

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY ROBERT MOLL,

Defendant-Appellant.

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UNPUBLISHED

April 30, 1999

No. 201754

Macomb Circuit Court

LC Nos. 94-002846 FH

94-002847 FH

Before: Gage, P.J., and Gribbs and Hoekstra, JJ.

MEMORANDUM.

Defendant appeals by right his sentence for probation violation following plea-based convictions of uttering and publishing, MCL 750.249; MSA 28.446. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On December 16, 1994 defendant pleaded guilty to three charges of uttering and publishing, contained in separate files. On February 9, 1995 the court sentenced defendant to five years' probation, with the first year in jail, and ordered him to pay restitution and costs. In August, 1996 defendant's probation was continued after a violation. On February 26, 1997 defendant's probation was violated for failure to report and failure to pay costs and restitution totaling \$3,039. In pleading guilty, defendant acknowledged that he had neither reported nor paid as ordered, but noted that he had unable to do so because he had been incarcerated. The court sentenced defendant to nine to fourteen years in prison, with credit for 349 days. In imposing sentence, the court noted that it could have sentenced defendant to prison originally, and that defendant had failed to take advantage of the opportunity he had been given to rehabilitate himself.

Defendant argues that his sentence is disproportionate. We disagree and affirm. The sentencing guidelines do not apply to probation violators. *People v Williams*, 223 Mich App 409, 412; 566 NW2d 649 (1997). The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). Defendant had an extensive prior record, including a conviction for armed robbery. He repeatedly failed to comply with the terms of his probation, in spite of the fact that he was given multiple opportunities to do so. Defendant failed to report during periods in which he was not incarcerated.

Defendant failed to pay costs and restitution as ordered, notwithstanding the fact that he was employed when he was not incarcerated. While nonpayment of costs or restitution cannot be grounds for revocation if the probationer is financially unable to make payments as required, *People v Gallagher*, 55 Mich App 613, 620; 223 NW2d 92 (1974), defendant did not establish that he was financially unable to make payments as required. Given defendant's extensive and serious prior record, and his failure to comply with the terms of his probation, his sentence does not constitute an abuse of discretion. *Houston, supra*.

Affirmed.

/s/ Hilda R. Gage

/s/ Roman S. Gribbs

/s/ Joel P. Hoekstra