

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW ALLEN SCHULTZ,

Defendant-Appellant.

UNPUBLISHED

February 20, 1998

No. 195834

St. Clair Circuit Court

LC No. 94-001595 FH

Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison*, JJ.

MEMORANDUM.

On plea of guilty, defendant was convicted of the former offenses of breaking and entering an occupied dwelling with intent to commit larceny, MCL 750.110; MSA 28.305 and conspiracy to burglarize an occupied dwelling, MCL 750.157a; MSA 28.354(1). In exchange for defendant's plea, an additional charge of arson of a dwelling house, MCL 750.72; MSA 28.267, was dismissed. Defendant was initially placed on probation, but then charged with violating his probation by virtue of various criminal offenses, including use of marijuana, reckless driving, and malicious destruction of property, in addition to the technical violation of failing to pay for the oversight expenses involved in his placement on the electronic tether program. Defendant pled guilty to the probation violation charge and was sentenced to five to fifteen years' imprisonment. We affirm.

On this appeal of right, defendant contends that his sentence is disproportionate to the offense and the offender, and that the trial court erred in accepting defendant's guilty plea when defendant was not represented by counsel.

As a probation violator, defendant's sentence is subject to review only for abuse of the trial court's sentencing discretion. *People v Williams*, 223 Mich App 409; 566 NW2d 649 (1997). In light of the seriousness of the underlying crimes, the benefits of the plea bargain, and defendant's behavior while on probation, no abuse of that discretion has been demonstrated on this record.

* Circuit judge, sitting on the Court of Appeals by assignment.

Prior to accepting defendant's plea of guilty to probation violation, the court advised him of his right to counsel, and that if he could not afford to retain counsel he was entitled to have counsel appointed at public expense. It should be noted that, although defendant was a juvenile when the underlying offense was committed, he was not inexperienced in dealing with the criminal justice system, since he was on active probation when the crime was perpetrated, and was represented by counsel during the initial phases of the prosecution. Since defendant was pleading guilty to probation violation, it would not have been logical to advise him, as he urges, of the dangers and disadvantages of self-representation, the advice concerning which relates to the disadvantages a lay defendant faces in a trial against a lawyer adversary. *People v Anderson*, 398 Mich 361; 247 NW2d 857 (1976). Defendant's waiver of his right to counsel was informed and valid, *People v Gonzales*, 179 Mich App 477, 481-482; 446 NW2d 296 (1989), and the trial court's acceptance thereof satisfies this Court that its finding that the waiver of counsel was free, voluntary, and understanding is not clearly erroneous. *Guilty Plea Cases*, 395 Mich 96, 126; 235 NW2d 132 (1975).

Affirmed.

/s/ Michael J. Kelly

/s/ E. Thomas Fitzgerald

/s/ Michael G. Harrison