

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANKIE AMAL HAMM,

Defendant-Appellant.

UNPUBLISHED

January 8, 2009

No. 282744

Oakland Circuit Court

LC No. 2007-212719-FC

Before: Zahra, P.J., and O’Connell and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court’s order and judgment revoking his probation and sentencing him to prison. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty to one count of second-degree criminal sexual conduct (CSC II), MCL 750.520c, in return for dismissal of a charge of first-degree criminal sexual conduct (CSC I), MCL 750.520b, and was convicted after a bench trial of failing to register as a sex offender, MCL 28.729.¹ On October 11, 2007, the trial court sentenced defendant to five years’ probation, with the first year in jail. Defendant received credit for 287 days’ time served. As a condition of probation, defendant was required to comply with the requirements of the county’s electronic monitoring program upon his release from jail.

Defendant did not comply with the requirements of the electronic monitoring system and was charged with violating his probation. Defendant requested and received a hearing on the probation violation charge.

Before defendant’s release from jail, his probation officer, Alanna Miller, visited him to explain the terms and conditions of his probation. Miller told defendant that to be in compliance with the requirements of the electronic monitoring program, he needed to have a stable residence with a landline telephone available before his release from jail. Defendant indicated that he

¹ Originally, defendant was charged with two counts of CSC I. A jury acquitted him of one count and failed to reach a verdict on the other count.

understood the requirements. Defendant reported to Miller's office on October 29, 2007, as required, but he told her that he did not have a stable residence or a landline telephone. Defendant secured a residence and had the electronic monitor attached to his ankle on November 1, 2007; nevertheless, Miller determined that defendant violated his probation.

Miller indicated that because defendant was released from jail on October 28, 2007, he had 72 hours, or until October 31, 2007, to become compliant with the requirements of the electronic monitoring system. In response to questions from the court, Miller indicated that the 72-hour time frame for becoming compliant with the electronic monitoring system was part of the Department of Corrections' electronic monitoring rules and that she had explained this information to defendant before his release from jail.

The trial court found that defendant violated his probation by failing to comply with the requirement that he have a stable residence with a landline telephone upon his release from jail so that he could be connected to the electronic monitoring system. The trial court sentenced defendant as a second habitual offender, MCL 769.10, to concurrent prison terms of 36 to 270 months' imprisonment for the CSC II conviction and three to six years' imprisonment for the failure to register as a sex offender conviction. Defendant received credit for 365 days' time served. Defendant's minimum term of three years was within the sentencing guidelines.

The prosecution has the burden of proving that a probation violation occurred by a preponderance of the evidence. MCR 6.445(E)(1); *People v Reynolds*, 195 Mich App 182, 184; 489 NW2d 128 (1992). We review a trial court's findings of fact for clear error, *People v Briseno*, 211 Mich App 11, 14; 535 NW2d 559 (1995), and we review a decision to revoke probation for an abuse of discretion, *People v Laurent*, 171 Mich App 503, 505; 431 NW2d 202 (1988). We will not find an abuse of discretion simply because the trial court might have reached a different result if the probation violation is clearly established. *People v Knox*, 115 Mich App 508, 515; 321 NW2d 713 (1982).

Defendant argues that the trial court abused its discretion by revoking his probation. We disagree. Defendant does not dispute that Miller visited him in jail and informed him of the rules of the electronic monitoring program. Contrary to defendant's assertion, Miller's statements that defendant needed a stable residence and landline telephone upon release in order to be connected to the electronic monitoring system were not merely suggestions. Miller testified that the Department of Corrections' rules stated as much, and that defendant was so informed before his release from jail. The trial court's finding that defendant violated the terms of his probation because he did not comply with these requirements was not clearly erroneous.

The probation violation was clearly established in this case. Therefore, we cannot conclude that the trial court abused its discretion by revoking defendant's probation, even if, under the circumstances, we might have reached a contrary decision.

Defendant also argues that even assuming that the trial court did not abuse its discretion by finding that he violated his probation, the trial court abused its discretion by sentencing him to prison. We disagree. The sentencing guidelines apply to a sentence imposed after probation is revoked. *People v Hendrick*, 472 Mich 555, 560; 697 NW2d 511 (2005).

The sentencing guidelines for the conviction of CSC II recommended a minimum term range of 36 to 88 months. The trial court imposed a sentence within that range for both convictions. Defendant does not assert that the sentencing guidelines were misscored, or that the trial court acted on inaccurate information when imposing a sentence; therefore, we must affirm defendant's sentences. MCL 769.34(10).

A trial court must give the parties an opportunity to examine the presentence investigation report in advance of sentencing, must give the parties an opportunity to explain or challenge information in the report, and must resolve any challenges. MCR 6.425(B) and (E). If imposing a sentence after probation is revoked, the trial court must obtain a current report. MCR 6.445(G).

Defendant argues that the trial court erred by imposing a sentence almost immediately after finding that a probation violation occurred and without complying with MCR 6.425 and MCR 6.445. We disagree. A party may waive the production of an updated presentence report at resentencing. *People v Hemphill*, 439 Mich 576, 582; 487 NW2d 152 (1992). Defendant did not affirmatively waive the production of an updated report, but he forfeited the issue by failing to object at the time of sentencing. Therefore, we review this issue for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). The trial court sentenced defendant to prison one month after sentencing him to probation. The trial court had the benefit of the probation violation report. Moreover, defendant points to no information that the trial court should have been provided before imposing sentence for the probation violation. Defendant has not shown that plain error occurred in this case.

Affirmed.

/s/ Brian K. Zahra
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood