

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD RAY BLISS,

Defendant-Appellant.

UNPUBLISHED

April 16, 1996

No. 185755

LC No. 92-6562

Before: Young, P.J., and Holbrook, Jr., and J. Richard Ernst,* JJ.

PER CURIAM.

Defendant was charged with breaking and entering an occupied dwelling with intent to commit a felonious assault (Count I), MCL 750.110; MSA 28.305, felonious assault (Count II), MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony (Count III), MCL 750.227b; MSA 28.424(2). In exchange for the dismissal of Count III, defendant pleaded guilty of Counts I and II, and was sentenced in December 1992 to serve five years probation, with the first year to be served in jail (with work release). In April 1994, a petition and bench warrant were issued alleging four separate violations of the conditions of probation. On August 11, 1994, the court continued defendant's probation, but ordered him to enter and successfully complete the Tri Cap Residential Program. Less than one month later, another petition and bench warrant was issued alleging that defendant had left the residential program without authorization. On January 11, 1995, defendant pleaded guilty of violating probation, and the court revoked probation and sentenced him to serve concurrent prison terms of six to fifteen years on Count I and two to four years on Count II. He appeals as of right, challenging the proportionality of his sentence under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We affirm.

When a probationer pleads guilty of violating a condition of probation, it is within the discretion of the sentencing court to revoke probation and impose any lawful sentence for the underlying offense. MCR 6.445(G); *People v Alvarado*, 192 Mich App 718, 722-723; 481 NW2d 822 (1992). Although the sentencing guidelines do not apply to probation violations, they do provide an appropriate

* Circuit judge, sitting on the Court of Appeals by assignment.

starting point for determining whether a sentence is proportionate. *People v Cotton*, 209 Mich App 82, 83-84; 530 NW2d 495 (1995). Here, defendant's six-year minimum sentence was within the original guidelines recommendation of 24 to 72 months for the underlying offense of breaking and entering, and therefore is presumed to be proportionate to the offender and the offense. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987). In light of defendant's repeated violations of probation, which indicate an unwillingness to conform his actions to the law or to accept responsibility for those actions, we find no abuse of discretion by the trial court in imposing a substantial prison sentence. Moreover, the trial court's statement on the record constituted an adequate articulation of its reasons for imposing sentence.

Finally, assuming that defendant was in fact awarded good time credit by the sheriff under MCL 51.282(2); MSA 5.883(2)(2), defendant would be entitled to additional credit against his sentence. *People v Resler*, 210 Mich App 24; 532 NW2d 907 (1995). We therefore remand to the trial court for a determination whether such good time credit was in fact awarded, and, if so, for a recalculation of defendant's sentence credit and any necessary amendment of the judgment of sentence.

Affirmed, but remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Robert A. Young

/s/ Donald E. Holbrook, Jr.

/s/ J. Richard Ernst