

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

QUINTIN ORRICK KINNON,

Defendant-Appellant.

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UNPUBLISHED

April 22, 2021

No. 354121

Kent Circuit Court

LC No. 19-002313-FH

Before: MURRAY, C.J., and MARKEY and LETICA, JJ.

PER CURIAM.

Defendant, Quintin Orrick Kinnon, appeals by delayed leave granted<sup>1</sup> his sentence, as a fourth-offense habitual offender, MCL 769.12, to 18 months to 15 years' imprisonment for his guilty plea conviction of possession of less than 25 grams of a controlled substance, MCL 333.7403(2)(a)(v). Kent Circuit Court Chief Judge Mark A. Trusock sentenced defendant as a result of defendant's violation of the terms of his probation. Defendant argues that Chief Judge Trusock erred by conducting the probation violation hearing because it should have been held by the judge who originally sentenced him to probation, Kent Circuit Court Judge Paul J. Sullivan. We affirm.

Defendant pleaded guilty to possession of less than 25 grams of cocaine, and Judge Sullivan sentenced him to probation. Defendant violated the terms of his probation within days of his sentencing by acting in an abusive manner toward court and jail personnel. Ten days after his sentencing hearing, a probation violation hearing was held before Chief Judge Trusock, who explained that Judge Sullivan was unavailable to conduct the probation violation hearing due to an overloaded docket, and that the case had been reassigned to Chief Judge Trusock. Chief Judge Trusock then sentenced defendant to 18 months to 15 years' imprisonment.

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<sup>1</sup> *People v Kinnon*, \_\_\_ Mich \_\_\_, 951 NW2d 41 (2020).

Issues of statutory interpretation are reviewed de novo, *People v Babcock*, 469 Mich 247, 253; 666 NW2d 231 (2003), as are issues of court rule interpretation, *People v Head*, 323 Mich App 526, 542; 917 NW2d 752 (2018).

At the time of sentencing, MCL 771.4<sup>2</sup> provided, in relevant part, as follows:

If during the probation period the sentencing court determines that the probationer is likely again to engage in an offensive or criminal course of conduct or that the public good requires revocation of probation, the court may revoke probation. All probation orders are revocable in any manner the court that imposed probation considers applicable either for a violation or attempted violation of a probation condition or for any other type of antisocial conduct or action on the probationer's part for which the court determines that revocation is proper in the public interest.

Further, MCR 2.613(B) provides as follows:

A judgment or order may be set aside or vacated, and a proceeding under a judgment or order may be stayed, only by the judge who entered the judgment or order, unless that judge is absent or unable to act. If the judge who entered the judgment or order is absent or unable to act, an order vacating or setting aside the judgment or order or staying proceedings under the judgment or order may be entered by a judge otherwise empowered to rule in the matter.

This Court has repeatedly ruled that MCL 771.4 and MCR 2.613(B) require that a probation violation hearing be held by the original judge (or the judge's successor) who sentenced the defendant to probation, unless that judge is absent or unavailable. See *People v McIntosh*, 124 Mich App 705, 708-709; 335 NW2d 129 (1983); *People v Rose*, 117 Mich App 530, 536; 324 NW2d 25 (1982); *People v Clemons*, 116 Mich App 601, 605; 323 NW2d 300 (1981); *People v Williamson*, 113 Mich App 23, 25-26; 317 NW2d 271 (1982), rev'd on other grounds 413 Mich 895 (1982); *People v McDonald*, 97 Mich App 425, 432; 296 NW2d 53 (1980), vacated on other grounds 411 Mich 870 (1981); *People v Biondo*, 76 Mich App 155, 160; 256 NW2d 60 (1977).<sup>3</sup>

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<sup>2</sup> This statute was recently amended by 2020 PA 397, effective April 1, 2021.

<sup>3</sup> In *People v Collins*, 25 Mich App 609, 612; 181 NW2d 601 (1970), this Court held that "nothing in the statute requiring revocation proceedings to be conducted before the same judge who originally ordered probation. All the statute demands is that the forum be the same." However, as noted, *Collins* was repeatedly contradicted by subsequent decisions of this Court and should be afforded no deference. *People v Bensch*, 328 Mich App 1, 7 n 6; 935 NW2d 382 (2019) (stating that although entitled to deference, this Court is not "strictly required to follow *uncontradicted* opinions from this Court decided prior to November 1, 1990") (quotation marks and citation omitted, emphasis added). Moreover, *Collins* was later disclaimed. See *Williamson*, 113 Mich App at 26 ("To the extent that any language contained in the *Collins* case, *supra*, conflicts with this decision, the writer confesses error.").

“It is appropriate, if revocation must be considered, that the consideration be by the judge who is most acquainted with the matter.” *McDonald*, 97 Mich App at 432.

However, if the original judge is “unable to act,” MCR 2.613(B), a different judge may act in place of the original judge when that different judge is “otherwise empowered to rule in the matter.” MCR 2.613(B). The ability to assign the court’s workload among the judges is a power granted to the chief judge of the court. See MCR 8.110, MCR 8.111, and *People v Watkins*, 178 Mich App 439, 448-449; 444 NW2d 201 (1989) (holding that “[t]he chief judge had the authority to reassign defendants’ cases”), rev’d on another ground 438 Mich 627 (1991).

Here, Chief Judge Trusock acknowledged at the probation violation hearing that the case had been transferred to him because Judge Sullivan had a very congested docket, including 11 trials. Therefore, it appears that Chief Judge Trusock properly exercised his power, under MCR 8.111, to reassign defendant’s case to address docket control problems.<sup>4</sup> See *Watkins*, 178 Mich App at 448-449. Thus, even though Judge Sullivan *should* have presided over the probation violation hearing had he still been presiding over the case, he was “unable to act,” under MCR 2.613(B), and thus, Chief Judge Trusock was “otherwise empowered to rule in the matter” by operation of his powers under MCR 8.111. Accordingly, we conclude that, although probation violation hearings are generally required to take place before the judge who placed a defendant on probation, under these circumstances the fact that the probation violation hearing was held by a different judge was not error.<sup>5</sup>

Affirmed.

/s/ Christopher M. Murray  
/s/ Jane E. Markey  
/s/ Anica Letica

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<sup>4</sup> Compare with *People v Manser*, 172 Mich App 485, 487; 432 NW2d 348 (1988), in which the newly assigned judge referred to the original judge’s apparent scheduling unavailability, but there was no indication that the reassignment was specifically made pursuant to the chief judge’s reassignment powers.

<sup>5</sup> We also take judicial notice that Judge Sullivan retired at the conclusion of 2020, and thus would not be able to sentence defendant had the case been remanded for resentencing.