

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAILLEL L. POINTERHICKS,

Defendant-Appellant.

UNPUBLISHED
December 1, 2005

No. 256839
Oakland Circuit Court
LC No. 03-192934-FH

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

MEMORANDUM.

Defendant appeals by right his sentences for carrying a concealed weapon (CCW), MCL 750.227, felon in possession of a firearm, 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, entered after a jury trial. Defendant received concurrent sentences of one to seven years in prison for CCW and felon in possession. He also received a two-year sentence for felony-firearm. The trial court ordered the sentence for felony-firearm to run concurrently to both of the other sentences. Defendant was given 238 days sentencing credit against the felony-firearm conviction. We remand for the correction of defendant's judgment of sentence. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

As his sole issue on appeal, defendant contends, and the prosecution concedes, that his sentence for felony-firearm improperly runs consecutively to his sentence for CCW. We agree. Pursuant to MCL 750.227b(1), a felony-firearm conviction cannot be predicated on a conviction under MCL 750.227. A sentence for felony-firearm may be consecutive only to the sentence for the specific underlying felony. *People v Clark*, 463 Mich 459, 463; 619 NW2d 538 (2000). In this case, the charge of felony-firearm was predicated on the charge of felon in possession. Because this error did not affect defendant's overall sentence, however, we remand solely to allow the trial court to correct the judgment of sentence to reflect that defendant's sentences for CCW and felony-firearm are to run concurrently to one another and consecutively to the sentence for felon in possession. *Id.* at 465.

We remand to the trial court to allow for the correction of defendant's judgment of sentence. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Bill Schuette

/s/ Stephen L. Borrello