

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL WILLIAM BORIGHT,

Defendant-Appellant.

UNPUBLISHED

February 16, 2006

No. 256225

Wayne Circuit Court

LC No. 89-012158-01

Before: Meter, P.J., and Whitbeck, C.J. and Schuette, J.

PER CURIAM.

Defendant appeals as of right his sentence of two to twenty years in prison imposed after a conviction of probation violation. We affirm.

On December 14, 1989, defendant pleaded guilty of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv). At that time, MCL 333.7401(2)(a)(iv) provided that a person convicted of that offense could be imprisoned for not less than one year or more than twenty years, or placed on probation for life. On February 20, 1990, the trial court sentenced defendant to lifetime probation.

On two occasions in 1996, defendant was convicted of violating his probation by using marijuana. On each occasion, the trial court continued him on lifetime probation. On April 6, 2004, defendant pleaded guilty of violating his probation by testing positive for marijuana on multiple occasions. The trial court sentenced defendant to two to twenty years in prison, with credit for 103 days.

Offenses committed before January 1, 1999 are subject to the judicial sentencing guidelines. *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000). The judicial sentencing guidelines do not apply to probation violations, *People v Cotton*, 209 Mich App 82, 83-84; 530 NW2d 495 (1995), and are not to be considered when imposing a sentence after a conviction of probation violation. *People v Williams*, 223 Mich App 409, 412-413; 566 NW2d 649 (1997). A sentence imposed after a conviction of probation violation is reviewed for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

Defendant argues that he is entitled to resentencing because the sentence imposed by the trial court following his conviction of probation violation is disproportionate to his circumstances and those of the offense. We disagree and affirm defendant's sentence. The terms of

defendant's probation required him to refrain from the use of controlled substances. Defendant was convicted of violating his probation on two previous occasions for using marijuana, but was continued on probation on those occasions. He was given multiple opportunities to reform his behavior, but he did not do so. Defendant demonstrated that he was unwilling to conform his behavior to the requirements of the law. The sentence imposed by the trial court following defendant's third conviction of probation violation was authorized by statutory law as it existed at the time of defendant's conviction in 1989, and was not disproportionate to defendant's circumstances or those of his offense. *Id.* Defendant is not entitled to resentencing.

Affirmed.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Bill Schuette