

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC THEORDOR WALKER,

Defendant-Appellant.

---

UNPUBLISHED

July 10, 2008

No. 278071

Wayne Circuit Court

LC No. 06-014092-01

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

PER CURIAM.

Defendant appeals as of right from his conviction of possession of a firearm during the commission of a felony, MCL 750.227b, and the trial court's order that he serve a term of one year's probation for his conviction of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), consecutively with his two-year prison term for felony-firearm. We affirm defendant's conviction of felony-firearm, but remand for correction of the sentence. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The police executed a search warrant on a residence occupied by defendant and several other persons. An officer observed defendant throw a plastic bag of suspected marijuana into a makeshift bedroom area. The police recovered the plastic bag, which contained 27 ziplock packets of marijuana, a digital scale, several empty ziplock packets, and a box containing four firearms and various papers and identification cards from the makeshift bedroom area. The box, which did not have a top, was covered with clothing. Three of the four firearms were loaded. None of the identification cards belonged to defendant.

Defendant gave a written statement in which he admitted that he possessed marijuana, but denied that the guns belonged to him. He indicated that someone else put something in his room, but that he did not know what had been put in his room.

The jury found defendant guilty of possession with intent to deliver marijuana and felony-firearm. The trial court sentenced defendant to two years in prison for felony-firearm, with credit for 19 days, and to a consecutive term of one years' probation for possession with intent to deliver marijuana.

Defendant argues that the evidence was insufficient to support his conviction of felony-firearm.<sup>1</sup> We disagree. In reviewing a sufficiency of the evidence question, we view “the evidence presented in a light most favorable to the prosecution [to] determin[e] whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990). We do not interfere with the jury’s role of determining the weight of the evidence or the credibility of witnesses. See *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *Vaughn*, *supra* at 379-380.

The elements of felony-firearm are: (1) the possession of a firearm; (2) during the commission of, or the attempt to commit, a felony. MCL 750.227b. A person has “possession” of a firearm if the firearm is accessible and available during the commission of or the attempt to commit a felony. *People v Williams (After Remand)*, 198 Mich App 537, 540-541; 499 NW2d 404 (1993). “Possession may be actual or constructive and may be proved by circumstantial evidence.” *People v Burgenmeyer*, 461 Mich 431, 437; 606 NW2d 645 (2000) (internal citation and quotation marks omitted). Possession may be exclusive or joint. See *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995).

“[C]ircumstantial evidence and reasonable inferences arising from it may constitute satisfactory proof of the elements of an offense.” *People v Johnson*, 146 Mich App 429, 434; 381 NW2d 740 (1985). The evidence established that a police officer observed defendant throw a plastic bag containing marijuana into the same room in which the firearms were found. Defendant made a statement to the police, and did not deny that the room served as his bedroom. Rather, his assertion that another person had put something in the room supported an inference that in fact defendant exercised some control over the room, and, at a minimum, had at least joint possession of the firearms. *Konrad*, *supra* at 271; *Vaughn*, *supra* at 379-380. The direct and circumstantial evidence that loaded firearms were found in an open box, with only articles of clothing on top of them, in a room to which defendant had access at the time he committed the offense of possession with intent to deliver marijuana, supported defendant’s conviction of felony-firearm. *Burgenmeyer*, *supra* at 437.

Defendant next claims that the trial court misapplied MCL 750.227b(2). The proper interpretation of a statute presents a question of law that we review de novo. *People v Clark*, 463 Mich 459, 463 n 9; 619 NW2d 538 (2000).

MCL 750.227b provides, in pertinent part:

(1) A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony, except a violation of section 223, section 227, 227a or 230, is guilty of a felony, and shall be imprisoned for 2 years. Upon a second conviction under this section, the person shall be imprisoned for 5

---

<sup>1</sup> Defendant does not challenge his conviction of possession with intent to deliver marijuana.

years. Upon a third or subsequent conviction under this subsection, the person shall be imprisoned for 10 years.

(2) A term of imprisonment prescribed by this section is in addition to the sentence imposed for the conviction of the felony or the attempt to commit the felony, and shall be served consecutively with and preceding any term of imprisonment imposed for the conviction of the felony or attempt to commit the felony.

A sentence for felony-firearm must be served consecutively with and before “any term of imprisonment imposed” for the underlying felony, MCL 750.227b(2); *People v Fortson*, 202 Mich App 13, 20-21; 507 NW2d 763 (1993), but not consecutively with a sentence imposed for any other offense. *Clark, supra* at 464. A probationary sentence cannot run consecutively with a term of imprisonment for felony-firearm. *People v Brown*, 220 Mich App 680, 682-685; 560 NW2d 80 (1996).

Defendant argues that the trial court erred by ordering that his sentence for felony-firearm run consecutively, rather than concurrently, with his probationary sentence for possession with intent to deliver marijuana. Plaintiff concedes that the trial court erred in this regard. We agree.

The trial court erred by sentencing defendant to a consecutive term of probation. *Id.*; MCL 750.227b(2). The task of correcting the judgment of sentence to reflect that defendant’s prison term for felony-firearm and his term of probation for possession with intent to deliver marijuana are to run concurrently is ministerial; therefore, a full resentencing hearing is not necessary. *Brown, supra* at 685. The trial court is directed to ensure that a copy of the corrected judgment of sentence is transmitted to the Department of Corrections.

We affirm defendant’s conviction of felony-firearm but remand this case for correction of the sentence. We do not retain jurisdiction.

/s/ Patrick M. Meter  
/s/ Michael R. Smolenski  
/s/ Deborah A. Servitto