

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALBERT ALAN WRIGHT,

Defendant-Appellant.

UNPUBLISHED

April 26, 2002

No. 224920

Oakland Circuit Court

LC No. 99-168476-FH

Before: Talbot, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree home invasion, MCL 750.110a(3). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to four to twenty years' imprisonment, with no credit for time served. Defendant appeals as of right. We affirm defendant's conviction, but remand for further proceedings with respect to his sentence.

We first address defendant's contention that he received ineffective assistance of counsel. Defendant moved for a new trial on the basis of ineffective assistance. This Court reviews for an abuse of discretion a trial court's decision regarding a motion for a new trial, but reviews de novo a trial court's determination whether counsel was ineffective. *People v Kevorkian*, 248 Mich App 373, 410-411; 639 NW2d 291 (2001).

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. The defendant further must demonstrate that a reasonable probability exists that but for counsel's error, the result of the proceedings would have been different *and* that the attendant proceedings were fundamentally unfair or unreliable. *People v Rodgers*, 248 Mich App 702, 714; ___ NW2d ___ (2001).

Defendant primarily argues that he received ineffective assistance because trial counsel lacked experience in trial procedure. Defendant asserts that trial counsel had difficulty admitting evidence, cross examining witnesses, and that he did not know how to request that the jury be permitted to view the crime scene. After reviewing the record, we note that certain portions of the trial transcripts raise an inference that trial counsel was somewhat inexperienced in trial procedure. However, inexperience alone is not a sufficient reason to conclude that defense counsel acted deficiently or in a manner that prejudiced the defendant. *Kevorkian, supra* at 415.

While defendant complains that his counsel had difficulty entering exhibits into evidence, the record reflects that defense counsel entered several exhibits into evidence and defendant provides no specific example of any evidence that counsel failed to successfully admit. That the trial court sustained several objections to defense counsel's sometimes repetitive cross examination of witnesses did not detract from counsel's otherwise thorough questioning of the police surveillance team members regarding their opportunities to observe defendant at the time of the crime and the inconsistencies in their testimony. Defense counsel did seek to recall the victim to the stand after she had been excused, but defendant does not explain why counsel should have reserved the right to recall her. We further note that although it does not appear that trial counsel requested that the jury be allowed to view the crime scene,¹ both defense counsel and the prosecutor introduced many photographs of the victim's house and the surrounding neighborhood, the trial witnesses testified with the aid of the photographs and a map of the area, and defendant fails to explain how a view of the crime scene would have affected his case.²

We cannot conclude that any of defense counsel's conduct qualified as objectively unreasonable. Moreover, defendant fails to even allege that any of defense counsel's conduct prejudiced him. Accordingly, we reject defendant's ineffective assistance of counsel claim.

Defendant also contends that the trial court erred by not granting him credit toward his sentence for jail time that he served in Macomb County before the instant trial. Following his October 1997 arrest for the instant offense, defendant obtained release on bond and absconded. On August 1, 1998, defendant was arrested in Macomb County on unrelated charges. Defendant stood trial and was convicted for the Macomb County offense. Defendant was sentenced for the Macomb County conviction on April 19, 1999 and remained incarcerated for this crime until June 16, 1999 when his conviction was overturned. According to defendant, he was not released from custody, however, because of the existing warrant relating to the instant charge. The record is unclear exactly when defendant arrived in Oakland County, but defendant apparently arrived sometime during August or September 1999. Defendant's preliminary examination took place on September 23, 1999, after which he was bound over on the instant charge, and on October 18, 1999 the trial court reinstated defendant's personal bond. Defendant's trial began on December 16, 1999.

The trial court determined that defendant was entitled to no credit for any of the time that he served. The court reasoned that with respect to "the period of incarceration on the Macomb County conviction, Defendant was not incarcerated as a result of the instant offense." The trial court also concluded that no time that defendant spent incarcerated between the vacation of his Macomb County conviction and his instant conviction could be credited against his sentence for

¹ Defense counsel did request that part of a witness' testimony be completed at the scene of the crime, but the trial court denied the request as irrelevant and cumulative.

² Defendant also suggests that his counsel won a motion to strike a key prosecution witness, but then inexcusably allowed the prosecutor to call the witness to testify. This argument wholly lacks merit because a reading of the transcript reveals that defense counsel lost his motion to strike the witness. Moreover, defendant offers no explanation how the witness' testimony prejudiced him.

the instant crime because “Defendant was on parole at the time he committed the instant offense.”

