

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDALL SCOTT CANAVAN,

Defendant-Appellant.

UNPUBLISHED

April 30, 1999

No. 200890

Recorder's Court

LC No. 91-003915

Before: Gage, P.J., and Gribbs and Hoekstra, JJ.

MEMORANDUM.

In 1991, defendant pleaded guilty to second-degree criminal sexual conduct (CSC II), MCL 750.520c; MSA 28.788(3), and was sentenced to five years' probation, in addition to a sentence of two to fifteen years' imprisonment for a CSC III conviction in another case. Subsequently, after being released on parole in 1994, defendant pleaded guilty to violating the terms of his probation, and he was resentenced to seven to fifteen years' imprisonment, with credit for one day of jail time served. Defendant now appeals by right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant contends that he was originally sentenced to serve his probation sentence in this case concurrently with his prison sentence in his CSC III case, and that he is entitled to sentence credit in this case for the 1,653 days of his original probation sentence he served while also serving concurrent prison sentences and jail time for other offenses. We disagree. Even assuming, *arguendo*, that defendant's original probation sentence was imposed to run concurrently with his prison sentence,¹ time spent on probation is not punishment to be credited against one's sentence upon revocation of that probation. *People v Lacey*, 54 Mich App 471, 474-475; 221 NW2d 199 (1974). Although defendant was also incarcerated during the same period, granting credit against his sentence in this case would be inappropriate because he was not incarcerated for the offense in this case during that time. *People v Phillips*, 109 Mich App 535, 538-540; 311 NW2d 301 (1981). See also *People v Givans*, 227 Mich App 113, 125-126; 575 NW2d 84 (1997).

Defendant also objects that the PSIR inaccurately lists the offense in this case as “CSC, 2nd degree (Person under 13)” when the offense actually involved a fourteen-year-old, and defendant requests that the words “(Person under 13)” be deleted from the PSIR pursuant to the court rule entitled “Correcting Mistakes.”² However, this issue is not properly before this Court at this time because it has not been raised below. MCR 6.429(C).

Affirmed.

/s/ Hilda R. Gage

/s/ Roman S. Gibbs

/s/ Joel P. Hoekstra

¹ In fact, the May 29, 1991 order of probation in this case expressly stated that defendant’s five-year probation term was “to begin after” defendant’s prison sentence for CSC III in Recorder’s Court Docket No. 90-10442. Although concurrent sentencing was mentioned during the joint sentencing hearing in this case and No. 90-10442, this apparently was in reference to the running of defendant’s prison sentence in No. 90-10442 concurrently with another sentence he was already serving for larceny from a motor vehicle. In any event, it is the trial court’s written order, not its oral remarks, that are controlling. E.g., *People v Collier*, 105 Mich App 44; 306 NW2d 387 (1981), lv den 414 Mich 955 (1982).

² Although defendant cites “MCR 6.535,” MCR 6.235 appears to be the intended reference. However, defendant has not complied with the requirements of MCR 7.208(B) in order to seek relief under MCR 6.235 during this appeal. See MCR 6.235(D).