

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 188684

Monroe Circuit Court

CHRISTOPHER LANE BATES,

LC No. 92-024741-FH

Defendant-Appellant.

Before: Taylor, P.J., and Griffin and Saad, JJ.

GRIFFIN, J. (concurring).

I concur in the result of the opinion by Judge Saad. The lower court is therefore affirmed. In my view, MCR 6.445(G) clearly authorizes the sentencing court to consider *all* information contained in an updated presentence report in sentencing a defendant for a probation violation.

Defendant pleaded guilty to failing to report to his probation officer and, hence, violating his probation for his underlying conviction of breaking and entering an unoccupied building, MCL 750.110; MSA 28.305. The trial court accepted defendant's plea, but delayed sentencing for six months "to allow Probationer the opportunity to demonstrate his ability to comply with the conditions of probation." Subsequently, the trial court sentenced defendant to three to ten years' imprisonment. In deciding to impose a prison sentence, the trial court considered information contained in an updated presentence report that defendant was charged with committing several crimes while on probation. The Honorable William F. Lavoy refused to "close [his] eyes" to this misconduct, although it was not the basis for defendant's probation violation guilty plea:

Unfortunately you [defendant] don't respond well to probation, there were the new violations. Mr. Golden eloquently says but he wasn't charged with them, that is true, but nevertheless, I think I cannot close my eyes to those and I must consider them under the *Melbourn* [sic] case sir.

Defendant contends that the trial court erroneously considered, for purposes of sentencing, information unrelated to defendant's probation violation. I disagree. MCR 6.445(G) provides:

If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, the court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of incarceration. *The court may not sentence the probationer to prison without having considered a current presentence report and having complied with the provisions set forth in MCR 6.425(B), (D)(2), and (D)(3).* [Emphasis added.]

Because the sentencing court must consider a current presentence report, all facts contained in the updated presentence report should be assessed by the court before sentencing a defendant to prison for a probation violation. The earlier cases that limited sentencing information to evidence regarding the probation violation itself, see, e.g., *People v Graber*, 128 Mich App 185, 193; 339 NW2d 866 (1983), are inconsistent with the court rule and, therefore, should not be followed.

In addition, our policy of individualized sentencing can be achieved only if the sentencing court has comprehensive information as to both the offense and the offender. As the Supreme Court stated in *People v Coles*, 417 Mich 523, 537; 339 NW2d 440 (1983):

. . . the policy of this state favors individualized sentencing for every convicted defendant. The sentence must be tailored to fit the particular circumstances of the case and the defendant. *People v McFarlin*, 389 Mich 557, 574; 208 NW2d 504 (1973). As we stated recently in *People v Pulley*, 411 Mich 523, 529-530; 309 NW2d 170 (1981):

“To so tailor the sentence, the judge must gather complete and detailed information about the offender. The judge must assess the reliability of the information received, assure that it is reasonably up-to-date, determine its competency as a sentencing consideration, and resolve challenges to its accuracy.”

In accordance with the court rule and our policy of individualized sentencing, the sentencing judge in the present case properly considered the unchallenged information in the presentence report regarding criminal charges filed against defendant while on probation. For this reason, I concur in affirming the lower court.

/s/ Richard Allen Griffin