

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EARL JUDSON,

Defendant-Appellant.

UNPUBLISHED
November 3, 2005

No. 256566
Berrien Circuit Court
LC No. 03-404590-FH

Before: Kelly, P.J. and Meter and Davis, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order revoking his probation.¹ We affirm.

Defendant's first issue is framed, in part, in terms of whether the trial court's admission of a police report, in lieu of direct testimony, denied him his right to confront his accuser. However, defendant has failed to cite any authority in support of this issue. In support of his assertion that the trial court's findings were against the great weight of the evidence, defendant again argues, without citing pertinent authority, that the trial court erred in relying on the police report. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims; nor may he give issues cursory treatment with little or no citation of supporting authority. *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004). An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue. *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004). Accordingly, defendant has abandoned any challenge to the trial court's reliance on the police report.

Defendant also raises for the first time on appeal the issue of whether the amended warrant deprived him of his due process right to notice. We review this unpreserved constitutional issue for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

¹ Defendant's probation resulted from a jury conviction of domestic violence, third offense, MCL 750.81(4).

On April 24, 2004, the trial court issued a petition, affidavit, and bench warrant stating that defendant violated probation by failing to report to his probation officer and enroll in the electronic monitoring program. On May 18, 2004, the trial court issued an amended petition, affidavit, and bench warrant restating the above reasons and adding that defendant committed criminal acts and engaged in assaultive, threatening, or intimidating behavior. Defendant's probation revocation hearing took place the next day.

In Michigan, the probationer must be served with written notice of the charges against him before the hearing. *In re McLoed*, 348 Mich 434; 83 NW2d 340 (1957); *People v Wood*, 2 Mich App 342, 348; 139 NW2d 895 (1966); MCL 771.4. "The purpose of the notice requirement is to provide a defendant a reasonable opportunity to dispute, with evidence, the claimed violation." *People v Hunter*, 106 Mich App 821, 825; 308 NW2d 694 (1981). However, the notice need not be as specific as an indictment or information. *Id.* at 826. Defendant contends that the amended warrant violated his due process rights because it only gave him one day's notice.

Depending on the nature of the charges to be heard, one day's notice may suffice when the charges against the probationer present simple factual issues that require minimal time to gather information. *People v Hanson*, 178 Mich App 507; 444 NW2d 175 (1989); *People v Duncan*, 154 Mich App 652, 654; 397 NW2d 857 (1986). On the other hand, one-day or same-day notice is insufficient in cases in which the disputed matter requires gathering witnesses and presenting a substantial defense. *People v Bell*, 67 Mich App 351; 241 NW2d 203 (1976) (shoplifting charges); *People v Gulley*, 66 Mich App 112, 114; 238 NW2d 421 (1975) (armed robbery, unlawfully appropriating a bus, and assaulting a police officer with the bus).

In this case, defendant had ample notice of the charges that he did not report to his probation officer or enroll in an electronic monitoring system. The warrant containing these allegations is dated nearly a month before his hearing. Moreover, these allegations present "simple factual issues" that do not require substantial time or effort to defend. *Duncan, supra*. The trial court, therefore, did not deprive defendant of his due process rights because he had sufficient notice that he violated these two conditions of probation.

However, the other two conditions – criminal activity and assaultive behavior – present substantive matters more akin to those in *Bell* and *Gulley*. Nonetheless, because defendant's violation of the other probation conditions are independent and sufficient grounds for revocation, the trial court's reliance on the amended warrant was unnecessary and, therefore, did not affect defendant's substantial rights.

Finally, defendant claims his sentence violates the statutory guidelines. In reviewing a sentence where the trial court departs from the guidelines, the existence of a particular factor is reviewed for clear error, whether the factor is objective and verifiable is reviewed de novo, and whether the objective and verifiable factor constitutes a substantial and compelling reason to depart from the guidelines is reviewed for an abuse of discretion. *People v Babcock*, 469 Mich 247, 264-265; 666 NW2d 231 (2003). This Court recently held, in *People v Hendrick*, 472 Mich 555, 560; 697 NW2d 511 (2005), that the legislative guidelines apply to sentences that are imposed after probation violations.

Defendant contends that his sentence violates MCL 769.34(4)(a), which provides:

If the upper limit of the recommended minimum sentence range for a defendant determined under the sentencing guidelines set forth in chapter XVII is 18 months or less, the court shall impose an intermediate sanction unless the court states on the record a substantial and compelling reason to sentence the individual to the jurisdiction of the department of corrections. An intermediate sanction may include a jail term that does not exceed the upper limit of the recommended minimum sentence range or 12 months, whichever is less.

According to the sentencing guidelines, defendant's minimum sentence range is zero to 17 months. MCL 777.68. Because the trial court imposed a sentence of 16 to 24 months in prison, it was required to articulate a substantial and compelling reason for placing defendant under the jurisdiction of the department of corrections. MCL 769.34(4)(a); see also *People v Stauffer*, 465 Mich 633, 634-636; 640 NW2d 869 (2002). A substantial and compelling reason means "an objective and verifiable reason that keenly or irresistibly grabs our attention; is of considerable worth in deciding the length of a sentence; and exists only in exceptional cases." *Hendrick, supra* at 563; *Babcock, supra* at 257-258.

The trial court identified several reasons that were not otherwise taken into account by the guidelines: (1) defendant's prior adult and juvenile records demonstrate a pattern of crimes of an assaultive nature, (2) the adult assaultive crimes all involved women with whom defendant had a previous relationship, and (3) defendant has *never* satisfactorily completed a probationary period. The trial court also considered defendant's conduct while on probation pursuant to *Hendrick, supra* at 565. We agree that these are substantial and compelling reasons for placing defendant under the jurisdiction of the department of corrections.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter
/s/ Alton T. Davis