

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DUANE C. HOWARD,

Defendant-Appellant.

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UNPUBLISHED

July 17, 1998

No. 198506

Recorder's Court

LC No. 95-008367

Before: Murphy, P.J., and Young, Jr. and Michael R. Smith\*, JJ.

MEMORANDUM.

Defendant appeals as of right his sentence for probation violation, entered after a bench trial conviction for arson of a dwelling house, MCL 750.72; MSA 28.267. We affirm.

After his arson conviction, defendant was sentenced to five years' probation, with the first year to be served in jail. When defendant was released, he was placed on a tether, and was ordered to not have any contact with complainant. Defendant was charged with probation violation based on a curfew violation, and a report from complainant that he was seen outside her home. Defendant pleaded guilty, and he was sentenced to six to twenty years' imprisonment.

On appeal, defendant asserts that his sentence is disproportionate, where the initial sentencing guidelines range was scored at zero to six months. Sentencing guidelines do not apply to probation violations. *People v Britt*, 202 Mich App 714, 717; 509 NW2d 914 (1993). Sentences for probation violation should comply with the principle of proportionality. *People v Smith*, 195 Mich App 147, 149; 489 NW2d 135 (1992). The second edition of the sentencing guidelines is a useful starting point for reviewing the proportionality of a sentence, however the trial court is at liberty to consider the circumstances surrounding the probation violation in arriving at the proper sentence. *Id.*, 150.

There is no showing that the trial court abused its discretion in imposing the sentence in this case. The court could properly consider defendant's failure to comply with the tether program, the circumstances under which he failed, and his subsequent record after sentencing.

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

The sentence was proportionate to the seriousness of the offense and the dangerousness of the offender.  
*People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ William B. Murphy

/s/ Robert P. Young, Jr.

/s/ Michael R. Smith