

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD D. VODVARKA,

Defendant-Appellant.

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UNPUBLISHED

December 28, 1999

No. 214352

Mason Circuit Court

LC No. 97-013212 FH

Before: Saad, P.J., and McDonald and Gage, JJ.

MEMORANDUM.

Defendant appeals as of right from his sentence of four to fifteen years in prison for probation violation following his plea-based conviction of criminal sexual conduct in the second degree (CSC II), MCL 750.520c; MSA 28.788(3). We affirm.

Defendant pleaded guilty to CSC II, with the victim being his girlfriend, who was under the age of sixteen. The court sentenced defendant to three years' probation, with 180 days in jail to be served immediately. The terms of defendant's probation required him to attend counseling, and prohibited him from having unsupervised contact with any child under the age of sixteen.

Defendant was charged with violating his probation by having unsupervised contact with children under the age of sixteen, failing to live in an approved residence, failing to change his sex offender registration as required, and resisting police officers. The court held a hearing and found defendant guilty of all charges save that of failing to change his sex offender registration. The court sentenced defendant to four to fifteen years in prison, with credit for 206 days.

Defendant argues that his four-year minimum term is disproportionate to his circumstances and those of the offense. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree and affirm. The sentencing guidelines do not apply to probation violators, and are not to be considered when fashioning a sentence for probation violation. *People v Williams*, 223 Mich App 409, 412-413; 566 NW2d 649 (1997). The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). Defendant was convicted of the underlying offense as a result of his having had sexual contact with a

person under the age of consent. He violated his probation by deliberately and repeatedly putting himself in a position where he had unsupervised contact with children under the age of sixteen. In addition, defendant missed more than fifty percent of the counseling sessions he was required to attend as part of his probation. He had a prior misdemeanor conviction for furnishing alcohol to a minor. Defendant's actions indicated an unwillingness to conform his conduct to the requirements of the law, notwithstanding the fact that he was given multiple opportunities to do so. His minimum term of imprisonment does not constitute an abuse of discretion under the circumstances.

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Hilda R. Gage