

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PHILLIP H. JOHNSON,

Defendant-Appellant.

UNPUBLISHED
February 22, 2002

No. 219684
Genesee Circuit Court
LC No. 94-051243-FC

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from a four to fifteen year sentence imposed for unarmed robbery, MCL 750.530, following an adjudication that he violated the terms of his probation. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant first contends that the trial court erred in revoking his probation. We disagree. Probation is a matter of grace, not of right, and is thus subject to revocation. MCL 771.4. “A revocation proceeding has two steps: (1) a factual determination that the violations charged in the notice have occurred; and (2) a discretionary determination that the proven charges warrant revoking probation.” *People v Taylor*, 104 Mich App 514, 516; 305 NW2d 251 (1981). Once the court determines that the defendant has violated the terms of his probation, it “may, 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) (footnote omitted). Only the evidence relating to the charged violation of probation “may provide the basis for a decision to revoke one’s probation.” *People v Pillar*, 233 Mich App 267, 270; 590 NW2d 622 (1998).

The instant petition contained two counts: (1) that defendant failed to report as directed and (2) that defendant failed to submit to urinalysis as directed. Defendant pleaded guilty to Count I and Count II was dismissed. Defendant’s admission of guilt as to Count I was sufficient to support the court’s decision to revoke probation. *People v Billy Williams*, 66 Mich App 67, 71; 238 NW2d 407 (1975). Contrary to defendant’s contention, the court did not assume that he had been found guilty of Count II. The court’s statement that defendant had “a problem with frequent dirty urines or failing to submit urines for testing as requested” was supported by the information in the presentence report, which expressly noted that Count II had been dismissed.

While the court noted that the petition included a charge of again failing to submit to urinalysis, it did so only in noting that it was not the first such charge. Because the court's decision to revoke probation was amply supported by defendant's history of noncompliance with the terms of his probation, the court did not abuse its discretion in ordering revocation. *People v Martinez*, 20 Mich App 319, 324; 174 NW2d 14 (1969).

Defendant next contends that he is entitled to resentencing because the sentence was based on inaccurate information. As discussed above, there is no basis for concluding that the trial court erroneously assumed that defendant had been found guilty of both charges alleged in the petition for probation revocation. Nor do we find any basis for concluding that the trial court misunderstood defendant's role in the offense. Defendant, in tendering his plea, tried to minimize his involvement in the crime. However, the original presentence report indicated that the victim ascribed a much more direct role to defendant. Apart from the omission of defendant's educational achievements while serving another jail sentence, defendant admitted that the report was accurate.

Moreover, when defendant appeared for sentencing after his probation was revoked, he had no corrections or additions to offer regarding the circumstances surrounding the offense. Therefore, the issue has not been preserved for appeal. *People v Bailey (On Remand)*, 218 Mich App 645, 647; 554 NW2d 391 (1996); *People v Gezelman (On Rehearing)*, 202 Mich App 172, 173-174; 507 NW2d 744 (1993). Defendant, who has not shown plain error affecting substantial rights, is not entitled to relief. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Considering all the facts and circumstances, the trial court did not abuse its discretion in sentencing defendant. *People v Walter Williams*, 223 Mich App 409, 412; 566 NW2d 649 (1997).

Affirmed.

/s/ Michael R. Smolenski
/s/ Martin M. Doctoroff
/s/ Donald S. Owens