

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROLLIN HAVEN WILLIAMSON,

Defendant-Appellant.

UNPUBLISHED
September 3, 1999

No. 207676
Monroe Circuit Court
LC No. 94-025878 FH

Before: Markman P.J., and Saad and P. D. Houk*, JJ.

MEMORANDUM.

Defendant appeals by right from his sentence of eighteen to forty-eight months' imprisonment for delivery/manufacture of marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c), after pleading guilty to violating his original sentence of probation a second time.¹ We affirm.

Defendant argues that his sentence is disproportionate under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), noting that the sentencing guidelines range for the underlying offense was zero to six months and that his probation violation was a "technical" violation for failing to report to probation in the month of June 1997. We disagree. The sentencing guidelines do not apply to probation violation sentences and this Court may not use the guidelines in any manner in determining whether defendant's sentence is proportionate. *People v Williams*, 223 Mich App 409, 413; 566 NW2d 649 (1997). The eighteen-month minimum sentence is proportionate to the seriousness of the underlying offense and defendant's continued failure to comply with the terms of his probation sentence despite having been previously sentenced to a six-month jail term in connection with his prior violation of probation.

Affirmed.

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

/s/ Stephen J. Markman

/s/ Henry William Saad

/s/ Peter D. Houk

¹ We need not resolve here the question whether any similarly situated plaintiff has an appeal by right since, to the extent that plaintiff lacks such an entitlement, we choose *sua sponte* to treat his appeal as an application for leave to appeal and reach the merits.