

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER SHAWN JACKSON,

Defendant-Appellant.

UNPUBLISHED

November 20, 2007

No. 270725

Kent Circuit Court

LC No. 05-004815-FH

Before: Murphy, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Following a jury trial, defendant Christopher Jackson was convicted of delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv). The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to 2-1/2 to 50 years' imprisonment, and he appeals his sentence as of right. We affirm.

Defendant argues that the trial court erred in failing to apply 432 days of credit to his sentence for the time that he served in jail awaiting trial. We disagree.

Defendant preserved this issue by requesting credit for time served at the sentencing hearing. *People v Meshell*, 265 Mich App 616, 638; 696 NW2d 754 (2005). Whether a defendant is entitled to credit for time served is a question of law that this Court reviews de novo. *People v Givans*, 227 Mich App 113, 124; 575 NW2d 84 (1997).

Where a trial court sentences a defendant who has served time in jail before sentencing because he could not afford or was denied bond, the court must credit the defendant with time served. MCL 769.11b; *People v Stead*, 270 Mich App 550, 551; 716 NW2d 324 (2006). However, MCL 769.11b does not apply where a defendant is held on a parole detainer. *People v Seiders*, 262 Mich App 702, 707; 686 NW2d 821 (2004). "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." *Id.* at 705. "[A] parole detainee convicted of a new offense is entitled to have jail credit applied exclusively to the sentence from which parole was granted." *Stead, supra* at 552; *People v Watts*, 186 Mich App 686, 687-690; 464 NW2d 715 (1991).

The undisputed evidence in this case establishes that defendant was on parole when he committed the present offense and that his commission of the offense constituted a violation of

his parole. Accordingly, when he was arrested for the new offense, he was held on a parole detainer and was not entitled to any credit against his new sentence for the time that he served in jail awaiting trial. *Stead, supra*; *Seiders, supra*. Defendant was entitled to have the credit applied against the remaining portion of his sentence for the paroled offense. MCL 768.7a(2); MCL 791.238. See also *People v Brown*, 186 Mich App 350; 463 NW2d 491 (1990).

Defendant argues that because he served the minimum terms of the sentences from which parole was granted, and because the Department of Corrections (“DOC”) did not require him to serve any additional time on his paroled sentences for the parole violation, there was no sentence against which to credit the 432 days that he served in jail awaiting trial on the new offense. Therefore, he was entitled to have the credit applied against his new sentence. The record does not indicate whether a parole violation hearing was held or whether the DOC imposed any additional sentence for defendant’s parole violation. Further, it does not indicate that, while defendant was in jail awaiting trial for the present offense, he was discharged from the sentence for which parole was granted. Thus, on this record, we cannot conclude that the sentence for the present offense is currently being served. It would have been inappropriate for the trial court to credit defendant’s time served against his new sentence. MCL 768.7a; *Watts, supra* at 690.

More importantly, this Court has held that a defendant is not entitled to credit against a new sentence for time spent incarcerated on a parole detainer even where the prison authorities abandon parole violation proceedings after the defendant is sentenced on the new offense. MCL 791.234(5); *People v Stewart*, 203 Mich App 432, 434; 513 NW2d 147 (1994). Thus, defendant was not entitled to credit against his new sentence regardless of the status of the sentence from which parole was granted. See also *Seiders, supra* at 705.

Defendant’s reliance on *Wayne Co Prosecutor v Dep’t of Corrections*, 451 Mich 569; 548 NW2d 900 (1996), is misplaced. The issue in that case “was when the [parolee’s] first sentence should end and when the second should begin, *not how jail credit was to be applied.*” *Stead, supra* at 552 (emphasis added). Similarly, defendant’s reliance on an unpublished case is misplaced. Unpublished opinions are not binding on this Court. MCR 7.215(C)(1). Moreover, the cited unpublished case appears to conflict with *Stewart, supra*, and *Seiders, supra*, and we are bound by those published decisions. MCR 7.215(C)(2); MCR 7.215(J)(1).

Defendant next argues that defense counsel was ineffective for failing to move for his pretrial release under MCR 6.004(C) and, therefore, he is entitled to resentencing. We disagree.

