

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS JAMES BROCKITT,

Defendant-Appellant.

UNPUBLISHED

January 26, 2001

No. 217106

Macomb Circuit Court

LC No. 97-000329-FH

98-000708-FH

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

MEMORANDUM.

Defendant appeals by right from a two to twenty year sentence imposed for first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), and a two- to fifteen-year sentence imposed for second-degree home invasion, MCL 750.110a(3); MSA 28.305(a)(3), following an adjudication that he violated the terms of his probation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

“The sole question on review of the finding of violation of probation is whether the trial judge could find by a preponderance of the evidence that the probation order had been violated.” *People v Billy Williams*, 66 Mich App 67, 71; 238 NW2d 407 (1975). The court properly found that defendant failed to complete boot camp as directed; defendant admitted that he quit the program without completing it. Having so found, the court could, “in the exercise of its discretion[,] (1) continue probation without punishment for the violation, (2) modify the conditions of probation or extend the period thereof, or (3) revoke the sentence of probation that had been given for the ‘underlying offense’ and impose upon the defendant any lawful sentence, other than probation, for such offense.” *People v Alvarado*, 192 Mich App 718, 722-723; 481 NW2d 822 (1992).

Defendant argues that the court abused its discretion in revoking his probation for failure to complete boot camp because he was not eligible for the program when the court sentenced him to boot camp. We disagree. The “appeal of right following probation violation and sentence is limited to matters relating to the probation violation and hearing thereon.” *People v Holiday*,

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

104 Mich App 471, 473; 304 NW2d 610 (1981). The probationary sentence itself is not reviewable. That aside, defendant presented no evidence that he had a mental disability that prevented his participation in the program or that he was physically incapable of participating in the program. MCL 771.3b(2)(d), (e); MSA 28.1133(2)(2)(d), (e). The evidence showed that defendant quit because he found it too physically and emotionally challenging.

We affirm.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew