

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MIGUEL GUITERREZ, JR.,

Defendant-Appellant.

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UNPUBLISHED

November 25, 2003

No. 242155

Jackson Circuit Court

LC No. 98-091455-FH

Before: Cooper, P.J., and Markey and Meter, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction of probation violation and his concurrent sentences of one year, four months to two years for his underlying convictions of third-degree child abuse, MCL 750.136b(5), and resisting and obstructing a police officer, MCL 750.479. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The prosecution has the burden of proving a charge of probation violation by a preponderance of the evidence. MCR 6.445(E)(1); *People v Reynolds*, 195 Mich App 182, 184; 489 NW2d 128 (1992).

Defendant argues that the evidence was insufficient to support a finding that he violated his probation. We disagree. Defendant's probation officer wrote to him on two occasions informing him that his term of probation would continue after he was released from jail and that he would be required to report on specific dates. There was no evidence that defendant failed to receive the letters. Defendant has cited no authority holding that such letters would be insufficient to apprise him of his obligations. The evidence was sufficient to support defendant's conviction of probation violation. *Id.*

Defendant argues that his minimum terms of one year, four months are disproportionate to his circumstances and those of the offenses. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree. The judicial sentencing guidelines<sup>1</sup> are inapplicable to probation violators and are not to be considered when fashioning a sentence for probation violation.

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<sup>1</sup> The offenses of which defendant was convicted occurred prior to January 1, 1999. Therefore, the statutory sentencing guidelines did not apply in this case. MCL 769.34(1).

*People v Williams*, 223 Mich App 409, 412-413; 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 violated his probation on two previous occasions, and indicated that he did not feel obligated to comply with the terms of probation because he disagreed with the trial court's decision to place him on probation. Defendant's behavior indicated an unwillingness to conform his actions to the requirements of the law. His minimum terms of imprisonment do not constitute an abuse of discretion under the circumstances.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Jane E. Markey  
/s/ Patrick M. Meter