

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD PHILLIP GILMORE,

Defendant-Appellant.

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UNPUBLISHED

November 26, 2002

No. 236358

Wayne Circuit Court

LC No. 99-010631

Before: Markey, P.J., and Saad and Smolenski, JJ.

MEMORANDUM.

Defendant appeals by right his sentence of two to four years in prison imposed following his conviction of probation violation. We affirm.

In March 2000, defendant was convicted of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and was sentenced to two years' probation. In 2001, defendant was charged with delivery of marijuana, MCL 333.7401(2)(d)(iii) (Wayne County Circuit Court Docket No. 01-003078). As a result, he was charged with violating his probation in the instant case. The trial court found defendant guilty of violating his probation by selling marijuana. Subsequently, defendant pleaded guilty to a reduced charge in Docket No. 01-003078. The trial court sentenced defendant to two to four years in prison based on the conviction of probation violation.

In imposing sentence, the court noted that defendant had prior narcotics-related convictions, and that he had been placed on lifetime probation in a previous case. The court observed that defendant had failed on probation and concluded that continuing him on probation would serve no purpose. The sentence of two to four years' imprisonment was to be concurrent with the sentence of one to four years' imposed in Docket No. 01-003078.

Defendant argues that he is entitled to resentencing because the minimum term of two years' 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 defendant's sentence. 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).<sup>1</sup> 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 of narcotics-related offenses when he appeared for sentencing in 1999 and was on probation in another matter; however, the trial court afforded him another opportunity to reform his behavior while on probation. Defendant violated his probation by committing another narcotics-related offense. His behavior indicated an unwillingness to conform his actions to the requirements of the law. Defendant's minimum term of imprisonment does not constitute an abuse of discretion under the circumstances. *Id.* at 320-321.

We affirm.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Michael R. Smolenski

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<sup>1</sup> *Williams* was decided when the judicial sentencing guidelines were in effect. However, no authority holds that the statutory sentencing guidelines are to be considered when fashioning a sentence for probation violation.