

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANCIS JOHN ALLEN,

Defendant-Appellant.

UNPUBLISHED

January 21, 1997

No. 182387

Isabella Circuit Court

LC No. 94-007005-FH

Before: McDonald, P.J., and Murphy and M. F. Sapala*, JJ.

PER CURIAM.

Pursuant to a plea agreement, defendant pled nolo contendere to second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). The trial court placed defendant on five years' probation with the first year to be served in the Isabella County Jail. The trial court specifically advised defendant that his probation was conditioned upon his good conduct while in jail. Defendant was subsequently convicted for a probation violation for his misconduct in the Isabella County Jail while serving the jail term that was part of the order of probation. He was sentenced to two to fifteen years' imprisonment with the Michigan Department of Corrections. Defendant appeals his probation violation conviction and the resulting sentence. We affirm.

Defendant first argues that the trial court erroneously found that defendant had been informed of the rules of conduct of the Isabella County Jail. He maintains that he was not informed of the rules of the jail and that, therefore, he cannot be held responsible for breaking the condition of this probation that he not break any rules of the jail. We disagree. Defendant admitted to the trial court that he knew that throwing food on the floor was a violation of the jail's rules but he threw food on the floor nonetheless. Additionally, jail personnel testified that inmates at the jail are given an inmate guide which outlines major and minor violations of the jail's rules and that defendant in particular was counseled several times regarding his disruptive conduct. We are not left with a definite and firm conviction that the trial court erroneously found that defendant was made aware of the jail's rules of conduct. *People v Saxton*, 118 Mich App 681; 325 NW2d 795 (1982). The trial court's findings were not clearly

* Recorder's Court judge, sitting on the Court of Appeals by assignment.

erroneous. *In re Bail Bond (People v Kang)*, 209 Mich App 540; 531 NW2d 806 (1995); MCR 2.613(C).

Defendant next argues that the trial court abused its discretion in sentencing defendant to a term of imprisonment exceeding the sentence imposed on defendant pursuant to his plea agreement. We disagree. Defendant's argument is apparently premised on the erroneous assumption that he was sentenced to prison solely for the acts that led to his probation violation conviction rather than the underlying CSC II conviction. To the contrary, a sentence imposed as a result of a probation violation essentially amounts to a revocation of the original probation order and a resentencing on the original offense as "if the probation order had never been made." *People v Jones*, 207 Mich App 253; 523 NW2d 888 (1994). Where defendant fails to argue that his sentence is disproportionate to his underlying CSC II conviction, this issue is abandoned on appeal. *Singerman v Municipal Service Bureau, Inc*, 211 Mich App 678; 536 NW2d 547 (1995). Furthermore, because defendant has already served his minimum sentence, this issue is moot since it would be impossible for this Court to fashion a remedy. *People v Rutherford*, 208 Mich App 198; 526 NW2d 620 (1994).

Affirmed.

/s/ Gary R. McDonald

/s/ William B. Murphy

/s/ Michael F. Sapala