

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES TILLMAN,

Defendant-Appellant.

UNPUBLISHED

April 16, 2002

No. 228724

Wayne Circuit Court

LC No. 99-003166

Before: Bandstra, P.J., and Murphy and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from sentences of forty to ninety months for carrying a concealed weapon, MCL 750.227, and felon in possession of a firearm, MCL 750.224f, as well as a two-year sentence for possession of a firearm during the commission of a felony, MCL 750.227b, each of which were ordered to be served consecutively to a sentence imposed for a prior controlled substance offense. We remand for clarification of the reason for consecutive sentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Concurrent sentencing is the norm. Consecutive sentences may not be imposed absent statutory authority. *People v Alvarado*, 192 Mich App 718, 720; 481 NW2d 822 (1992). MCL 768.7b provides such authority. It reads in part:

Beginning January 1, 1992, if a person who has been charged with a felony, pending the disposition of the charge, commits a subsequent offense that is a felony, upon conviction of the subsequent offense . . . , the following shall apply:

(a) Unless the subsequent offense is a major controlled substance offense, the sentences imposed for the prior charged offense and the subsequent offense may run consecutively. [MCL 768.7b(2).]

The term “may” designates discretion. *Port Huron v Amoco Oil Co, Inc*, 229 Mich App 616, 631; 583 NW2d 215 (1998). Thus MCL 768.7b(2) “operates at the discretion of the trial court.” *People v Daniels*, 69 Mich App 345, 349; 244 NW2d 472 (1976). Therefore, the trial court had discretion in determining whether to impose a consecutive sentence because the crimes were committed while defendant was out on bond for a prior offense. In stating that defendant’s

sentence “has to be consecutive,” the court may have evinced a mistaken belief that consecutive sentencing was mandatory.

Accordingly, we remand for clarification of the reason for consecutive sentencing. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Christopher M. Murray