

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARY EARL HAMINGER,

Defendant-Appellant.

UNPUBLISHED

March 7, 1997

No. 187937

Ottawa Circuit

LC Nos. 93-017384-FH;

93-017385-FH

Before: Michael J. Kelly, P.J., and Smolenski and W.J. Giovan,* JJ.

MEMORANDUM.

Defendant pleaded guilty to violating probation on his underlying convictions of larceny from a person, MCL 750.357; MSA 38.589, and operating a vehicle under the influence of liquor, third offense, MCL 257.625(6)(d); MSA 9.2325(6)(d). For those respective convictions, he was sentenced to three to ten years' imprisonment and three to five years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

We first note that, in a order issued April 3, 1996, this Court denied defendant's motion to remand for clarification by the trial court regarding its consideration of information in the presentence report that was allegedly challenged by defendant. Therefore, defendant's first issue on appeal has already been decided by this Court and it will not be addressed here.

We disagree with defendant's claim that his sentences are disproportionate to the offenses and the offender. Despite the trial court's numerous efforts in giving defendant probation rather than prison or jail time, putting defendant into alcohol treatment programs, confining defendant to jail for a period of six months, and revoking his driver's license, defendant violated probation several times, beginning just a year after he was initially sentenced on the underlying offenses. Defendant has been given numerous opportunities for rehabilitation but has failed, as he readily admits. The trial court appropriately focused on defendant's prior record and the need to protect society. Defendant obviously has a dangerous

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

propensity to drink and drive, and a clear message that such behavior is not to be tolerated was warranted in this case. The trial court did not abuse its discretion in sentencing defendant to the terms imposed. See *People v Reynolds*, 195 Mich App 182, 184-185; 489 NW2d 138 (1992). The sentences are proportionate to the circumstances surrounding the underlying offenses, the probation violations, and the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Michael J. Kelly

/s/ Michael R. Smolenski

/s/ William J. Giovan