

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN DENNIS MILLER,

Defendant-Appellant.

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UNPUBLISHED

February 15, 2000

No. 213740

Jackson Circuit Court

LC No. 96-074756-FH

Before: O'Connell, P.J., and Meter and T. G. Hicks\*, JJ.

MEMORANDUM.

Defendant appeals as of right from his sentence for probation violation following his plea-based conviction of breaking and entering a building with the intent to commit larceny, MCL 750.110; MSA 28.305. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty to breaking and entering a building with the intent to commit larceny and to receiving or concealing stolen property having a value in excess of \$100, MCL 750.535; MSA 28.803. At sentencing, the trial court vacated the receiving or concealing conviction. The trial court sentenced defendant to three years' probation, with the first 180 days in jail. Defendant received credit for 104 days. In addition, defendant was ordered to pay costs, a fine, and restitution.

Defendant was charged with violating his probation on four occasions. On the first three occasions, his probation was continued. On the fourth occasion, the trial court found him guilty of failing to report to his probation officer and sentenced him to five to ten years in prison, with credit for 458 days. In imposing sentence, the trial court noted that defendant had a lengthy prior record, that he had failed to abide by the terms of his probation, and that his prospects for rehabilitation while on probation were not good.

Defendant argues that his sentence is disproportionate. 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;

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

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 had a prior record consisting of eleven misdemeanor convictions. He repeatedly failed to comply with the terms of his probation, in spite of the fact that he was given multiple opportunities to do so. His actions indicated an unwillingness to conform his conduct to the requirements of the law. Defendant's sentence does not constitute an abuse of discretion under these circumstances. See *People v Alexander*, 234 Mich App 665, 679-680; 599 NW2d 749 (1999).

Affirmed.

/s/ Peter D. O'Connell

/s/ Patrick M. Meter

/s/ Timothy G. Hicks