

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANKLIN HENRY ROPER,

Defendant-Appellant.

UNPUBLISHED
December 3, 2002

No. 232893
Ingham Circuit Court
LC No. 99-075097-FH

Before: Whitbeck, C.J., and Sawyer and Saad, JJ.

PER CURIAM.

Defendant Franklin Henry Roper appeals as of right his probation violation conviction, for which the trial court sentenced him to 30 to 120 months in prison. We affirm.

I. Basic Facts And Procedural History

The parties do not dispute the underlying facts. Roper was convicted of assault with intent to commit unarmed robbery in the parking lot of Sparrow Hospital, in Lansing. In short, he tried to grab the victim's purse and hit her in the head with a large beer bottle, but was unsuccessful in the robbery attempt. The victim was not harmed. The trial court sentenced Roper to thirty-six months' probation, including six months in jail. The probation order required Roper to abide by a variety of conditions. An amendment of the order required Roper to attend the Alternative Directions Program. After he was "terminated" from that program, he pleaded guilty of a probation violation in June 2000. The trial court then sentenced him to sixty days on tether. Roper did not comply with the tether conditions. He pleaded guilty to absconding in July 2000. The trial court then sentenced him to complete another rehabilitation program in Waterford, comply with aftercare, abstain from alcohol, and to be tested at the probation agent's discretion.

Roper's probation agent was called to his home the day after he was sentenced for absconding. A test revealed that he had been drinking in violation of his probation. He was then sentenced to thirty days in jail in August 2000, after which he would have to attend a new rehabilitation program, called CPI or Community Placement. However, the order committing him to jail also included an erroneous statement that he was entitled to thirty days' credit. Thus, the jail released Roper on August 9, 2000. Two days later, Roper contacted his probation agent. The probation agent, on instructions from the trial court, which entered an amended judgment of sentence, told Roper to report to jail no later than 7:00 p.m. that day. Roper said he had a ride

and would report as instructed, but he did not do so. On August 16, 2000, while Roper was supposed to be in jail, the trial court amended the probation order to require Roper to “[e]nter and successfully complete the Community Programs Inc. in Waterford, MI with applicable aftercare at Total Health Education. No alcohol with testing at agent’s discretion. Probation continued.”

Roper actually attended an inpatient substance abuse at the Battle Creek VA Hospital between August 21, 2000, and September 22, 2000. When released from that program, he was free until he was arrested on a bench warrant on December 11, 2000. In the probation violation hearing, Roper claimed that he did not think that he had been released from jail in error because he had served more than the original six-month jail term, though he conceded that he had not reported to jail as his probation agent had told him to do. The trial court found him guilty of violating probation in two respects: (1) not reporting to jail as ordered, and (2) not reporting to CPI as ordered. In January 2001, the trial court sentenced Roper to 30 to 120 months in prison with credit for 287 days already served.

II. Standard Of Review

Roper challenges the trial court’s factual findings supporting its legal conclusion that he had violated his probation. We apply the clear error standard of review to the two issues he raises in this appeal.¹

III. Failure To Report To Jail

Roper contends that the trial court clearly erred when it found that he had failed to report to jail as ordered, claiming that there is no evidence that the trial court had amended the order at the time his probation agent told him to report to jail on August 11, 2000. However, the amended order includes the corrected jail term and indicates that Roper had to report to jail before 7:00 p.m. The trial court, which MCL 771.2 permits to amend a probation order “at any time,” signed the order.² Roper’s contention that there was no amended order for him to violate on August 11, 2000, is pure speculation. Further, this failure to report was not a violation merely by a few minutes, which might call into question the timing of the trial court’s amended order. Roper failed to report to jail for four months. He only returned to prison when he was arrested on a bench warrant. The record does not suggest that the trial court clearly erred in finding that this was a probation violation.

IV. Failure To Report To CPI

Roper contends that the trial court clearly erred when it found him guilty of violating probation for failing to report to CPI because no one ever told him that he had to report to the

¹ See MCR 2.613(C).

² See *People v Kendall*, 142 Mich App 576, 579; 370 NW2d 631 (1985) (“An order of probation may be amended on an *ex parte* basis. There is no requirement that defendant be given notice or an opportunity to be heard prior to the amendment.”).

program. Again, the trial court has the authority to amend a probation order “at any time.”³ A trial court does not need to give notice to a defendant before amending a probation order.⁴ Though another case might present a due process problem if a defendant is convicted of violating an order he had no way of knowing existed or changed his liberty status without notice,⁵ Roper does not raise a constitutional issue in his appeal. Furthermore, the only reason he did not know about the order was because he had absconded. Had he reported to jail as ordered, the authorities would have known where to find him and where to send him after he completed his jail term. There was no clear error in the trial court’s finding that Roper had been under a valid probation order to report to CPI, but failed to do so.

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Henry William Saad

³ MCL 771.2.

⁴ See *Kendall*, *supra* at 579.

⁵ See *People v Jackson*, 168 Mich App 280, 283-284; 424 NW2d 38 (1988).