

EXHIBIT
B

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE TOWNSHIP OF
BLOOMFIELD,

Plaintiff/Appellee,

v.

Case No. 08-DA8771-AR
Hon. Mark A. Goldsmith

District Court Nos. 07-BT-23120
07-BT-26508A
08-BT-29916
08-BT-05062

JOHN MICHAEL WILLIAMS,

Defendant/Appellant.

OPINION AND ORDER VACATING STAY

On July 10, 2008, this Court entered an order staying proceedings in the 48th District Court pending the appeal of this matter. As a condition of the stay, the Court ordered Defendant to abstain from any use of alcohol and submit to daily PBTs. After receiving notice that Defendant may have violated the conditions of the stay, the Court ordered Defendant to appear on August 4, 2008 and show cause why the stay order should not be vacated. Specifically, the Court noted that Defendant had been arrested on July 25, 2008 and asked Defendant to respond to the arresting officers' report that Defendant attended a party where alcohol was consumed and, at the time of his arrest, had a strong odor of intoxicants, glassy eyes, and slurred speech, but refused to submit to a PBT.

At the hearing, Defendant's counsel claimed that Defendant denied drinking on July 25, but admitted that Defendant missed his daily PBTs more than once during the past week. In addition, the arresting officer's report, presents facts from which this Court could

find that Defendant was consuming alcohol. Defendant's admission of failing to submit to daily PBTs, in and of itself, confirms that Defendant violated the terms of this Court's stay order.

Given Defendant's violation of the conditions of the stay order, the Court concludes that he requires closer monitoring, which can be better accomplished by the trial court. The Court orders that the stay pending appeal be dissolved. With the dissolution of the stay, Defendant must now comply with the trial court's sentence unless and until this Court reverses or modifies that sentence. Furthermore, the trial court is no longer restrained from conducting a hearing on Defendant's apparent violation of the terms of his probation.

Although the trial court is now able to proceed with a hearing, the trial court is cautioned that, should it find a probation violation, it can only take the action authorized for a violation of probation. In this case, Defendant was convicted of a first offense of being a minor in possession of alcohol, under § 5-2(a)(1) of West Bloomfield's municipal code, and was sentenced to probation. That ordinance, which is similar to MCL 435.1703(a)(1), authorizes the trial court to impose a fine and order Defendant to (i) participate in substance abuse prevention services or substance abuse treatment services, (ii) perform community service, and (iii) undergo substance abuse screening and assessment at his or her own expense. Should the trial court conclude that Defendant violated the terms of his probation, it may continue probation, modify the terms of probation, extend the probation period, or revoke probation. MCR 6.445(G). If the trial court revokes probation, it may "sentence the probationer in the same manner and to the same penalty as the court might have done if the probation order had never been made." MCL 771.4. Because jail is not

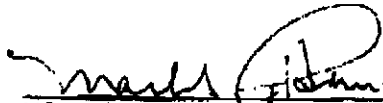
an authorized penalty for a first offense of minor in possession, the trial court has no authority to sentence Defendant to jail.

Further, the trial court may not utilize its contempt powers to impose jail time for a violation of probation. By sentencing Defendant to jail for contempt, the trial court would be violating the principle that a probation violation in and of itself does not amount to a new crime. People v Kaczmarek, 464 Mich 478, 482-83; 628 NW2d 484 (2001) (on violating probation "the probationer is neither burdened with a new conviction nor exposed to punishment other than that to which he has already been exposed"); People v Vancil, 186 Mich App 665, 668; 465 NW2d 49 (1991) ("the sentence imposed upon a probation violation must be in accordance with the permissible sentence for the underlying offense itself").

Although this Court recognizes the limitation that this ruling places on the trial court, the limitation is a direct result of the legislative determination that a first time offender under the MIP ordinance should not be jailed. That legislative determination must be respected by this Court.

In sum, the Court vacates the stay pending appeal and allows the trial court to proceed with a hearing on Defendant's alleged violation of the terms of his probation. However, the trial court is prohibited from jailing the Defendant should it find that a violation has occurred.

IT IS SO ORDERED.


HON. MARK A. GOLDSMITH
CIRCUIT COURT JUDGE

AUG 08 2008

Dated: _____