

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY JEROME MACK,

Defendant-Appellant.

UNPUBLISHED
February 27, 2001

No. 219303
Oakland Circuit Court
LC No. 98-163957-FH

Before: Meter, P.J., and Neff and O’Connell, JJ.

MEMORANDUM.

Defendant appeals as of right from a jury conviction of first-degree retail fraud, MCL 750.356c; MSA 28.588(3), to which he was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to one and one-half to fifteen years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the trial court erred in refusing to give him credit for time served pursuant to MCL 769.11b; MSA 28.1083(2). We review this issue de novo on appeal. *People v Givans*, 227 Mich App 113, 124; 575 NW2d 84 (1997).

Because defendant was jailed pending disposition of the instant offense and he was unable to post bond, he was entitled to credit for the time served prior to sentencing. MCL 769.11b; MSA 28.1083(2). Further, because defendant committed the instant offense while on parole from a prior sentence, the court was required to impose a sentence consecutive to the remainder of the prior sentence. MCL 768.7a(2); MSA 28.1030(1)(2). Where a defendant receives a consecutive sentence for an offense committed while on parole from a prior sentence imposed by a court of this state, the credit for time served prior to sentencing on the subsequent offense is to be applied to the remaining portion of the sentence for the paroled offense. It is not credited against the sentence for the subsequent offense. *People v Watts*, 186 Mich App 686, 691; 464 NW2d 715 (1991); *People v Brown*, 186 Mich App 350, 359; 463 NW2d 491 (1990). We do not agree with defendant that *Wayne Co Prosecutor v Dep’t of Corrections*, 451 Mich 569; 548 NW2d 900 (1996), requires a contrary finding. In that case, the Court interpreted the phrase “remaining portion” as used in MCL 768.7a(2); MSA 28.1030(1)(2) to determine when a reoffending parolee’s second sentence should begin, not how his jail credit should be applied. We do agree with defendant that he is entitled to time served for his sentence on the crime for which he was on parole.

Defendant next contends that the trial court abused its discretion in admitting the cash register receipt into evidence. We review the trial court's ruling for an abuse of discretion. *People v Cain*, 238 Mich App 95, 122; 605 NW2d 28 (1999).

We reject defendant's contention that the prosecutor was required to produce the groceries themselves under the best evidence rule. That rule requires that the original writing, recording, or photograph is necessary to prove the contents thereof unless the original has been lost, destroyed, or is otherwise not available. MRE 1002; MRE 1004. The groceries were not writings or recordings or photographs as defined in MRE 1001(1) and (2) and thus the best evidence rule does not apply. The prosecutor laid a proper foundation for the admission of the receipt. The defects cited by defendant go to the weight the jury is to give the evidence, not its admissibility. *People v White*, 208 Mich App 126, 129-131; 527 NW2d 34 (1994).

Affirmed.

/s/ Patrick M. Meter
/s/ Janet T. Neff
/s/ Peter D. O'Connell