

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACKIE BERDETTE THOMAS,

Defendant-Appellant.

UNPUBLISHED

February 27, 2001

No. 219140

Saginaw Circuit Court

LC No. 95-010541-FH

Before: Doctoroff, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In 1995, defendant pleaded guilty to four counts of larceny by false pretenses in excess of \$100, MCL 750.218; MSA 28.415, and was sentenced to three years' probation on each count. Following a bench trial, she was convicted of four counts of probation violation. The trial court sentenced her to thirty to 120 months' imprisonment to be served concurrently with the other four convictions. Defendant appeals by right, contending that her sentence was disproportionate. We disagree and affirm.

This Court reviews sentencing decisions for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990); *People v McCrady*, 213 Mich App 474, 483; 540 NW2d 718 (1995). Criminal sentences must be proportionate to the seriousness of the crime and must take into account the circumstances of both the offense and the offender. *Milbourn, supra* at 636. A sentencing court, after revoking a probation order, may sentence the offender in the same manner and to the same penalty as it might have done if the probation order had never been made. *People v Sandlin*, 179 Mich App 540, 543; 446 NW2d 301 (1989). The sentencing guidelines do not apply to sentencing for probation violations, only to the crimes covered by the earlier underlying felony. *People v Edgett*, 220 Mich App 686, 690-691; 560 NW2d 360 (1996); see, also, *People v Williams*, 223 Mich App 409, 411; 566 NW2d 649 (1997). Thus, "when dealing with probation violators . . . , this Court may not use the guidelines in any manner in determining whether the defendant's sentence is proportionate." *Williams, supra* at 413.

At the time of defendant's underlying convictions, larceny by false pretenses in excess of \$100 was punishable by not more than ten years. Pursuant to the two-thirds rule of *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972), defendant could have received a sentence of 6-2/3 to 10 years. The 2½-year minimum sentence imposed in this case was substantially less than the statutory maximum that could have been imposed. Further, the record indicates that

since being placed on probation in 1995, defendant violated her probation conditions several times, but was still not sentenced to imprisonment until her fourth violation in January 1999. The trial court gave defendant ample opportunities to comply with her probation conditions and avoid imprisonment. The 2½-year prison sentence given by the trial court was proportionate to the circumstances of the offense and offender; consequently, the trial court did not abuse its discretion in sentencing defendant.

We affirm.

/s/ Martin M. Doctoroff

/s/ Joel P. Hoekstra

/s/ Jane E. Markey