

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY JAMES PARKER,

Defendant-Appellant.

UNPUBLISHED

May 15, 1998

No. 196696

Recorder's Court

LC No. 94-007187

Before: Neff, P.J., and White and D. A. Teeple*, JJ.

MEMORANDUM.

On plea of nolo contendere, defendant was convicted of second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3), as part of a bargain pursuant to which two counts of first-degree criminal sexual conduct were dismissed. Defendant was initially placed on probation, but then charged with, and convicted on plea of guilty of, probation violation. He was then sentenced to six to fifteen years' imprisonment on the underlying offense, and now appeals as of right. We affirm.

Defendant first contends that the trial court erred in sentencing him above the guideline range. The sentence guidelines, however, are inapplicable and irrelevant to probation violation situations, which are reviewed for abuse of the trial court's sentencing discretion. *People v Williams*, 223 Mich App 409, 410-411; 566 NW2d 649 (1997). Given the circumstances of the offense, defendant's poor adjustment while on probation, and his subsequent conviction while on probation for brandishing a firearm, no abuse of the trial court's sentencing discretion has been demonstrated.

Defendant also argues that the trial court erred in referencing pending charges of assault with intent to murder and possession of a firearm during commission of a felony. The trial court did not consider these charges in accepting defendant's plea to violating probation. The court referred to the pending charge when imposing sentence, concluding that the nature of the original charge, the subsequent conviction of brandishing a firearm, the pending case, and the fact that defendant had not complied with the order of probation (requiring counseling) led the court to conclude that defendant was dangerous to the public. The court was aware that defendant contested the pending charges.

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

Defendant was ultimately convicted of felonious assault, rather than assault with intent to murder. We are satisfied that had the trial court been able to predict that outcome, the sentence would have remained the same.

Affirmed.

/s/ Janet T. Neff

/s/ Helene N. White

/s/ Donald A. Teeple