The trial court correctly determined that defendant should receive no credit toward his instant sentence for the time that he spent in jail between his August 1, 1998 arrest on the Macomb County charge and the vacation of the Macomb County conviction. The relevant statutory provision provides as follows:

Whenever any person is hereafter convicted of any crime within this state and has served any time in jail prior to sentencing *because of being denied or unable to furnish bond for the offense of which he is convicted*, the trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing. [MCL 769.11b (emphasis added).]

Section 11b neither requires nor permits sentence credit in cases like this where a defendant is incarcerated as a result of charges arising out of an unrelated offense or circumstance and then seeks credit in another case for the unrelated period of confinement. *People v Ovalle*, 222 Mich App 463, 468-469; 564 NW2d 147 (1997), quoting *People v Prieskorn*, 424 Mich 327, 340; 381 NW2d 646 (1985). Because the record reflects that defendant spent time incarcerated in Macomb County on a charge unrelated to the instant crime, and contains no indication that defendant spent any time incarcerated in Macomb County because of his inability to post bond for the instant offense, we conclude that defendant is entitled to no credit for the time he served related to his Macomb County offense.

With respect to the period that defendant spent incarcerated between the vacation of his Macomb County conviction and his conviction of the instant offense, the trial court correctly observed that defendant could not receive any credit toward his instant sentence for this period if defendant was on parole when he committed the instant offense. The Legislature has provided as follows:

If a person is convicted and sentenced to a term of imprisonment for a felony committed while the person was on parole from a sentence for a previous offense, the term of imprisonment imposed for the later offense shall begin to run at the expiration of the remaining portion of the term of imprisonment imposed for the previous offense. [MCL 768.7a(2).]

See also *People v Johnson*, 205 Mich App 144, 146-147; 517 NW2d 273 (1994) (explaining that when a parolee violates parole he becomes liable to serve out the unexpired portion of maximum imprisonment for the paroled offense, which must be served before a sentence for a second offense may begin); *People v Watts*, 186 Mich App 686, 687; 464 NW2d 715 (1991) (observing that “[b]ecause defendant was on parole at the time of the instant offense, the sentence for the instant offense must be consecutive to the sentence for which he was on parole).

While it is clear that defendant’s status as a parolee would preclude him from applying any time served between the vacation of his Macomb County conviction and his instant conviction toward satisfaction of his instant sentence, defendant’s parole status appears less

clear. The trial court stated that defendant was on parole, but the existing record leaves us unable to substantiate this fact.³ Defendant's presentence information report also states that defendant "was on parole at the time of the instant offense," but does not explain for which of his several convictions he was on parole. None of the parties' arguments before the trial court or on appeal explain for exactly what offense defendant was on parole. The prosecutor merely asserts that defendant indeed was paroled when he committed this offense, and defendant, while initially conceding this fact, avers that he nonetheless is entitled to credit toward his instant sentence because "he has been discharged from parole on his prior sentence."

The legal issue presented remains clear: if defendant was on parole when he committed the instant crime he cannot receive any credit toward his instant sentence for the time he served between the vacation of his Macomb County conviction and his instant conviction. Without more specific information, however, regarding (1) the exact amount of time defendant spent incarcerated between the vacation of his Macomb County conviction and his instant conviction and (2) defendant's parole status at the time of the instant offense, i.e., for what crime defendant was serving a sentence and what sentence term he received for this crime, we cannot determine whether the trial court properly denied defendant any credit for time served. Accordingly, we remand this case to the trial court for the limited purpose of ascertaining these matters and granting defendant credit for any time served, limited to the period between the vacation of his Macomb County conviction in June 1999 and his instant conviction in January 2000, that does not apply to a previously imposed sentence for which defendant was on parole.

Defendant further suggests that he is entitled to credit as a matter of due process because the denial of credit violates his protection against double jeopardy and his equal protection rights. We decline to address this issue, however, because defendant failed to raise it in his statement of questions presented on appeal and offers minimal analysis and relevant authority to support his claim. *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000); *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

We affirm defendant's conviction and sentence, but remand to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Hilda R. Gage
/s/ Kurtis T. Wilder

³ Defendant's instant judgment of sentence does not mention his parole status at the time of this offense and does not state that his instant sentence is to be served consecutively to any previously imposed term, but merely reflects that defendant received no credit for any time served and that "[t]his sentence shall be executed immediately."