

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCELLUS MARTIN KOGER,

Defendant-Appellant.

UNPUBLISHED

March 28, 1997

No. 189566

Genesee Circuit Court

LC No. 93-048761-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty to felonious assault, MCL 750.82; MSA 28.277, and was initially sentenced to four years' probation. After violating his probation by stalking his former girlfriend, defendant was sentenced to two to four years' imprisonment. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant's sentence does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Felonious assault is a felony punishable by a maximum of four years in prison. MCL 750.82; MSA 28.277. Although the sentencing guidelines do not apply to probation violations, the guidelines' range of zero to twelve months for the underlying offense may be used as a starting point for determining whether the sentence imposed is appropriate. *People v Cotton*, 209 Mich App 82, 83-84; 530 NW2d 495 (1995). The trial court noted at sentencing that defendant committed an assaultive offense and would have been incarcerated had it not been for the victim's request for leniency. Although defendant was put on probation, he continued to engage in assaultive

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

behavior. The court also noted that defendant was referred to a mental health facility to no avail. The court found that a more punitive approach than probation should be used, and that a prison term was appropriate because the county jail was unable to address defendant's mental health needs. The trial court could properly have considered that defendant was originally charged with assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, a felony punishable by a maximum of ten years in prison. See *People v Duprey*, 186 Mich App 313, 318; 463 NW2d 240 (1990).

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar