

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

JAMES ALBERT VOORDE,

Defendant-Appellant

UNPUBLISHED

April 25, 1997

No. 191397

St. Joseph Circuit Court

LC No. 93-007258 FH

Before: Griffin, P.J., and Doctoroff and Markman, JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to operating a motor vehicle with an unlawful blood alcohol level, third offense, MCL 257.625(6); MSA 9.2325(6), and habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to 4½ to 7½ years' imprisonment, and now appeals as of right. We affirm.

Defendant first contends that the 180-day rule and his right to a speedy trial were violated. However, defendant entered a plea of nolo contendere, and thus waived appellate consideration of his asserted violation of the 180-day rule, *People v Irwin*, 192 Mich App 216, 218; 480 NW2d 611 (1991), and the constitutional and statutory rights to a speedy trial, *People v Depifanio*, 192 Mich App 257, 257-258; 480 NW2d 616 (1991). Although defendant claims that his plea was conditionally entered, and that, thus, he preserved his ability to appeal, MCR 6.301(C), the record does not support this contention. The record indicates that defendant's plea was unconditional. Accordingly, we need not review these claims.

Defendant next argues that he was entitled to additional credit for time served. This claim fails for two reasons. First, defendant failed to establish the necessary factual predicate for an award of additional credit under Michigan's sentence credit statute, MCL 769.11b; MSA 28.1083(2). Defendant argues that he was entitled to 54 additional days of credit because a detainer was placed on him on November 21, 1992. See *People v Ranson*, 153 Mich App 157, 161; 395 NW2d 271 (1986). However, the trial court found that the hold was actually placed on defendant 54 days later, on January 14, 1993. Defendant failed to develop a record at trial which supports his contention that the

hold was placed on him on November 21, 1992, thus he is not entitled to credit for those days. See *Id.* at 162.

Furthermore, defendant has failed to provide authoritative support for his claim. In arguing that he is entitled to additional credit based on principles of due process, defendant relies on *People v Van Wert*, 149 Mich App 128; 385 NW2d 622 (1985); *People v Gleason*, 139 Mich App 445; 363 NW2d 3 (1984); *People v Parshay*, 104 Mich App 411; 304 NW2d 593 (1981); and *People v Cohen*, 35 Mich App 706; 192 NW2d 652 (1971). However, none of these cases was decided on due process grounds. Instead, those panels of this Court allowed the award of sentence credit under a “liberal” construction of the sentence credit statute, MCL 769.11b; MSA 28.1083(2). *Van Wert*, *supra*, 130; *Gleason*, *supra*, 447; *Parshay*, *supra*, 414-418; *Cohen*, *supra*, 707-709. Subsequently, our Supreme Court expressly repudiated the approach taken by these cases. *People v Adkins*, 433 Mich 732, 741-749; 449 NW2d 400 (1989); *People v Prieskorn*, 424 Mich 327, 333-344; 381 NW2d 646 (1985). Under the current rule, sentence credit is granted only for time served when the defendant was denied or unable to furnish bond for the offense of which the defendant is convicted. *Adkins*, *supra*; *Prieskorn*, *supra*. Finally, in arguing that he was entitled to additional credit for time served, defendant mistakenly relied on *People v West*, 100 Mich App 498; 299 NW2d 59 (1980). However, in *West*, this Court found that the trial court lost jurisdiction to sentence the defendant through the court’s decision to delay sentencing. *Id.* at 500-501. Accordingly, any discussion in *West* regarding sentence credit constituted dicta, and is of no precedential value.

Based on the lack of factual and legal support for defendant’s claimed entitlement to additional sentence credit, we conclude that the sentencing court correctly denied defendant’s request for the same.

Affirmed.

/s/ Richard Allen Griffin
/s/ Martin M. Doctoroff
/s/ Stephen J. Markman