

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

UNPUBLISHED
February 14, 1997

No. 190649

Saginaw Circuit Court
LC No. 94-9830-FH

FONTAINE LAVELL PIERSON,

Defendant-Appellant.

Before: Hood, P.J., and Saad and T.S. Eveland,* JJ.

PER CURIAM.

Defendant, who was placed on probation after entering a plea of guilty to carrying a concealed weapon, MCL 750.227; MSA 28.424, entered a plea of guilty to violating his probation by committing the crimes of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and second-offense habitual offender, MCL 769.10; MSA 28.1082. Defendant's probation was revoked, and he was sentenced to one to five years' imprisonment for the underlying conviction, concurrent with the sentence for the offense which led to the violation. Defendant appeals as of right. We affirm.

Defendant argues that, because his one- to five-year sentence is twice the minimum guidelines range of zero to six months for the underlying offense, it is disproportionate. We disagree. A sentence must be proportional to the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). A sentence within the guidelines recommended range is presumed proportionate. *People v Eberhardt*, 205 Mich App 587, 591; 518 NW2d 511 (1994). The guidelines, however, do not apply to probation violations. *People v Cotton*, 209 Mich App 82, 83-84, 530 NW2d 495 (1995). Although the guidelines are the best barometer by which to measure the proportionality of a sentence, *Milbourn, supra*, the guidelines scoring for the underlying

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

offense should be used only as a starting point when determining a sentence for a probation violation. *Cotton, supra*.

Defendant's one- to five-year sentence, which exceeds the minimum guidelines range by six months, was not an abuse of discretion. In sentencing defendant to a minimum sentence in excess of the guidelines range, the trial court noted that it had carefully reviewed the petition and the case report. The court further indicated that defendant had been given an opportunity, yet had violated seven of the twelve conditions of probation.

Defendant also urges us to find his sentence disproportionate because he had no prior felony convictions and "the subsequent felonies were non violent in nature." We find these arguments devoid of merit. In this case, the weapon in the underlying offense was a loaded 9 millimeter, semi-automatic pistol. Furthermore, defendant had a prior criminal history, consisting of six misdemeanors. Defendant also has a poor employment history, failed to complete high school or an equivalent, and admitted to possessing drugs. Furthermore, defendant's violation of seven of the twelve probation conditions exhibited a total disregard for the law and that he had not learned from his past transgressions. We, therefore, conclude that defendant's sentence is proportionate in light of the circumstances surrounding the offense and the offender.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/Thomas S. Eveland