

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EDWARD RUSSO,

Defendant-Appellant.

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UNPUBLISHED

October 1, 1999

No. 210404

Lake Circuit Court

LC No. 92-002862 FH

Before: Griffin, P.J., and Zahra and Pavlich\*, JJ.

MEMORANDUM.

Defendant appeals by right his conviction and sentence for probation violation. We affirm.

Defendant pleaded no contest to an unarmed robbery charge, MCL 750.530; MSA 28.798, and was sentenced to one year in jail and five years' probation. The probation order was amended on September 16, 1996, after a petition to show cause was filed. A second show cause order was issued on January 23, 1997. After two days of hearings, defendant was found guilty of violating his probation. On April 21, 1997, defendant was sentenced to four to fifteen years' imprisonment.

Defendant asserts that his sentence is disproportionate where the guidelines range for the underlying offense is twelve to forty-eight months. We disagree.

Although sentencing guidelines do not apply to probation revocation sentencing, *People v Leske*, 187 Mich App 153; 466 NW2d 361 (1991), this Court has held that the guidelines are a useful point of departure in determining where on the continuum the sentence should fall. *People v Perry*, 201 Mich App 347, 352; 505 NW2d 909 (1993); *People v Peters*, 191 Mich App 159; 477 NW2d 479 (1991). A trial court is at liberty to consider defendant's actions and the seriousness and severity of the facts surrounding the probation violation in arriving at the proper sentence to be given. *Id.* at 167.

Here, defendant's sentence would be within the guidelines range at the time of the original sentence. Where the added factor of defendant's failure at probation is considered, the four to

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

fifteen year sentence is proportionate to the offender and the offense. The circuit court did not abuse its discretion in sentencing defendant. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Richard Allen Griffin

/s/ Brian K. Zahra

/s/ Scott L. Pavlich