

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAREN L. SHOOK,

Defendant-Appellant.

UNPUBLISHED

December 23, 1997

No. 194217

Oakland Circuit Court

LC No. 92-115376 FH

Before: O’Connell, P.J., and White and C. F. Youngblood*, JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to arson of a dwelling house, MCL 750.72; MSA 28.267, and second offender status, MCL 769.10; MSA 28.1082, and received an enhanced sentence of three years’ probation. Defendant was subsequently convicted of third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4), resulting in the revocation of his probationary sentence. In its stead, defendant received a term of imprisonment of five to thirty years. Defendant appeals as of right. We affirm.

Defendant argues that his sentence must be vacated because his probation was revoked without a probation revocation hearing and an attendant finding that he violated the terms of his probation. We disagree. Defendant’s violation consisted of a felony conviction for third-degree criminal sexual conduct while on probation. At a hearing after this conviction, defense counsel, after consulting with defendant, stated:

He has no objection to me standing in [for counsel assigned to the probation violation matter]. Obviously, the Court sat through a jury trial. The Court knows that he was convicted of criminal sexual conduct third degree. It is a fact that the Court is going to violate him. We’re prepared for the violation.

The court responded:

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

All right, fine. Thank you.

At the next hearing, counsel began by stating “He pled to the probation violation.” Under the circumstances, defendant is not entitled to relief.

Defendant’s sentencing issues were partially rendered moot by stipulation of the parties entered as a consequence of defendant’s motion for resentencing. *People v Greenberg*, 176 Mich App 296, 302; 439 NW2d 336 (1989). We reject the remaining challenges because the guidelines do not apply to probation revocations and defendant has not shown that the court believed he was a fourth habitual offender.

Affirmed.

/s/ Peter D. O’Connell

/s/ Helene N. White

/s/ Carole F. Youngblood