

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEONTTAY LINDSAY,

Defendant-Appellant.

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UNPUBLISHED

March 25, 2004

No. 244422

Wayne Circuit Court

LC No. 96-006235

Before: Zahra, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Defendant appeals as on leave granted from a sentence of seven and a half to fifteen years in prison for a plea-based conviction of second-degree home invasion, MCL 750.110a(3), following a determination that he violated the terms of his probation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

**I. FACTS**

Defendant was charged in the Wayne Circuit Court with second-degree home invasion for an incident that occurred on July 8, 1996.<sup>1</sup> The offense was committed when defendant was seventeen.

In August 1996, defendant appeared before the Honorable Karen Fort Hood and pleaded guilty. In September, the Honorable Vera Massey Jones assigned him to youthful trainee status, MCL 762.11, and placed him on probation for two years. MCL 762.13(1)(b).

In December 1996, the court directed defendant to appear on February 6, 1997 to show cause why his probation should not be revoked. The petition alleged that he had twice tested positive for marijuana during substance abuse screens in October. Apparently defendant did not appear and a *capias* was issued. Defendant was arraigned on March 13, 1997. In April 1997, the

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<sup>1</sup> Because defendant committed the offense before January 1, 1999, the legislative sentencing guidelines do not apply to this case. MCL 769.34(1)(2). Similarly, the judicial sentencing guidelines do not apply in this case because the crime of home invasion did not exist until six years after the latest edition of the sentencing guidelines took effect.

court revoked defendant's youthful trainee status and later sentenced him to five years' probation. See MCL 762.12. He was also ordered to complete a substance abuse treatment program.

In September 1998, defendant was charged with violation of probation because he had been arrested and charged with domestic violence. The record does not reflect what became of that charge.

In June 1999, defendant was again charged with violation of probation because he had been arrested and charged with two counts of first-degree home invasion. Following a contested hearing, the court found defendant guilty of violation of probation.

At a hearing on July 2, 1999, Judge Jones revoked probation. She explained:

First of all, we gave you Homes [sic] Youthful Trainee. You violated that. We had to sentence you regularly. And then I have this case where I found by a preponderance of the evidence that you had violated your probation by being involved in criminal conduct; mainly, by having your neighbors scared to death because you . . . was [sic] breaking into their homes.

The probation department recommended six months in jail. Defendant asked that he be given another opportunity to undergo substance abuse treatment. The court responded, "Your neighbors need a chance. Your neighbors need a chance to be able to sleep at night so they can get up in the morning and go to work. Seven and a half to fifteen."

## II. STANDARD OF REVIEW

This Court's review is limited to determining whether the trial court abused its discretion by violating the principle of proportionality. *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998). An abuse of discretion will be found "where the sentence imposed does not reasonably reflect the seriousness of the circumstances surrounding the offense and the offender." *People v Castillo*, 230 Mich App 442, 447; 584 NW2d 606 (1998).

## III. ANALYSIS

Second-degree home invasion is punishable by up to fifteen years in prison. MCL 750.110a(6). The minimum sentence cannot exceed ten years. *People v Tanner*, 387 Mich 683, 690; 199 NW2d 202 (1972). A sentence must be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). In determining the appropriate sentence for a violation of probation, the trial court may consider the defendant's actions and the seriousness and severity of the facts and circumstances surrounding the violation of probation. *People v Peters*, 191 Mich App 159, 167; 477 NW2d 479 (1991).

After defendant pleaded guilty, the court gave him an opportunity to avoid a criminal record by granting him probation as a youthful trainee. See MCL 762.14. He violated probation within the first month. His youthful trainee status was revoked, but defendant was given a

second chance at probation. Two years later, he violated probation by acquiring new criminal charges for first-degree home invasion. Those charges were pending at the time of sentencing. In light of defendant's poor adjustment to probation and his further involvement in criminal activity, incarceration was certainly appropriate.

We are not persuaded that the trial court abused its discretion in imposing sentence. First, the fact that the victim did not suffer injury does not constitute a mitigating factor where, as here, defendant's conduct—home invasion of an occupied dwelling—is actually a more severe offense than his underlying offense of second-degree home invasion. The escalation in criminal conduct was properly taken into consideration. Second, the fact that defendant had no prior adult convictions is commendable, but hardly a surprise given that he was only a 17-year-old juvenile when the underlying offense was committed. As noted by Judge Jones, defendant was given at least two opportunities to avoid prison, but chose instead to continue his criminal conduct. Under the circumstances, defendant has not demonstrated that his sentence was an abuse of discretion. *St John, supra* at 650.

Affirmed.

/s/ Brian K. Zahra  
/s/ Henry William Saad  
/s/ Bill Schuette