

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID COCHISE BOARDS,

Defendant-Appellant.

UNPUBLISHED

October 30, 2007

No. 271835

Calhoun Circuit Court

LC No. 06-000109-FH

Before: Zahra, P.J., and White and O’Connell, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v), and was sentenced as an habitual offender, fourth offense, MCL 769.12, to a prison term of 2 to 15 years. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Following a traffic stop and the arrest of the vehicle’s driver, police officer Joel Case asked defendant to step from the vehicle so he could search it, and defendant complied. Case patted him down and did not find anything. Case told defendant that he believed that there was possibly going to be either crack or crack pipes in the vehicle and asked him if there was. Defendant did not initially respond. Upon further inquiry, defendant hesitantly replied, “[i]f there was something in there, that it wasn’t his.”

In the area where defendant had been sitting, on the seat, Case found a crack pipe inside a garden glove. Adjacent to that was a wadded up piece of tissue paper. Inside the tissue was tightly wadded lined paper, which held pieces of “chore boy” and .10 grams of cocaine. The items were on the passenger seat of the vehicle, where a passenger’s left leg would rest. Case did not recall any other items on the passenger seat. When defendant was asked about the crack cocaine, he replied that he did not know anything about it. When Case asked defendant how the cocaine got there and if the driver had placed it underneath him, defendant responded “something to the effect of, ‘Possibly.’” The driver indicated that the drugs were not hers or defendant’s, but must have been left by someone else.

Defendant argues that the evidence of constructive possession was insufficient to support the conviction. “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the

crime were proven beyond a reasonable doubt.” *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Constructive possession exists where the defendant has control over the contraband and knowledge of its presence. *Id.* at 520. An inference of possession is not automatically unreasonable because it is founded exclusively on circumstantial evidence. See *People v Meshell*, 265 Mich App 616, 621; 696 NW2d 754 (2005).

In this case, defendant was not merely present at the location where the drugs were found. Instead, they were found hidden with a crack pipe in a glove that was sitting on defendant’s seat. Specifically, on a portion of the seat that had just been occupied by the backside of defendant’s leg. A rational trier of fact could reasonably infer that defendant was sitting on the glove containing the cocaine and the crack pipe to conceal it, which demonstrated that he knew that the cocaine was present and that he exercised a considerable amount of control over it. *Wolfe, supra* at 520. Therefore, the evidence of constructive possession was adequate to support defendant’s conviction.

Defendant next contends that he is entitled to a remand to determine whether he received credit for the time he served in jail awaiting sentence. Defendant committed the offense while on parole. He claims that if the Parole Board did not require him to serve an additional portion of his previous sentence for violating parole, then the jail credit must be applied to the sentence for the instant offense.

A convicted defendant who served time in jail before sentencing is entitled to credit for time served against the sentence imposed pursuant to MCL 769.11b only if he was held because he was denied or was unable to furnish bond. Defendant did not serve time in jail because of an inability or denial of bond. He was held on a parole detainer. “When a parolee is arrested for a new criminal offense, he is held on a parole detainer until he is convicted of that offense, and he is not entitled to credit for time served in jail on the sentence for the new offense.” *People v Seiders*, 262 Mich App 702, 705; 686 NW2d 821 (2004). Rather, he is entitled to have jail credit applied exclusively to the sentence from which parole was granted. *People v Stead*, 270 Mich App 550, 552; 716 NW2d 324 (2006).

Defendant requests a remand to determine if he received credit on the earlier offense. However, the remand is unnecessary because regardless whether he received credit against the other sentence, MCL 769.11b does not provide a basis for granting credit against the present sentence. Defendant’s reliance on unpublished authority issued before *Seiders* and *Stead* is misplaced. Although defendant cites the dissents to the denials of applications for leave to appeal in *People v Wright*, 474 Mich 1138; 716 NW2d 552 (2006), and *People v Conway*, 474 Mich 1140; 716 NW2d 554 (2006), the concerns expressed by the dissenting justices do not provide a basis for this Court to disregard *Seiders* and *Stead*.

Affirmed.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Peter D. O’Connell