

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY GEORGE BOLLMAN,

Defendant-Appellant.

UNPUBLISHED

March 7, 2000

No. 216853

Berrien Circuit Court

LC No. 97-401399-FH

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant was convicted by jury of two counts of second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3). The trial court sentenced him to five years' probation, of which the first 270 days were ordered spent in jail. Defendant subsequently was charged with violating his probation. After a hearing, the trial court found defendant guilty of violating his probation, revoked his probation, and sentenced him to thirty months to fifteen years' imprisonment. Defendant appeals as of right from the trial court's order revoking his probation and imposing imprisonment. We affirm.

Defendant's sole claim on appeal is that the trial court erred, violating defendant's fifth amendment right against self incrimination, when it revoked defendant's probation for failing to admit in court-ordered counseling sessions that he had committed the offenses for which he stood convicted while the appeal of his conviction was pending.

In Michigan, probation is granted as a matter of grace as an alternative to confining a defendant in jail or prison. MCL 771.4; MSA 28.1134; *People v McKeown*, 228 Mich App 542, 545; 579 NW2d 122 (1998); *People v Peters*, 191 Mich App 159, 163; 477 NW2d 479 (1991). No vested right to the continuance of probation exists, and it may be revoked. *Peters, supra*; MCL 771.4; MSA 28.1134. The court may determine the duration and conditions of probation, *Peters, supra*; MCL 771.2; MSA 28.1132, but the conditions must be lawfully and logically related to the defendant's rehabilitation, *People v Houston*, 237 Mich App 707, 719; 604 NW2d 706 (1999); MCL 771.3(2); MSA 28.1133(2).

Here, a condition of defendant's probation was that he "[p]articipate in and cooperate fully in a program of mental health counseling as directed by the Probation Officer until discharged by the

Program and the Probation Officer.” In order to meaningfully participate and to successfully complete counseling, defendant needed to discuss his involvement in the illegal conduct and to acknowledge the wrongfulness of his actions. Without such, rehabilitation is not feasible.

At the probation violation hearing, defendant’s counselor testified that defendant would sit quietly and listen during the group counseling sessions, but when asked to indicate what crime he was guilty of committing, defendant would not take responsibility for his crime. According to the counselor, defendant would admit that he was convicted of a sex crime, but qualify that response by saying that he was not guilty. This scenario occurred “at least eight times.” Further, the counselor testified that he had private conversations with defendant in which defendant continued to deny responsibility. According to the counselor, defendant’s denial was based on his assertion that he did not commit the crimes for which he was convicted and because an appeal of his underlying convictions was pending.

Because defendant proclaimed his innocence, he did not and could not comply with the counseling program, which required defendant to admit responsibility for the crimes for which he was convicted. Defendant’s not participating in counseling has nothing to do with defendant’s assertion of his fifth amendment right, but with his repeated statements that he was not guilty. By failing to participate in and cooperate fully in the program and consequently being terminated from the program, defendant did not comply with the terms of his probation. This record is sufficient to support the trial court’s ruling that defendant violated probation, and thus support the trial court’s revocation of his probation. We find that the trial court’s determination that defendant violated probation was not error. Although the trial court determined that defendant had violated probation on a different basis,¹ this Court does not reverse where the trial court reaches the right result for a wrong reason. *People v Ramsdell*, 230 Mich App 386, 406; 585 NW2d 1 (1998).

On appeal, defendant claims that he was asserting a fifth amendment privilege against self incrimination. Although the record supports that he may have asserted that right at times, the record as a whole reveals that for the most part he maintained his innocence in conjunction with this assertion. We do not find defendant’s fifth amendment claim controlling here where his proclamation of innocence was sufficient to support a probation violation. Therefore, we do not reach defendant’s fifth amendment claim.²

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

¹ The trial court revoked defendant’s probation and sentenced him to imprisonment because defendant failed to waive his fifth amendment right, and thus the trial court, relying on *People v Hellenthal*, 186 Mich App 484; 465 NW2d 329 (1990), concluded that defendant violated a condition of his probation.

² We note that had defendant simply asserted his fifth amendment right at the counseling sessions, without repeatedly proclaiming his innocence, our analysis would be different. Because that factual situation is not before us, we make no determination at this time regarding such a situation.