

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

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PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED  
April 19, 1996

Plaintiff-Appellee,

v

No. 184309  
LC No. 93-64803-FH

JOHN LEE MARSHALL,

Defendant-Appellant.

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

PER CURIAM.

Defendant pleaded guilty of larceny by conversion over \$100, MCL 750.362; MSA 28.594, and was sentenced to serve two years on conditional probation. Approximately six months after being placed on probation, a petition and bench warrant were issued alleging that defendant had violated a condition of probation by assaulting his former girlfriend. Defendant thereafter pleaded guilty of probation violation, and the trial court revoked probation and sentenced defendant on the underlying larceny offense to serve two to five years in prison. He appeals as of right.

Defendant argues on appeal that the trial court improperly considered unsubstantiated allegations in sentencing defendant on his probation violation. We disagree. The basis for defendant's plea to the probation violation charge was his subsequent conviction of a criminal offense, i.e., a conviction by a jury of aggravated assault against his former girlfriend. Defendant was sentenced for the assault conviction and the probation violation simultaneously. At the hearing, the trial court articulated its reasons for each sentence separately, stating:

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

Mr. Marshall, I've reviewed both of the [presentence] reports. Of course, I'm familiar with the case because the [assault] trial was just a few weeks ago. There are no guidelines in the aggravated assault. The purpose of my sentence is to punish you for your crime, to bring about your rehabilitation, to deter others from committing that type of offense. I consider this to be a real serious offense. You could have made an assault with not anywhere near quite so serious an injury. This is a real serious injury that there's going to be lifelong consequences for this victim. I consider it to be a very serious aggravated assault.

Now, on the probation violation there aren't any guidelines actually for the probation violation. The underlying offense had guidelines of 0 to 12 months. I've considered those. When I look at a probation violation, I look at when you were placed on probation and how soon after this offense occurred, and this occurred not that long after you were placed on probation and I look at the seriousness of the violation. It can be a violation of not paying your fines and costs. When we have a violation of violating criminal laws, one of them can be some traffic law. This isn't like you murdered someone, but it's also not a minor traffic offense.

Contrary to defendant's claim, it was proper for the trial court to consider the nature and severity of defendant's violation of a condition of probation in fashioning a proportionate sentence. See *People v Peters*, 191 Mich App 159, 167; 477 NW2d 479 (1991). Accordingly, defendant has not established entitlement to remand for resentencing.

We further conclude that defendant's two- to five-year prison sentence is proportional to the offender and the offense. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Finally, defendant argues that he was entitled to additional jail credit against his sentence on the probation violation. We agree.

The jail credit statute, MCL 769.11b; MSA 28.1083(2), provides:

Whenever any person is hereafter convicted of any crime within this state and has served any time in jail prior to sentencing because of being denied or unable to furnish bond for the offense of which he is convicted, the trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing.

Section 11b has been interpreted by this Court as granting jail credit for "preparole-violation-conviction imprisonment" where the substantive offense and the parole violation are "inextricably related." *People v Tilliard*, 98 Mich App 17, 21; 296 NW2d 180 (1980).

According to the lower court record, defendant committed the aggravated assault offense on November 12, 1993, and was arrested on a petition and bench warrant alleging probation violation on November 21, 1993. He was released from jail on bond the next day, but when he failed to appear for a scheduled probation violation hearing, his bond was revoked and he was surrendered to the Jackson County Sheriff's Department by his surety on December 24, 1993. He remained in jail until August 22, 1994, when he was again released on bond. Thereafter, defendant was convicted by a jury of aggravated assault and subsequently pleaded guilty in this matter of violating probation. On February 22, 1995, the trial court sentenced defendant to serve 365 days in jail, with credit for 246 days already served, on the assault conviction, and two to five years in prison, with no credit for time served, on the probation violation. Because the two offenses were inextricably related, and the sentences were to be served concurrently, defendant was entitled to sentence credit of 246 days against both sentences. See *People v Chattaway*, 18 Mich App 538, 543; 171 NW2d 801 (1969). We exercise our authority under MCR 7.216(A)(1) and amend defendant's judgment of sentence accordingly.

Affirmed, as modified.

/s/ Robert A. Young

/s/ Donald E. Holbrook, Jr.

/s/ J. Richard Ernst