

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH MORENO,

Defendant-Appellant.

UNPUBLISHED
October 10, 1997

No. 191964
Oakland Circuit Court
LC No. 94-133484 FH

Before: Doctoroff, P.J., and Cavanagh and Saad, J.J.

MEMORANDUM.

Defendant pleaded nolo contendere to second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), and received a sentence of five years probation, despite defendant's status as a second offender, MCL 769.10; MSA 28.1082. Defendant subsequently pleaded guilty to violating the terms of his probation by cutting an electronic tether from his leg and received an enhanced sentence of 4 to 22-1/2 years imprisonment. Defendant appeals as of right. We affirm.

Defendant's claim notwithstanding, our review of the record reveals that the trial court expressly found that defendant's action violated the terms of defendant's probation. The court's finding was supported by defendant's admissions on the record. *People v Ison*, 132 Mich App 61, 66; 346 NW2d 894 (1984). Moreover, the trial court did not abuse its discretion when it revoked defendant's probation in light of defendant's admission that he cut the tether from his leg in "disgust" after learning that his case was being referred back to the Oakland Circuit Court after reports of defendant's tampering with the monitoring equipment. MCR 6.445(G); *People v Laurent*, 171 Mich App 503; 431 NW2d 202 (1988).

The trial court did not err when it considered the contents of the presentence investigation report or the case report when fashioning an appropriate judicial response to defendant's conduct. The trial court is at liberty to consider defendant's actions and the severity of the probation violation in arriving at the proper sentence to be given. *People v Peters*, 191 Mich App 159, 167; 477 NW2d 479 (1991).

The trial court did not abuse its sentencing discretion when it imposed a four-year minimum sentence, in light of defendant's criminal history, the circumstances surrounding the probation violation and the underlying offense, and defendant's failure to take advantage of the rehabilitative opportunity offered him by his sentence of probation. *People v Hansford (After Remand)*, 454 Mich 320; 562 NW2d 460 (1997); *People v Parrish*, 216 Mich App 178, 185; 549 NW2d 32 (1996); *People v Kreger*, 214 Mich App 549, 554 NW2d 55 (1995).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Mark J. Cavanagh

/s/ Henry W. Saad