

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RACHEL ROSETTA THOMAS,

Defendant-Appellant.

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UNPUBLISHED

March 25, 2003

No. 237516

St. Clair Circuit Court

LC No. 92-002258-FH

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right her 40- to 60-month sentences for unlawful taking and driving away of a motor vehicle, MCL 750.413, and fleeing and eluding a police officer causing serious bodily injury, MCL 750.479a. The sentences were imposed for these underlying offenses after defendant was found guilty of a probation violation. We affirm in part and remand for resentencing on the fleeing and eluding count. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

“[T]he maximum sentence for a probation violation is necessarily the same as the maximum sentence for the underlying offense.” *People v Maxson*, 163 Mich App 467, 470; 415 NW2d 247 (1987). At the time of defendant’s 1992 commission of and 1993 conviction for the underlying offense of fleeing and eluding a police officer causing serious bodily injury, the maximum sentence set by statute was four years’ imprisonment.<sup>1</sup> MCL 750.479a. Thus, the trial court erred when it imposed a forty- to sixty-month sentence for this offense. Although this Court could correct the maximum sentence to comply with the statute, *Maxson*, *supra* at 471, doing so would violate the Tanner Rule. *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972). Therefore, we remand for resentencing regarding this count.

Regarding the offense of unlawful taking and driving away of a vehicle, MCL 750.413, it cannot be said that the trial court abused its discretion when it imposed a sentence of 40 to 60 months. When a trial court revokes probation, it may sentence the probationer in the same

<sup>1</sup> MCL 750.479a was amended by 1996 PA 586, § 2, effective June 1, 1997, to increase the maximum sentence for fleeing and eluding a police officer causing serious bodily injury to ten years’ imprisonment. Since defendant’s probation violation, the statute was amended again to the current version.

manner and to the same penalty as if the probation order had never been entered. MCL 771.4; *People v Krieger*, 202 Mich App 245, 247; 507 NW2d 749 (1993). The maximum sentence for violation of MCL 750.413 is five years' imprisonment.

A sentence constitutes an abuse of discretion if it is disproportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). 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 sentence to be given. *People v Williams*, 223 Mich App 409, 411; 566 NW2d 649 (1997). In this case, defendant was given multiple chances to succeed in her probation, yet she repeatedly violated its terms. Defendant was absent from her probation for extended periods of time over the course of several years, and to date has failed to take responsibility for her actions. The trial court did not abuse its discretion in sentencing defendant to forty to sixty months for this count.

Affirmed in part and remanded for resentencing on the fleeing and eluding a police officer count. We do not retain jurisdiction.

/s/ Peter D. O'Connell  
/s/ E. Thomas Fitzgerald  
/s/ Christopher M. Murray