

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HAROLD LLOYD RICH, SR.,

Defendant-Appellant.

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UNPUBLISHED

March 5, 1999

No. 204743

Clinton Circuit Court

LC No. 97-006201 FH

Before: Jansen, P.J., Sawyer and Markman, JJ.

PER CURIAM.

Defendant was convicted by jury trial of absconding or forfeiting bond in violation of MCL 750.199a; MSA 28.396(1). Defendant was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to serve not less than ten years nor more than fifteen years' imprisonment. Defendant appeals as of right. We affirm defendant's conviction but remand for a determination regarding the correct number of days of credit.

Defendant first argues that his sentence was disproportionate. Provided that the trial court considers permissible factors, this Court's review is limited to whether the trial court abused its discretion in determining the offender's sentence. *People v Fetterley*, 229 Mich App 511; 583 NW2d 199 (1998). Because defendant was subject to an habitual offender information, the sentencing guidelines do not apply. *People v Chandler*, 211 Mich App 604; 536 NW2d 799 (1995). Because defendant's underlying offense was absconding on bond, a four-year felony, MCL 750.199a; MSA 28.396(1), the pertinent habitual offender statute limits defendant's maximum sentence to fifteen years. MCL 769.12; MSA 28.1084. Defendant's minimum term could not exceed ten years based on the two-thirds rule. *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972); *People v Wright*, 432 Mich 84, 85-86; 437 NW2d 603 (1989). Accordingly, defendant's sentence of ten to fifteen years was within the statutory limits, and can therefore be considered proportionate based on the underlying felony and defendant's criminal history. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997).

However, we note further that the trial court properly took into account defendant's lengthy criminal record which included six prior felony convictions. *People v Ross*, 145 Mich App 483, 495;

378 NW2d 517 (1985). The court pointed to defendant's lack of remorse, *People v Houston*, 448 Mich 312, 323; 532 NW2d 508 (1995), and further determined that defendant's potential for rehabilitation was not good based on his personal and social history, *Ross, supra* at 495, and his age. *People v Lemons*, 454 Mich 234, 259; 562 NW2d 447 (1997). Since these were appropriate factors for a court to consider during sentencing, *Fetterley, supra* at 511, and were supported by the record, we conclude that the sentence was proportionate for these reasons as well. *People v Milbourn*, 435 Mich 630, 635-36, 654; 461 NW2d 1 (1990); *People v Paquette*, 214 Mich App 336, 344-45; 543 NW2d 342 (1995).

Defendant next argues that he was entitled to 329 days of credit instead of 184 days under the sentencing credit statute. MCL 769.11b; MSA 28.1083(2). This Court reviews questions of statutory interpretation de novo. *People v Webb*, 458 Mich 265, 274-75; 580 NW2d 884 (1998). The sentencing credit statute specifically states that a defendant is entitled to credit for time served "for the offense of which he is convicted." MCL 769.11b; MSA 28.1083(2). Defendant was arrested and charged with receiving and concealing stolen property in October 1995. While out on bond, defendant fled to Florida. He returned to Michigan on August 13, 1996 and was rearrested on that date in regard to the receiving and concealing charge. A warrant regarding the absconding charge was subsequently issued on January 6, 1997. Defendant's credit was computed from the date the warrant was issued regarding the absconding charge, January 6, 1997, to the day of sentencing, July 8, 1997. The time defendant spent in jail between August 13, 1996 and January 6, 1997 was for the offense of receiving and concealing. Defendant was not entitled to credit for those days served because they were not served in regard to the absconding charge on which defendant was being sentenced. *People v Prieskorn*, 424 Mich 327; 381 NW2d 646 (1985); *People v Givans*, 227 Mich App 113; 575 NW2d 84 (1997).

However, the statute does not foreclose altogether the issuance of additional credit. In *People v Adkins*, 433 Mich 732; 449 NW2d 400 (1989), the Supreme Court held that the sentencing statute "does not require a court to grant sentence credit from the time a hold either was or could have been placed. . . ." *Id.* at 742. However, the Court noted that it was not deciding whether a defendant might be entitled to some remedy for "misconduct" where there is an allegation that the prosecution did not move swiftly. *Id.* at 750. In addition, the Court stated that "[o]ur opinion today . . . must not be seen as in any way prohibiting a sentencing judge from granting sentence credit for time served for an unrelated offense should it be decided such credit is warranted." *Id.* at n 10. Moreover, in *People v Parshay*, 104 Mich App 411; 304 NW2d 593 (1981), this Court held:

Where the police have failed to live up to [a] standard [of due diligence] and delay in the issuance of an arrest warrant is the result, if defendant is incarcerated on another offense, unless that other offense precludes concurrent sentencing, we believe defendant must be given credit from the beginning of his incarceration and not just from the date upon which the arrest warrant is issued. [*Id.* at 416].

The trial court did not address the delay issue in determining that defendant was only entitled to 184 days credit. After defendant affirmatively raised the issue, the prosecutor had the burden of providing some explanation regarding the alleged delay in charging defendant on the absconding offense.

Accordingly, we remand for a determination as to whether this delay was unreasonable in some regard and therefore warranted an award of additional days of credit. *People v Thomas*, 58 Mich App 9, 11; 226 NW2d 734 (1975).

Defendant's sentence is otherwise affirmed but it is remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ David H. Sawyer

/s/ Stephen J. Markman