

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IDRIS ZURI KUMASI,

Defendant-Appellant.

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UNPUBLISHED

September 21, 2010

No. 292950

Oakland Circuit Court

LC No. 2007-214006-FH

Before: BORRELLO, P.J., and JANSEN and BANDSTRA, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from the trial court's order revoking his probation and status under the Holmes Youthful Trainee Act, ("HYTA"), MCL 762.11 *et seq.*, in connection with his plea-based conviction of first-degree home invasion, MCL 750.110a(2), and sentencing him to a prison term of 1-1/2 to 20 years. For the reasons set forth in this opinion, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

**I. FACTS**

In August 2007, defendant, then 16 years old, entered a guilty plea to first-degree home invasion. He admitted that he assisted another person in entering a dwelling without permission and taking items from within. The trial court sentenced defendant as an adult, but under the provisions of the HYTA, to two years' probation, with the first year to be served in jail, but with credit for 208 days served and the remaining time suspended "for entry into the Sheriff's Boot Camp." The court also ordered defendant to pay costs, fees, and restitution. The court twice told defendant to, "Get a job and keep it."

Defendant signed a probation order that contained a condition that he "make genuine efforts to find and maintain legitimate employment of a minimum of 30 hours per week, unless engaged in an alternative program approved by the field agent."

In June 2008, a notice of probation violation was filed alleging six different violations: (1) new criminal activity, (2) failure to report, (3) failure to pay costs, (4) failure to acquire a GED, (5) failure to participate in substance abuse treatment, and (6) failure to maintain verifiable employment. Prior to defendant tendering a plea of guilty, defendant, through his counsel, denied most of the allegations in the complaint, however, defendant pled guilty to failure to pay costs as ordered by the trial court. The trial court then found defendant guilty of failure to

maintain employment. Following some discussions with defense counsel and the Department of Corrections, the trial court then revoked defendants' probation and HYTA status, and sentenced him to a prison term of 1-1/2 to 20 years. Defendant later filed a motion for a new probation violation hearing, which the trial court denied.

On appeal, defendant argues that the trial court lacked a sufficient basis for each finding of a probation violation.

## II. STANDARD OF REVIEW

This Court reviews a trial court's decision to revoke probation for an abuse of discretion. See *People v Knox*, 115 Mich App 508, 515; 321 NW2d 713 (1982). A decision whether to hold an evidentiary hearing is also reviewed for an abuse of discretion. *People v Mischley*, 164 Mich App 478, 482; 417 NW2d 537 (1987). "A trial court abuses its discretion when it fails to select a principled outcome from a range of reasonable and principled outcomes." *People v Kahley*, 277 Mich App 182, 184; 744 NW2d 194 (2007). A trial court's findings of fact may not be set aside unless clearly erroneous. MCR 2.613(C).

## III. COSTS

At the hearing on defendant's motion for a new probation violation hearing, defense counsel suggested that defendant misunderstood the timing requirements that applied to his obligation to pay costs. On appeal, defendant asserts that he lacked the ability to pay and should not have been found in violation of his probation for failing to do the impossible. But defendant in the first instance, unequivocally and unconditionally pleaded guilty to violating his probation for failing to pay costs, and the fact that he did not pay costs was not in question.

Ordinarily, a criminal defendant who pleads guilty "may raise on appeal only those defenses and rights which would preclude the state from obtaining a valid conviction against the defendant." *People v New*, 427 Mich 482, 491; 398 NW2d 358 (1986). The Supreme Court explained in *New* that "[s]uch rights and defenses reach beyond the factual determination of defendant's guilt and implicate the very *authority* of the state to bring a defendant to trial." *Id.* (emphasis retained; internal quotations and citation omitted). The Court reiterated that "where the defense or right asserted by defendant relates solely to the capacity of the state to prove defendant's factual guilt, it is subsumed by defendant's guilty plea." *Id.*

Defendant in effect wishes to withdraw his guilty plea, but no such formal motion was brought before the trial court. Because defendant's arguments concerning his failure to pay costs relate to the question of his factual guilt, whether it should be mitigated because of a misunderstanding or inability to pay, we decline to entertain such arguments, and thus affirm the trial court's decision to accept defendant's plea of guilty to violating his probation by failing to pay costs.

## IV. EMPLOYMENT

At the probation violation hearing, defendant conceded that he did not have employment outside of being a student, and defense counsel argued mitigation in the matter without offering to bring evidence, then or in the future, to show that defendant had in fact acquired some

employment. On appeal, defendant complains that the matter should have been more fully litigated, but does not assert that he had any employment at the time relevant. At issue, then, is whether the trial court erred in treating the bald fact of defendant's unemployment, but for his being a full-time student, as a probation violation. We conclude that the record clearly reveals that defendant was told both orally and in his terms and conditions of probation, which he signed, that he must "make genuine efforts to find and maintain legitimate employment of a minimum of 30 hours per week, unless engaged in an alternative program approved by the field agent." Further, both the original and amended orders assigning defendant to HYTA status include the direction, "MAINTAIN AND/OR SEEK EMPLOYMENT AS DIRECTED BY P[robation] O[fficer]." Even if defendant felt that his full-time position as a student obviated his obligation to seek employment, we are still left with a plea of guilty to a violation of probation, and the fact that defendant does not dispute that he failed to seek and/or maintain employment. Rather, he merely argues that he was not required to do so by his probation officer, and further, that because he was a full-time student; he was not required to fulfill this particular obligation of his probation. "While a trial court must consider evidence presented in mitigation of the probation violation, it need not determine that mitigating circumstances justify allowing the defendant to remain on probation." *People v Knox*, 115 Mich App 508, 514; 321 NW2d 713 (1982).

Defendant explained to the trial court, "I was told I didn't need to get a job cause I was a full time student," and added, "I was looking for a job, but it wasn't required from my probation officer." The trial court was not obliged to take this account at face value. See *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998) ("it is well settled that this Court may not attempt to resolve credibility questions anew"), and consequently we cannot hold that the trial court abused its discretion in revoking defendant's probation. *People v Laurent*, 171 Mich App 503, 505; 431 NW2d 202 (1988).

Affirmed.

/s/ Stephen L. Borrello  
/s/ Kathleen Jansen  
/s/ Richard A. Bandstra