

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ZACKARY FRANKLIN a/k/a ZACKAARY
FRANKLIN,

Defendant-Appellant.

UNPUBLISHED

September 25, 1998

No. 206613

Genesee Circuit Court

LC No. 93-048514 FH

Before: MacKenzie, P.J., and Bandstra and Markman, JJ.

PER CURIAM.

Following a hearing, defendant was found to be in violation of his probation for possession of a weapon. He was sentenced to five to fifteen years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court improperly considered illegally seized evidence to find him in violation of probation. We conclude that the evidence was not illegally seized. The police had a valid arrest warrant for a resident of the home. With an arrest warrant, police have limited authority to enter the home and search for the suspect. *People v Clement*, 107 Mich App 283, 288; 309 NW2d 236 (1981). While searching, the police saw in plain view a shotgun in a bedroom and correspondence linking defendant to the bedroom. After reviewing this evidence in a light most favorable to the prosecution, we find that a rational trier of fact could conclude that a preponderance of the evidence indicated that defendant violated his probation.¹ See *People v Reynolds*, 195 Mich App 182, 184; 489 NW2d 128 (1992).

Next, defendant argues that he is entitled to have his presentence report clarified to show that the reason he was terminated from a domestic violence program was that he was arrested. However, the presentence report specifies that defendant was terminated from the program due to non-attendance that occurred after he was arrested. We conclude that the presentence report thus states with sufficient clarity that defendant was terminated from the program because of his arrest and no clarification is warranted.

Finally, defendant argues that his sentence was disproportionate to the offense and offender because the minimum sentence according to the guidelines was twelve to thirty-two months. However, sentencing guidelines do not apply to habitual offenders or to probation violation. *Reynolds, supra* at 184. Furthermore, this Court may not use the guidelines in any manner to determine the proportionality of a sentence. *People v Williams*, 223 Mich App 409, 413; 566 NW2d 649 (1997).

At sentencing, the trial court indicated that defendant had not been employed during the four years on probation, that he continued to abuse drugs and had continued contact with the legal system. Accordingly, we find that the trial court did not abuse its discretion by sentencing defendant disproportionately. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

We affirm.

/s/ Barbara B. MacKenzie

/s/ Richard A. Bandstra

/s/ Stephen J. Markman

¹ Because the evidence regarding the gun was properly admissible as discussed above, even if we accepted defendant's argument that his *Miranda* rights were violated, it would be harmless error. *People v Howard*, 226 Mich App 528, 542; 575 NW2d 16 (1997). As there was evidence sufficient to link defendant to the weapon without his statement regarding which bedroom was his, defendant was not prejudiced by the procurement of that statement. Further, there was no need to link defendant to the weapon to find a violation of the probation order, which prohibited defendant from being with anyone in possession of a weapon.