

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HARRIETTE LOUISE SMITH, a/k/a HARRIETTE
LOUISE BURTON-SMITH,

Defendant-Appellant.

UNPUBLISHED

June 15, 1999

Nos. 211611 & 211612

Kalamazoo Circuit Court

LC Nos. 92-001586 FH

95-000590 FH

Before: Griffin, P.J., and Wilder and R. J. Danhof*, JJ.

PER CURIAM.

In 1993, defendant pleaded no contest to a charge of child abuse, third degree, in violation of MCL 750.136b(4); MSA 28.331(2). Defendant was sentenced to six months in jail and twenty-four months' probation. In 1995, defendant pleaded guilty to operating a motor vehicle while under the influence of intoxicating liquor in violation of MCL 257.625; MSA 9.2325. Defendant was sentenced to twelve months in jail and sixty months' probation. Defendant's probation under the child abuse charge was extended in 1996 for twelve months and again in 1997 for an additional twelve months.

In March 1997, defendant was sentenced for violating the terms of her probation by failing to report to her probation officer and consuming alcoholic beverages. Defendant's probation was continued; however, the court imposed an additional term to her probation, that defendant enter and be successfully discharged from the Southwest Women's Residential Program. Defendant entered the program but failed to complete phase IV of the program and was discharged from the program due to noncompliance.

A hearing was held on the probation violation charge and the trial judge found that defendant had violated a condition of her probation by failing to successfully complete the program. The court revoked defendant's probation and sentenced her to sixteen to twenty-four months' imprisonment for the child abuse, third degree, conviction, and two to five years' imprisonment for the OUIL, third offense, conviction. Defendant appeals as of right. We affirm.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Defendant first contends that her probation violation conviction should be reversed because the original trial judge that presided over one of her cases did not preside over her probation violation hearing in the same matter. We disagree.

In the instant case, defendant's oldest felony file was reassigned by virtue of an administrative order to the trial judge who handled her most recent felony file. The reassignment was prompted by the ongoing court reorganization and ensuing transition into the family and trial divisions of the circuit court. Defendant never raised an objection to the reassignment order.

Defendant's failure to object forecloses appellate review of this issue. This Court will not permit a defendant to wait until after a judge has found a probation violation and then object because the matter has proceeded before the wrong judge. *People v McIntosh*, 124 Mich App 705, 709-710; 335 NW2d 129 (1983). We do not otherwise find that the alleged error was decisive of the outcome of the case or resulted in a miscarriage of justice. *People v Grant*, 445 Mich 535, 548-554; 520 NW2d 123 (1994). As noted above, the trial judge who ultimately revoked defendant's probation was familiar with defendant, her criminal history, and progress on probation and was thus qualified to assess defendant's current status. Defendant's argument is therefore without merit.

Next, defendant contends that the lower court failed to properly articulate its reasons for imposing the sentence. We disagree.

To aid in appellate review and to avoid injustice resulting from errors in sentencing, the trial court must state on the record the criteria considered and the facts supporting the sentence imposed. *People v Poppa*, 193 Mich App 184, 189-190; 483 NW2d 667 (1992). However, the articulation requirement can be satisfied if the court acknowledges that it is following the guidelines or relying on a statutorily proscribed minimum. *People v Broden*, 428 Mich 343, 354; 408 NW2d 789 (1987); *Poppa, supra* at 190. In the instant case, the only comments made by the lower court regarding the sentencing was "[a]ll right. Well, I've read the presentence report, and recommendation. And, it appears that you've had a number of opportunities, haven't been successful with 'em." Based on the facts detailed in the presentence investigation report, we conclude that this is a sufficient statement of the facts and reasons for the imposition of the sentence.

Last, defendant contends that the prosecutor made an impermissible statement when, before sentencing, the prosecutor stated that defendant had "kicked a police officer in the testicles during the pendency of these cases." We disagree. This incident was contained in the presentence report. Defendant failed to object to the information and it was not stricken due to inaccuracy; therefore, it was information that could be considered by the court. MCR 6.425(D)(3).

Affirmed.

/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder
/s/ Robert J. Danhof