient to permit him to adequately prepare a defense. *People v Hunter*, 106 Mich App 821; 308 NW2d 694 (1981). However, there was no objection by defendant or his counsel to the validity of the probation violation charges, on this or any other basis, either at arraignment on the charges or during the three days of hearings which the trial court conducted. It would be too late to raise such objections on appeal for the first time if the charges had been brought by indictment or information, *People v Drennan*, 86 Mich 445; 49 NW 215 (1891); *People v Kelly*, 99 Mich 82; 57 NW 1090 (1894), and it is too late to do so in a probation violation case. *People v Stallworth*, 107 Mich App 754; 309 NW2d 561 (1981). Here it may be noted that defendant's probation had been amended once to require him to "obey all rules of that program." The trial court found undisputed evidence that defendant had violated at least one such rule, and whether the Department of Corrections would otherwise have considered such violation sufficient grounds for termination of defendant from the Special Alternative Incarceration Program or not is irrelevant to the question whether violation of the rule constituted a violation of his probationary conditions.

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

As a probation violator, the proportionality of defendant's sentence is to be evaluated

without reference to any sentence guidelines. *People v Williams*, 223 Mich App ____; ____ NW2d ____ (No. 194946, 5/13/97); *People v Edgett*, 220 Mich App 686; 560 NW2d 360 (1996). Defendant's thirty-two- to forty-eight-month sentence on each charge is reviewed on appeal only for abuse of the trial court's sentencing discretion. *People v Hansford (After Remand)*, 454 Mich 320; 562 NW2d 460 (1997). Here, where the malicious destruction of property charge involved allegations of assaultive behavior, and defendant's adult and juvenile record reflects other assaultive crimes or conduct, and defendant twice wasted opportunities given him by the circuit court to prove himself capable of rehabilitation on probation, the sentences imposed do not constitute an abuse of the trial court's sentencing discretion.

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell