

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BILLY JOHN FRENCH,

Defendant-Appellant.

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UNPUBLISHED

March 12, 1999

No. 206292

Berrien Circuit Court

LC No. 93-001620 FH

Before: Gribbs, P.J., and Saad and P. H. Chamberlain,\* JJ.

PER CURIAM.

Defendant Billy John French appeals of right from the circuit court judgment revoking his probation and sentencing him to prison. We affirm.

On May 12, 1993 defendant pleaded guilty to breaking and entering a vehicle for the purpose of taking property valued at not less than \$5.00, MCL 750.356a; MSA 28.588(1). On June 21, 1993 the court sentenced defendant to three years' probation, and required him to pay restitution of \$3,324.00 at the rate of \$30.00 per month, and fines and costs of \$400.00 at the rate of \$30.00 per month.

Defendant violated his probation on several occasions. On three occasions the charges included failing to report to his probation officer as required and failing to pay restitution, fines, and costs as required. Defendant's probation was extended, he was placed on electronic tether, and at one point he was incarcerated for one year.

On June 10, 1997 defendant was arraigned on probation violation charges for the fifth time. The charges included failing to report as required and failing to pay restitution, fines, and costs as required. Defendant pleaded not guilty, and requested court-appointed counsel. A probation revocation hearing was scheduled for June 12, 1997.

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

At the hearing, defendant's appointed counsel indicated that defendant was not ready to proceed because he wished to obtain retained counsel. The court declined to adjourn the hearing.

Defendant's probation officer testified that defendant still owed \$2,900 in restitution, and had not made a payment since February, 1995. In addition, he still owed \$400 in fines and costs. Defendant testified on his own behalf and admitted that he had no excuses for not making the required payments. The court revoked defendant's probation and sentenced him to thirty to sixty months in prison, with credit for 367 days.

A trial court's decision to revoke probation is reviewed for an abuse of discretion. *People v Martinez*, 20 Mich App 319, 324; 174 NW2d 14 (1969).

We affirm the decision of the trial court. Defendant's assertion that the trial court abused its discretion by revoking his probation is without merit. While nonpayment of restitution or fines and costs cannot be grounds for revocation if the probationer is financially unable to make payments as required, *People v Gallagher*, 55 Mich App 613, 620; 223 NW2d 92 (1974), defendant did not establish that he was financially unable to make payments as required. Defendant testified that that he had been employed on a fairly steady basis while on probation, and that he had no excuses for not making payments as required. Under the circumstances, revocation of probation did not constitute an abuse of discretion or a violation of defendant's right to equal protection. *People v Double*, 57 Mich App 633, 635; 226 NW2d 594 (1975). Furthermore, defendant was not denied due process by the timing of his revocation hearing. Defendant had two days' notice of the hearing. We have held that depending on the nature of the charges to be heard, one day's notice can be sufficient. *People v Duncan*, 154 Mich App 652, 654; 397 NW2d 857 (1986). The charges against defendant, failing to report as required and failing to make payments as required, presented simple factual issues that required minimal time to gather information. Finally, defendant had the right to be represented by counsel at the revocation hearing. *People v Bellanger*, 227 Mich App 637, 641; 576 NW2d 703 (1998). However, at his arraignment, defendant requested court-appointed counsel. The record does not reflect that between the date of the arraignment and the date of the hearing, defendant took any steps to retain counsel. The trial court did not err by declining to adjourn the hearing. Cf. *People v Gulley*, 66 Mich App 112, 117; 238 NW2d 421 (1975).

Affirmed.

/s/ Roman S. Gibbs  
/s/ Henry William Saad  
/s/ Paul H. Chamberlain