

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SALVATORE PAUL MESSINA,

Defendant-Appellant.

UNPUBLISHED

February 17, 1998

No. 198415

Macomb Circuit Court

LC No. 93-002577 FH

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals by right his adjudication of probation violation and resulting sentence of three to fifteen years' imprisonment, based on an underlying conviction for breaking and entering an occupied dwelling, MCL 750.110; MSA 28.305. We affirm.

After initially being placed on probation, defendant was adjudicated a probation violator, and sentenced to participate in the alternative incarceration (bootcamp) program, MCL 771.3a; MSA 28.1133(1), with a requirement that, subsequently, he be subjected to electronic monitoring (tether) for six months. Electronic monitoring is a permissible probationary condition, MCL 771.3(2)(l), MSA 28.1133(2)(12). After completing the bootcamp program, defendant was charged with being a probation violator by virtue of perpetrating a misdemeanor. A hearing on that charge was postponed, see *People v Rocha*, 86 Mich App 497, 512-513; 272 NW2d 699 (1978), after remand 99 Mich App 654 (1980), pending resolution of the underlying criminal charge, and defendant was granted bond on the probation violation charge. A condition of the bond was that his electronic monitoring be continued.

Defendant was then charged with a new probation violation for breaching his curfew and attempting to remove the electronic monitor from his leg. At a hearing on these new charges, defendant admitted that he had attempted to remove the electronic monitor and then glued it back together to conceal his actions. He contends here that because the electronic monitor was merely a condition of his bond and not of his probation, he could not be adjudicated a probation violator for this transgression.

This argument is without merit in light of the fact that the removal or attempted removal of the electronic tether was a misdemeanor because it was a violation of defendant's bail conditions. MCL 750.197a; MSA 28.394(1); *Smith, Sturgeon & Co v Grosslight*, 123 Mich 87, 91-93; 81 NW 975 (1900). As the cited statute makes violation of bail conditions a misdemeanor, defendant thereby violated a criminal law of the state, and thus breached his statutory probationary conditions, MCL 771.3(1)(a); MSA 28.1133(1)(a); *In re Rudnik*, 333 Mich 216, 218; 52 NW2d 671 (1952), without respect to whether the electronic monitor was a condition of his probation at the time. Accordingly, the trial court properly adjudicated defendant a probation violator on this basis.

Defendant's further contention is that his three to fifteen year sentence is disproportionate to the offense and the offender. Defendant's argument is predicated on the sentence guidelines as calculated for the underlying offense at the original sentencing proceeding. Those guidelines are, however, irrelevant after a probation violation determination, and defendant's sentence is simply reviewed for abuse of the trial court's sentencing discretion. *People v Williams*, 223 Mich App 409, 412-415; 566 NW2d 649 (1997). No abuse of that discretion has been demonstrated on this record.

Affirmed.

/s/ Jane E. Markey

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski