

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDY SCOTT WILSON,

Defendant-Appellant.

UNPUBLISHED

March 10, 1998

No. 195559

Osceola Circuit Court

LC No. 92-001893-FH

Before: MacKenzie, P.J., and Holbrook, Jr. and Saad, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction after a bench trial, for violating his probation. MCL 771.4; MSA 28.1134. The trial court sentenced defendant to four- to fifteen- years' imprisonment; we affirm.

I

Defendant contends that the amended petition alleging violations of his probation failed to provide him adequate notice of the charges he faced. We disagree. Probationary hearings are not entitled to the same level of due process as regular criminal proceedings and need only be conducted in a fundamentally fair manner. *Gagnon v Scarpelli*, 411 US 778; 93 S Ct 1756; 36 L Ed 2d 656 (1973); *People v Ritter*, 186 Mich App 701, 706; 464 NW2d 919 (1991). Defendant was served with the original petition the day before his arraignment and he was subsequently arraigned on the same petition. At his probation violation hearing five days later, defendant was served with an amended petition. The two petitions were identical, except for the omission of one count in the amended petition which had been listed in the original petition, (and which is not at issue here). Moreover, the trial court read and explained the charges to defendant at his arraignment, defendant said that he understood the charges, and defendant's attorney was faxed a copy of the original petition five days before the probation violation hearing. At defendant's probation violation hearing, the trial court specifically stated that the hearing addressed the last four counts listed in the original petition. Defendant was therefore afforded sufficient notice of the pending charges.

II

Defendant also claims that the trial court improperly revoked his probation based on information not charged in the original and amended petitions.¹ This argument has no merit. Hearings for probation violations are bifurcated into two parts. Initially, the trial court makes the “factual determination that a defendant is in fact guilty of violating probation,” and if found guilty, then the court makes the “discretionary determination of whether the violation warrants revocation.” *People v Laurent*, 171 Mich App 503, 505; 431 NW2d 202 (1988). Uncharged conduct should not be considered when a trial court is determining whether to revoke one’s probation. *Id.*

Here, according to the original order of probation, defendant’s probation could be revoked if he committed *any* violation of *any* criminal law.² The purpose of the requirement that defendant be apprised of the allegations of misconduct in a notice of probation violation is to afford a defendant an opportunity to prepare a defense against them, and the notice need not be as specific as an indictment or information. *People v Hunter*, 106 Mich App 821, 826; 308 NW2d 694 (1981). There was evidence presented at the probation violation hearing that, while on probation, defendant had operated a motor vehicle while impaired and that he had been arrested. The trial court specified the grounds for which defendant’s probation was being revoked and stated that it did not consider evidence of an uncounseled misdemeanor. Additionally, the trial court’s finding that defendant failed to report his arrest to his probation officer was supported by testimony given at the probation revocation hearing. We see no error.

III

Lastly, defendant claims that the four- to fifteen-year sentence imposed by the trial court was disproportionate to the probation violation. Any factors considered by a trial court when it imposes a sentence should be stated on the record with proper consideration given to the severity and nature of the crime and the circumstances surrounding the defendant’s criminal behavior. *People v Hunter*, 176 Mich App 319, 321; 439 NW2d 334 (1989). The trial court properly considered that defendant’s record was replete with encounters with law enforcement and that despite these occurrences, defendant had failed to conform his conduct to the norms of society. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997). Therefore, defendant’s sentence was not disproportionate.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Donald L. Holbrook, Jr.
/s/ Henry William Saad

¹ Specifically, defendant claims that the petition alleged that defendant violated a criminal law based on his *reckless driving*, but the judge found that he violated the law based on *impaired driving*.

² Both the original and the amended petition alleged that defendant had violated rule #1 of his probation (that he not violate any criminal law of any unit of government).