

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL DEXTER MOORE,

Defendant-Appellant.

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UNPUBLISHED

September 18, 1998

No. 203167

St Clair Circuit Court

LC No. 94-000888 FH

Before: Hood, P.J., and Griffin and O, Connell, JJ.

MEMORANDUM.

Defendant appeals by right his sentence for probation violation. We affirm in part, and remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty to felonious assault, MCL 750.82; MSA 28.277, and pleaded no contest to attempted assault with intent to commit great bodily harm less than murder. MCL 750.84; MSA 28.279, MCL 750.92; MSA 28.287. Defendant was placed on probation. Defendant was subsequently charged with probation violation, and pleaded guilty to two violations. Defendant was sentenced to two concurrent forty to sixty month terms of imprisonment.

The prosecutor concedes that a forty to sixty month term exceeds the maximum punishment allowable for felonious assault of four years. MCL 750.82; MSA 28.277. This sentence is vacated, and remanded for imposition of a valid sentence under the statute. *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997).

Defendant also asserts that his sentence is disproportionate. The sentencing guidelines do not apply to probation violations, but a probation violation sentence must comply with the principle of proportionality. *People v Smith*, 195 Mich App 147, 149; 489 NW2d 135 (1992). The guidelines provide a starting point for determining the continuum within which the sentence should fall. *Id.*, 150.

Defendant's sentence was within the original guidelines range, and presumptively proportionate. *People v Wybrecht*, 222 Mich App 160, 175; 564 NW2d 903 (1997). Defendant has failed to overcome the presumption of proportionality. *Id.*

Defendant's sentence for attempted assault with intent to commit great bodily harm less than murder is affirmed. His sentence for felonious assault is vacated, and remanded for resentencing within the statutory limit. We do not retain jurisdiction.

/s/ Harold Hood

/s/ Richard Allen Griffin

/s/ Peter D. O'Connell