

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY GADDIS,

Defendant-Appellant.

UNPUBLISHED

March 7, 1997

No. 185263

Genesee Circuit Court

LC No. 90-43859-FH

Before: MacKenzie, P.J., and Holbrook, Jr., and T.P. Pickard,* JJ.

MEMORANDUM.

In July 1992, defendant pleaded guilty of receiving and concealing stolen property valued over \$100, MCL 750.535; MSA 28.803, and was sentenced to serve three years' probation. In October of that year a petition and bench warrant was issued, alleging that defendant had violated probation by failing to report to his probation officer as required and by failing to complete the New Paths OUIL program. Eventually, in October 1994, defendant surrendered on the warrant and pleaded guilty of probation violation. The court extended defendant's probation period through July 31, 1997, and ordered him to complete a rehabilitative program. In February 1995, another petition and bench warrant was issued, alleging that defendant had violated probation by being in possession of cocaine, failing to participate in the electronic surveillance program, and failing to complete the outpatient rehabilitative program as required. Following an evidentiary hearing, defendant was found guilty by the court of three counts of probation violation. The court revoked defendant's probation and sentenced him to serve two to five years in prison. He appeals as of right, challenging the proportionality of his sentence under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We affirm.

A sentence imposed for probation violation must comply with the principle of proportionality announced in *Milbourn, supra*. *People v Leske*, 187 Mich App 153, 158; 466 NW2d 361 (1991). Although the sentencing guidelines do not apply to probation violations, they should be used as a starting point in determining whether such a sentence was disproportionately harsh in light of the offender and the circumstances of the underlying offense as well as the nature and severity of the probation violation.

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

People v Britt, 202 Mich App 714; 509 NW2d 914 (1993); *People v Smith*, 195 Mich App 147, 149; 489 NW2d 135 (1992).

The recommended minimum prison sentence under the guidelines for defendant's underlying offense of receiving and concealing stolen property was zero to nine months. Although defendant was gainfully employed during his probationary period, he repeatedly failed to comply with the conditions of probation. His actions exemplify an unwillingness to conform his actions to the law, a factor that was not accounted for in the original guidelines calculation. Under the circumstances of this offender, the underlying offense, and the repeated violations of probation, we conclude that the trial court did not abuse its discretion in imposing a prison sentence of two to five years.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Donald E. Holbrook, Jr.

/s/ Timothy P. Pickard