

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES HOWARD BROOKS,

Defendant-Appellant.

UNPUBLISHED

September 24, 1996

No. 181111

LC No. 92-001034-FH

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

Defendant pleaded guilty to violating probation imposed on his underlying conviction of larceny from a person, MCL 750.357; MSA 28.589, and was sentenced to five to ten years' imprisonment. He appeals as of right. We reverse and remand. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant argues that, in revoking his probation, the trial court improperly considered conduct that was not charged in the probation violation petition, to wit: a June 7, 1994, incident for reckless driving and a September 2, 1994, incident with an undercover police officer. We agree that the charged and admitted violations in this case were so blended with the uncharged conduct that it is impossible to ascertain the basis of the trial court's decision in revoking defendant's probation. Conduct which is not charged in a petition for probation violation should not be considered in determining whether there has been a violation of probation or in determining whether to revoke probation. *People v Laurent*, 171 Mich App 503, 506; 431 NW2d 202 (1988); *People v Graber*, 128 Mich App 185; 339 NW2d 866 (1983); *People v Banks*, 116 Mich App 446; 323 NW2d 436 (1982); *People v Elbert*, 21 Mich App 677; 176 NW2d 467 (1970). The injection of extra-notice matters into the hearing impermissibly taints the proceedings and another hearing must be held. *People v Acosta*, 65 Mich App 640; 237 NW2d 601 (1975). Hence, we reverse the probation revocation

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

order and remand for another hearing at which the trial court shall not consider the aforementioned incidents because they were not charged in the probation violation petition.

Reversed and remanded for another probation violation hearing in accordance with this opinion. We do not retain jurisdiction.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan