

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM EUGENE BURRELL,

Defendant-Appellant.

UNPUBLISHED

October 8, 1999

No. 212583

Kent Circuit Court

LC No. 97-001211 FH

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

PER CURIAM.

Defendant appeals as of right from his conviction of probation violation. We affirm.

Defendant pleaded guilty to operating a vehicle under the influence of intoxicating liquor, third offense, MCL 257.625d; MSA 9.2325(4). The trial court sentenced defendant to five years' probation, with the condition that he participate in an inpatient substance abuse treatment program at Jellema House. Failure to comply with the rules of the treatment program would be considered a violation of probation. As a further condition of probation, defendant was required to notify his probation officer of any arrest within forty-eight hours.

While on a furlough from Jellema House, defendant was arrested and lodged in the Kent County Jail. He remained in jail for approximately thirteen days until he was released on bond.

Defendant was charged with violating his probation by failing to notify his probation officer of his arrest within forty-eight hours, and by failing to comply with the rules of Jellema House by leaving the program without authorization. At a hearing, Brenda Anaya, defendant's probation officer, testified that after he was arrested, defendant made no effort to contact her. She indicated that although her office did not accept collect calls, if a person attempted to call the office from the jail, a message would be recorded on voice mail. Anaya stated that defendant was terminated from the Jellema House program because he did not return from his furlough in a timely fashion. Defendant testified that after he was incarcerated, he unsuccessfully attempted to contact his mother and sister to have a message relayed to his probation officer. Furthermore, defendant stated that he failed to return to Jellema House in a timely manner because he was incarcerated.

The trial court concluded that the violations were established by a preponderance of the evidence, found defendant guilty of probation violation, and revoked probation. The trial court sentenced defendant to three to five years in prison, with credit for 145 days.

Defendant argues that the trial court's finding that he was guilty of violating the terms of his probation was not supported by sufficient evidence. We disagree and affirm. A probation violation must be established by a preponderance of the evidence. *People v Pillar*, 233 Mich App 267, 270; 590 NW2d 622 (1998). Contrary to defendant's assertion, the trial court did not improperly consider conduct not specified in the charging petition when determining that he violated his probation. *People v Laurent*, 171 Mich App 503, 505; 431 NW2d 202 (1988). Evidence regarding his arrest established the circumstances that resulted in the actions which constituted violations of probation. Defendant's assertion that the evidence established that it was impossible for him to comply with the terms of his probation is without merit. Anaya testified that a probationer could satisfy the notification of arrest requirement by sending a message via a friend or family member. Defendant's assertion that he attempted to contact family members was unsubstantiated. Furthermore, it is true that defendant's incarceration prevented him from returning to Jellema House in a timely manner. However, defendant's own actions resulted in his arrest and incarceration. The trial court's finding that defendant violated his probation was supported by sufficient evidence. *Pillar, supra*.

Defendant's argument that he is entitled to resentencing because the presentence report on which the trial court relied when imposing sentence contained inaccurate information is not preserved for appellate review. Defendant did not raise the issue before or at sentencing and has not demonstrated that the challenge was raised as soon as the inaccuracy could reasonably have been discovered. MCR 6.429(C); *People v Bailey (On Remand)*, 218 Mich App 645, 647; 554 NW2d 391 (1996).

Affirmed.

/s/ Richard Allen Griffin

/s/ Brian K. Zahra

/s/ Scott L. Pavlich