

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KATINA LAJUAN MCKINNEY,

Defendant-Appellant.

UNPUBLISHED

April 15, 1997

No. 192426

Kent Circuit Court

LC No. 95-442-FH

Before: Taylor, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Defendant was charged with embezzlement over \$100. Pursuant to a plea agreement, defendant pleaded guilty to attempted embezzlement over \$100, MCL 750.174; MSA 28.371. Defendant was sentenced to thirty months' probation. She appeals as of right. We affirm.

In November 1994, defendant was employed by Witmark retail store in Grand Rapids as a cashier. Defendant misappropriated money from the store. In one instance, an individual whom defendant met at a party came through defendant's lane and defendant requested that this individual keep some money until she could retrieve it.

Defendant ultimately was sentenced to thirty months' probation. She was also fined various fines, costs and restitution and ordered to perform 120 hours of community service. Among the other standard conditions of probation, defendant was required under term forty-four of the probation order to "give a full and complete report to the investigating detective concerning the identity of [her accomplice]," and that she give truthful testimony in a subsequent proceeding regarding her accomplice.

Defendant first argues that term forty-four of the probation order violates her Fifth Amendment right against self-incrimination because she will conceivably be questioned beyond the scope of the embezzlement scheme and because the term is not rationally related to her rehabilitation. We disagree. Probation is within the province of the sentencing judge and appellate courts will not interfere absent a showing of a violation or abuse of statutory authority or a violation of some constitutional right. *People v Brown*, 220 Mich App 680, 682-683; ___ NW2d ___ (1996); *People v Lemon*, 80 Mich App 737, 742; 265 NW2d 31 (1978).

The privilege against self-incrimination provides that “[n]o person shall be compelled in any criminal case to be a witness against [herself]. . . .” Const 1963, art 1, § 17. In this case, however, defendant is not being compelled to be a witness against herself. Rather, term forty-four requires that she provide information and truthful testimony regarding her accomplice. Furthermore, “a witness who discloses a criminal transaction on [her] part without invoking [her] privilege against self-incrimination, waives the privilege with respect to the details and particulars of the fact or transaction disclosed.” *People v Hoffa*, 318 Mich 656, 668; 29 NW2d 292 (1947). Here, defendant has already confessed to her involvement in the incident involving the accomplice without invoking her privilege against self-incrimination and pleaded guilty to attempted embezzlement. She, therefore, has waived the privilege with respect to additional information concerning the accomplice. If, as defendant fears, the investigating detective or prosecutor attempts to question her beyond the scope of the incident involving her accomplice, then she may be able to successfully assert her Fifth Amendment privilege against self-incrimination. In addition, there is ample authority to support the proposition that the privilege against self-incrimination is waived by an individual asked to testify regarding a crime to which a conviction or guilty plea relates. See 9 ALR3d 990.

Moreover, a waiver of one’s constitutional protections may properly be made a condition of a probation order where the waiver is reasonably tailored to a defendant’s rehabilitation. See *People v Hellenthal*, 186 Mich App 484, 486; 465 NW2d 329 (1990). Here, we find that term forty-four is reasonably tailored to defendant’s rehabilitation because it enables the punishment of those involved in the incident. We therefore conclude that defendant’s privilege against self-incrimination was not violated.

Defendant further argues that term forty-four is ambiguous. We disagree. Defendant correctly asserts that a probationary order must be definite and certain in its provisions so that the probationer clearly understands what he or she is required to do in order to comply with it. *People v Sutton*, 322 Mich 104, 109-111; 33 NW2d 681 (1948). Defendant, however, has failed to specify why term forty-four is ambiguous or offer any reasonable alternate interpretations. A party may not merely announce her position and leave it to us to discover and rationalize the basis for the claim. *Goolsby v Detroit*, 419 Mich 651, 655, n 1; 358 NW2d 856 (1984); *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992). In any event, the clear meaning and intent of term forty-four is that defendant assist the investigating detective in ascertaining the identity of her accomplice, and that she testify truthfully regarding the accomplice in any subsequent proceeding. In the event that there is a probation violation hearing, defendant will be able to explain to the court why she is unable to provide the desired information. We therefore conclude that term forty-four is not ambiguous.

Affirmed.

/s/ Clifford W. Taylof

/s/ Harold Hood

/s/ Roman S. Gribbs

