

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SIMON LEE TEMPLAR,

Defendant-Appellant.

UNPUBLISHED

September 18, 1998

No. 200236

Kent Circuit Court

LC No. 94-003169 FH

Before: Whitbeck, P.J., McDonald and T. G. Hicks*, JJ.

MEMORANDUM.

Defendant appeals as of right his September 3, 1996 prison sentence, challenging its proportionality. We affirm.

Defendant pleaded guilty to attempted larceny from a building, MCL 750.360; MSA 28.592, arising out of a planned larceny from his employer. On August 14, 1995, defendant was placed on probation for a period of 24 months. On September 3, 1996, defendant was charged with violation of his probation,¹ to which he pleaded guilty. The trial court accepted the plea, and sentenced defendant to 16 to 24 months' imprisonment.

On appeal, defendant argues that the trial court abused its discretion in entering a disproportionate sentence. We disagree.

Sentences for probation violation should comply with the principle of proportionality announced in *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). *People v Smith*, 195 Mich App 147, 149; 489 NW2d 135 (1992). A sentence is not an abuse of discretion if it is proportionate "to the seriousness of the circumstances surrounding the offense and the offender." *Milbourn, supra*, 636. "The trial court is at liberty to consider defendant's actions and the seriousness and severity of the facts and circumstances surrounding the probation violation in arriving at the proper sentence." *Smith, supra*, 150.

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

The trial court did not abuse its discretion in imposing a 16 to 24 month sentence for attempted larceny of a building. Defendant was given multiple chances to correct his criminal behavior,² but he failed to comply with the terms of probation. The sentence is proportionate in light of defendant's record, the seriousness of the underlying offense, and the circumstances surrounding his violation of probation.

Affirmed.

/s/ William C. Whitbeck

/s/ Gary R. McDonald

/s/ Timothy G. Hicks

¹ We are aware of two independently sufficient violations of defendant's probation: an embezzlement charge and a series of violations of the terms of his probation regarding change of address, employment involving monetary responsibilities, and payments to the crime/victim's rights assessment and assessment of court costs. Having considered both violations, we find either to be grounds to find that defendant violated his probation.

² Defendant was already on parole from a 3-14 year prison sentence for a prior uttering and publishing conviction.