

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID HARDY,

Defendant-Appellant.

UNPUBLISHED

September 21, 1999

No. 205411

Recorder's Court

LC No. 95-012015

Before: Saad, P.J., and Kelly and Bandstra, JJ.

PER CURIAM.

On October 26, 1995, the court convicted defendant of arson - real property (an abandoned home), MCL 750.73; MSA 28.268, and sentenced him to five years' probation. A condition of defendant's probation was that he avail himself to a halfway house. Defendant appeals as of right from his guilty plea to a violation of this probation entered with the trial court at a hearing on the petition and bench warrant. Defendant was sentenced to five to ten years in prison. We reverse.

I

Defendant argues that the trial court failed to comply with the mandates of MCR 6.445(F)(4), and consequently, that there was insufficient factual support for the court's acceptance of defendant's guilty plea. We agree.

In Michigan, probation revocation proceedings are governed by MCR 6.445 and primarily consist of two phases. First, a factual determination of guilt is made. Next, if defendant is guilty, a discretionary determination is made as to whether probation should be revoked. *People v Laurent*, 171 Mich App 503; 431 NW2d 202 (1988). MCR 6.445(F)(4) provides, in pertinent part:

. . . Before accepting a guilty plea, the court, speaking directly to the probationer and receiving the probationer's response, must

* * *

(4) establish factual support for a finding that the probationer is guilty of the alleged violation.

Defendant contends that the trial court failed to establish factual support for the probation violation. We agree.

This Court has not directly addressed the quantum or nature of support necessary for a finding of guilt, pursuant to a guilty plea in a probation violation context. *People v Hall*, 138 Mich App 86, 90; 359 NW2d 259 (1984). However, the facts on the record here clearly fall short of the level required to establish a violation. On the critical issue of whether defendant went to the halfway house, the trial court was satisfied with defendant's isolated statement, "I went there, but I left" and asked no further questions about defendant's contact with the halfway house. This record is devoid of a factual basis establishing defendant's commitment to and criminally responsible departure from the halfway house.

The background of this case evinces a defendant of marginal competence and distressing circumstances. Defendant is a homeless individual who was convicted of arson after he set fire to an abandoned building, apparently to keep warm on a frigid day. The trial court sentenced him to five years' probation, including a sloppy requirement to "avail" himself to a halfway house. After showing up at and leaving the unspecified halfway house, defendant was arrested on other charges related or not to the circumstances of this record. Defendant pleaded guilty to probation violation.

Given the manner in which this case has been handled, we cannot conclude that the trial court adequately complied with MCR 6.445(F)(4). The April 12, 1996 order of probation indicates a five year sentence of probation for defendant. However, it also indicates an unspecified term of community service in lieu of court costs. Additionally, the order remanded defendant to the Wayne County Jail until the probation department could find a halfway house for him. No time period is fixed for the jail term or the halfway house term. The record is devoid of any indication as to when and where defendant was to report after his release from jail, or how long he was required to stay.¹

Because of the uncertainty of the original sentence, defendant's isolated statement "I went there, but I left" does not provide adequate factual support for a finding of probation violation. Due to the incomplete nature of the order of probation and lack of certainty of the probation violation charge, we find that defendant has been denied due process. All that we can discern from the probation order is that defendant was to avail himself to a halfway house. On this record it appears defendant did present himself at the facility. What transpired between his arrival and departure is a mystery to this Court. Given these limited facts, the record does not supply or support any factual basis for the plea.

Reversed.

/s/ Henry William Saad
/s/ Michael J. Kelly
/s/ Richard A. Bandstra

¹ Furthermore, it is questionable whether the trial court properly imposed the halfway house condition. Defendant's probation officer unsuccessfully petitioned for deletion of the halfway house requirement on the ground that convicted arsonists are ineligible for halfway house placement. The trial court denied this petition.