

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TOLLAND BROWN,

Defendant-Appellant.

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UNPUBLISHED

August 6, 1999

No. 212723

Recorder's Court

LC No. 95-005386

Before: White, P.J., and Markey and Wilder, JJ.

MEMORANDUM.

Defendant appeals by right his sentence for two counts of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), entered after he pleaded guilty to probation violation. We affirm.

Defendant argues that his sentence is disproportionate, in light of the original guidelines score of zero to thirty-six months computed at the time of sentencing. However, sentencing guidelines are inapplicable to a probation violation sentence. *People v Williams*, 223 Mich App 409, 411; 566 NW2d 649 (1997). The trial court is at liberty to consider defendant's actions and the seriousness and severity of the facts and circumstances surrounding the probation violation in arriving at the proper sentence. *People v Peters*, 191 Mich App 159, 167; 477 NW2d 479 (1991). Here, where defendant repeatedly violated probation, the trial court did not impose a disproportionate sentence under the circumstances of this case.

Defendant also argues that disproportionality is established where he was convicted of a probation violation in another, unrelated case and only received a six-month jail sentence. However, that sentence was based on a less serious underlying conviction, for which defendant had not previously violated probation. Where circumstances were dissimilar, there is no basis for using that sentence to determine the proportionality of the instant sentence. The sentence imposed considered the totality of the circumstances. *People v Smith*, 195 Mich App 147; 489 NW2d 135 (1992).

Affirmed.

/s/ Helene N. White

/s/ Jane E. Markey

/s/ Kurtis T. Wilder