STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY NOBLE,

Defendant-Appellant.

UNPUBLISHED
March 2, 1999

No. 196735
Recorder's Court
LC No. 91-000013

Before: Gage, P.J., and MacKenzie and White, JJ.

PER CURIAM.

In 1991, defendant pleaded guilty to attempted breaking and entering an unoccupied building, MCL 750.92; MSA 28.287 and MCL 750.110; MSA 28.305, and was sentenced to two years' probation. The order of probation required defendant to report to his probation officer, to report to a clinic, and to not move without probation department permission. Defendant did not comply with these terms, but instead moved to Maryland. A bench warrant was issued for his arrest in October, 1991. Defendant returned to Michigan and turned himself in to the police on March 3, 1996. The following day, defendant pleaded guilty to violating his probation and was subsequently sentenced two to five years' imprisonment. He then filed his claim of appeal in this Court. We affirm.

This Court previously directed the parties to address the question "whether a defendant has an appeal of right from a guilty plea to a probation violation even though the underlying crime was committed before December 27, 1994." In 1994, Const 1963, art 1, § 20, was amended to eliminate appeals as of right from guilty pleas. The legislation implementing the amendment became effective December 27, 1994, and applies to crimes committed after that date. See MCL 600.308(2)(d); MSA 27A.308(2)(d), as amended by 1994 PA 375, and MCL 770.3(1)(e); MSA 28.1100(1)(e), as amended by 1994 PA 375. See also MCR 7.203(A)(1)(b) and 448 Mich cxiii-cxiv.

In this case, although defendant's guilty plea was not taken until 1996, it is undisputed that the underlying crime and the conduct that served as the basis for defendant's probation violation proceedings occurred in 1990 and 1991, well before December 27, 1994. We therefore conclude that defendant is entitled to appeal his probation violation guilty plea and the resulting sentence as of right.

Defendant contends that the trial court should have granted his motion to withdraw his guilty plea because defendant did not substantially admit his guilt at the plea hearing. We find no abuse of discretion in denying the motion. *People v Jones*, 190 Mich App 509, 512; 476 NW2d 646 (1991). In reviewing the adequacy of the factual basis for a plea, this Court examines whether the fact finder could properly convict on the facts elicited from the defendant at the plea proceeding. *People v Hogan*, 225 Mich App 431, 433; 571 NW2d 737 (1997). Here, defendant admitted that he "didn't acknowledge the fact of the whole probation procedure." This was sufficient to establish that defendant failed to perform the affirmative duties placed on him in his order of probation and hence that he violated the terms of his probation. The court's statement "I find by a preponderance of evidence there has been a violation of probation" did not alter the fact that defendant offered and the court accepted a guilty plea.

Defendant also contends that the matter should be reversed and remanded for resentencing, with the question whether to revoke probation being revisited, because the trial court improperly considered uncharged conduct in deciding to revoke defendant's probation. Defendant correctly observes that the court did not revoke defendant's probation at the violation proceeding, but simply accepted his plea and found a probation violation, leaving the questions of revocation and sentencing pending until the preparation of an updated presentence report, and that in revoking defendant's probation and imposing a prison term, the court relied on the report's account of defendant's extensive criminal activity before and after being placed on probation. Relying on a line of cases holding that both the decision that probation has been violated and the decision to revoke probation after finding a violation must be based only on the charged conduct, defendant argues that the revocation must be set aside and the matter must be remanded for consideration whether to revoke probation based only on the conduct set forth in the original presentence report and the probation violation hearing. We find the cases relied on by defendant distinguishable. At the revocation/sentencing proceeding, defense counsel reviewed the presentence report with defendant and offered only one correction, to his birth date. Defendant did not otherwise challenge the accuracy of the report. Thus, unlike the cases cited, here defendant, in effect, admitted the conduct by admitting the accuracy of the presentence report. We find no error requiring reversal.

Defendant's final argument is that the trial court abused its discretion in refusing to order a psychiatric evaluation to evaluate defendant's competency. This issue was not raised during the plea hearing or sentencing and is not preserved. Although defendant's attorney suggested that defendant undergo a psychological evaluation as part of the preparation of an updated presentence report, see *People v Wright*, 431 Mich 282, 287; 430 NW2d 133 (1988), no one ever suggested that defendant undergo an evaluation to establish his mental competency to understand the charges against him and enter a plea. In any event, unlike *People v Martin*, 61 Mich App 102; 232 NW2d 191 (1975), where there was bona fide doubt as to the defendant's competency, the record in this case shows that defendant understood the nature of the probation violation proceedings. Accordingly, we find no abuse of discretion in the trial court's failure to order a competency examination for defendant.

Affirmed.

/s/ Hilda R. Gage
/s/ Barbara B. MacKenzie
/s/ Helene N. White