

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOEL HARDING,

Defendant-Appellant.

UNPUBLISHED

December 18, 1998

No. 191135

Recorder's Court

LC No. 93-008901 FH

Before: Gage, P.J., and Michael J. Kelly and Hoekstra, JJ.

MEMORANDUM.

Defendant appeals as of right the trial court's October 1995 order finding that defendant violated a condition of the five-year term of probation imposed following his plea-based conviction of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). As a result of the violation, the court extended defendant's probation by three years.¹ We affirm.

Defendant contends that the trial court erred in concluding that he had violated his probation by refusing to release information regarding psychiatric examinations he underwent while hospitalized during his term of probation. Probation is within the province of the sentencing judge, and we will not interfere absent a showing of a violation or abuse of statutory authority or a violation of some constitutional right. *People v Brown*, 220 Mich App 680, 682-683; 560 NW2d 80 (1996).

Defendant first argues that requiring him to release the information regarding his psychiatric examinations violated his constitutional right against self-incrimination. The Fifth Amendment right against self-incrimination attaches when a psychiatric examination is used to determine the nature and severity of a defendant's sentence. *People v Wright*, 431 Mich 282, 295; 430 NW2d 133 (1988). In the instant case, the probation officer sought the information not to determine the nature or severity of defendant's sentence, but to assess his mental status and direct the treatment required by the probation order. Therefore, we find defendant's constitutional argument without merit. See *Minnesota v Murphy*, 465 US 420, 435 n 7; 104 S Ct 1136; 79 L Ed 2d 409 (1984).

Defendant next claims that the trial court erroneously considered uncharged conduct when finding that defendant violated his probation. However, the court's statement that defendant refused to

cooperate refers to his failure to sign the release, which the probation officer charged in the petition. Thus, we conclude that this argument is also without merit.

Finally, defendant argues that the probation order did not require him to release the information. The order provides that defendant is to receive treatment at the direction of the probation department. Because the department cannot assess defendant's mental status and direct his treatment without information relevant to his mental stability, we conclude that the trial court did not err in finding that defendant's refusal to sign the release constituted a probation violation. This conclusion is not altered by the fact that the probation department did not order his placement in the hospital whose records are sought, nor by the fact that defendant had earlier signed certain ineffective releases.

Affirmed.

/s/ Hilda R. Gage

/s/ Michael J. Jelly

/s/ Joel P. Hoekstra

¹ A subsequent violation of the probation imposed for his second-degree criminal sexual conduct conviction is the subject of defendant's appeal in Docket No. 205014.