

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

ANTHONY JEREMY HILL,

Defendant-Appellant.

UNPUBLISHED

December 28, 2010

No. 294744

St. Clair Circuit Court

LC No. 07-002616-FH

Before: SHAPIRO, P.J., and SAAD and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals the trial court's order that denied his motion to withdraw his guilty plea for his probation violation and for resentencing. For the reasons set forth below, we affirm.

Defendant was arrested for violating the terms of his probation for two underlying cases. Specifically, defendant was placed on probation on February 25, 2008 for one count of failure to register as a sex offender as a second habitual offender and one count of assault and battery. On May 27, 2008, defendant received probation for possession of less than 25 grams of cocaine and attempted resisting or obstructing a police officer. Defendant was arrested for violating his probation because he failed to pay court assessments, he changed his residency without informing or seeking the permission of his parole officer, he failed to maintain employment, and he missed multiple drug tests. Defendant pleaded to the allegations and, after sentencing, he sought to withdraw his plea.

Defendant asserts that the trial court erred when it denied his motion to withdraw his plea for violating his probation. "We review a trial court's decision on a motion to withdraw a plea for an abuse of discretion." *People v Billings*, 283 Mich App 538, 549; 770 NW2d 893 (2009). "A court abuses its discretion when it selects an outcome outside the range of reasonable and principled outcomes." *People v Waclawski*, 286 Mich App 634, 645; 780 NW2d 321 (2009).

Defendant argues that, when he pleaded guilty to the probation violation, the trial court failed to advise him of his rights pursuant to MCR 6.445(F), which provides:

The probationer may, at the arraignment or afterward, plead guilty to the violation. Before accepting a guilty plea, the court, speaking directly to the probationer and receiving the probationer's response, must

(1) advise the probationer that by pleading guilty the probationer is giving up the right to a contested hearing and, if the probationer is proceeding without legal representation, the right to a lawyer's assistance as set forth in subrule (B)(2)(b),

(2) advise the probationer of the maximum possible jail or prison sentence for the offense,

(3) ascertain that the plea is understandingly, voluntarily, and accurately made, and

(4) establish factual support for a finding that the probationer is guilty of the alleged violation.

Specifically, defendant asserts that his guilty plea was not understanding or voluntary because the trial court failed to advise him that, by pleading guilty, he was waiving his right to a contested hearing.

At his arraignment, defendant was fully advised of his right to an evidentiary hearing. At that time, defendant requested appointed counsel and advised the court that he intended to produce evidence at the hearing to establish his compliance with the terms of his probation. On the date of the evidentiary hearing, the trial court asked defendant's attorney whether defendant wished to proceed with the evidentiary hearing. In response, counsel advised the court that defendant wished to admit to the probation violation and to explain the reasons for his violation. Thus, the record reflects that defendant knew that he had a right to a contested hearing and he understood that he could present evidence to the court at that time. This Court has held that the statute does not require "rigid, unwavering, ceremonial incantation of its provisions under peril of mandatory reversal" *People v Alame*, 129 Mich App 686, 690; 341 NW2d 870 (1983). The record shows that the trial court advised defendant of his right to a hearing and that defendant chose to plead to the allegations.

Defendant further claims that there was inadequate factual support to find that he violated his probation under MCR 6.445(F)(4) because he did not do so intentionally. Before the trial court accepted defendant's plea, defendant specifically admitted to the probation violations. Though he gave various reasons for failing to notify his probation officer of his residency, his unemployment and his failure to submit to drug screens, he provided sufficient facts to establish that he, in fact, violated the terms of his probation. Defendant cites no legal authority to support his claim that the court must consider or accept as true his claimed attempts at compliance. Because the facts established that defendant was guilty of the violations, the trial court properly accepted his plea and did not abuse its discretion when it denied his motion to withdraw it.

Defendant contends that the trial court's decision to revoke his probation was erroneous. "The decision to revoke probation is a matter within the sentencing court's discretion." *People v Ritter*, 186 Mich App 701, 706; 464 NW2d 919 (1991). MCL 771.4 provides:

It is the intent of the legislature that the granting of probation is a matter of grace conferring no vested right to its continuance. If during the probation period the sentencing court determines that the probationer is likely again to engage in an

offensive or criminal course of conduct or that the public good requires revocation of probation, the court may revoke probation. All probation orders are revocable in any manner the court that imposed probation considers applicable either for a violation or attempted violation of a probation condition or for any other type of antisocial conduct or action on the probationer's part for which the court determines that revocation is proper in the public interest. Hearings on the revocation shall be summary and informal and not subject to the rules of evidence or of pleadings applicable in criminal trials. In its probation order or by general rule, the court may provide for the apprehension, detention, and confinement of a probationer accused of violating a probation condition or conduct inconsistent with the public good. The method of hearing and presentation of charges are within the court's discretion, except that the probationer is entitled to a written copy of the charges constituting the claim that he or she violated probation and to a probation revocation hearing. The court may investigate and enter a disposition of the probationer as the court determines best serves the public interest. If a probation order is revoked, the court may sentence the probationer in the same manner and to the same penalty as the court might have done if the probation order had never been made.

Consistent with the statute, MCR 6.425(G) provides:

If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, the court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of incarceration. The court may not sentence the probationer to prison without having considered a current presentence report and having complied with the provisions set forth in MCR 6.425(B) and (E).

At a hearing to revoke probation, the trial court must make “(1) a factual determination that the probationer is in fact guilty of violating probation, and (2) a discretionary determination of whether the violation warrants revocation.” *People v Pillar*, 233 Mich App 267, 269; 590 NW2d 622 (1998). “There must be verified facts in the record from which the court can find by a preponderance of the evidence that a violation was committed.” *Id.* at 270.

The trial court did not abuse its discretion when it revoked defendant's probation. Defendant admitted to the violations of the terms of his probation, the trial court adjourned defendant's sentencing to give him additional time to comply with those terms, and defendant failed to do so. The trial court's decision not to give credence to defendant's continued excuses for failure to comply with the probation requirements was within its discretion. The record contains ample evidence that defendant violated the terms of his probation and it was, therefore, within the trial court's discretion to revoke his probation.

Defendant maintains that the trial court erred when it failed to give him the opportunity to examine the updated probation violation recommendation report or to challenge the information contained in the report. At the sentencing hearing, the trial court stated that it had reviewed the presentence investigation report and the recommendation for resentencing and gave defendant the opportunity to address the court. After defendant made various comments about his failure to

comply with the terms of his probation, defendant's attorney stated that he and defendant looked at the updated recommendation and he asserted only that he would prefer that defendant receive minimal jail time or credit for time served. Thus, the record reflects that defendant had the opportunity to examine the presentence investigation report, including the recommendation with regard to his probation violation, and he had the chance, in open court, to challenge the information in the report, but chose only to dispute the length of the recommended sentence. Thus, defendant has waived any further challenge to the information in the report. *People v Sharp*, 192 Mich App 501, 503-505; 481 NW2d 773 (1992).

Affirmed.¹

/s/ Douglas B. Shapiro
/s/ Henry William Saad
/s/ Kirsten Frank Kelly

¹ In light of our holding, we need not address defendant's assertion that this case should be remanded to a different judge.