To preserve a claim of ineffective assistance of counsel, a defendant must move for a new trial or an evidentiary hearing in the trial court. *People v Noble*, 238 Mich App 647, 661; 608 NW2d 123 (1999). Defendant did not move for a new trial or an evidentiary hearing in this case. Therefore, the issue is unpreserved. *Id.* Our review of unpreserved claims of ineffective assistance of counsel is limited to errors apparent on the record. *Id.* To establish a claim of ineffective assistance of counsel, a defendant must show that counsel’s performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 314, 338; 521 NW2d 797 (1994).

MCR 6.004(C) provides, in part:

In a felony case in which the defendant has been incarcerated for a period of 180 days or more . . . the defendant must be released on personal recognizance, unless the court finds by clear and convincing evidence that the defendant is likely either to fail to appear for future proceedings or to present a danger to any other person or the community.

The remedy for a violation of MCR 6.004(C) is release from jail, on personal recognizance, while awaiting trial. Defendant failed to cite any authority in support of his argument that he is entitled to resentencing based on defense counsel's failure to move for his pretrial release under MCR 6.004(C). A party may not simply announce a position and leave it for this Court to discover and rationalize the basis for his claim. *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004). Although defendant may have spent more time in jail while awaiting trial as a result of his trial counsel's decision, this alone would not entitle defendant to credit on his new conviction for the time served. Further, defendant has not alleged that the purported failure prejudiced his trial. Thus, defendant is not entitled to the requested relief on his claim of ineffective assistance of counsel.

Defendant also argues that he is entitled to resentencing because defense counsel failed to inform the trial court of the reasons for the pretrial delays in this case, i.e., that the delays were the result of circumstances beyond defendant's control, including the congestion of the lower court docket and the prosecutor's illness. Thus, his sentence was based on incomplete, or inaccurate, information.

A sentence is invalid if it is based on inaccurate information. MCL 769.34(10); *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997). "The court may correct an invalid sentence, but the court may not modify a valid sentence after it has been imposed except as provided by law." MCR 6.429(A). For purposes of MCR 6.429(A), "[i]nvalid sentence" refers to any error or defect in the sentence or sentencing procedure that entitles a defendant to be resentenced or to have the sentence changed." *Miles, supra* at 97 (citation omitted).

[T]here must be some "legal flaw" in a sentence, or a "tangible legal or procedural error" leading to a sentence in order to consider it "invalid" and justify resentencing. To be clear, this legal error has a neutral posture; a sentence's validity does not rest on whether it favors the defendant's interests over society's interests, or the converse. [*People v Thenghkam*, 240 Mich App 29, 70-71; 610 NW2d 571 (2000), overruled in part on other grounds *People v Petty*, 469 Mich 108; 665 NW2d 443 (2003) (citations omitted).]

Defendant failed to establish that his sentence was invalid. The sentencing judge determined that, because defendant was on parole when he committed the new offense, he was not entitled to credit for the time that he served in jail awaiting trial for that offense. The trial court's decision reflected a correct understanding of the law and, thus, did not provide any basis to revisit defendant's sentence. *Stead, supra*; *Seiders, supra*. Further, the trial court was aware of the fact that defendant was incarcerated for 432 days awaiting trial. The record indicates that Judge Johnston, who sentenced defendant, presided over this case since June 29, 2005. He issued the orders that were entered following the status conferences in this case, as well as the orders adjourning defendant's jury trial. Therefore, we presume that he was aware of the pretrial

delays, and the reasons for the delays. It was not objectively unreasonable for defense counsel to refrain from apprising the trial court of facts already known to it.

Defendant failed to establish that the trial court relied on inaccurate information in imposing the sentence in this case and, therefore, we must affirm defendant's sentence. "“This Court shall affirm sentences within the guidelines range absent an error in scoring the sentencing guidelines or inaccurate information relied on in determining the defendant's sentence.”” *People v Cox*, 268 Mich App 440, 453-454; 709 NW2d 152 (2005), quoting *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000). See also MCL 769.34(10).

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Patrick M. Meter