

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD DALE GERMAINE,

Defendant-Appellant.

UNPUBLISHED

March 3, 2009

No. 281870

Chippewa Circuit Court

LC No. 07-008483-FH

Before: Sawyer, P.J., and Servitto and M. J. Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of operating a motor vehicle while intoxicated causing serious impairment of a body function, MCL 257.625(5). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to a prison term of four years, 10 months to 15 years. We affirm.

Defendant's conviction arose out an automobile collision in which defendant's passenger sustained a fractured pelvis and other injuries. The passenger subsequently died of complications from prior medical problems.

On appeal, defendant first maintains that the trial court erred by denying defendant's request for additional peremptory challenges during jury selection. The record is unclear as to whether defendant preserved this alleged error. However, we need not determine whether the error was preserved because we conclude that defendant failed to demonstrate good cause for additional peremptory challenges.

There is no dispute that defendant used all of the peremptory challenges to which he was entitled under MCR 6.412(E)(1), albeit the last two having been exercised after the start of the trial. MCR 6.412(E)(2) provides, "[o]n a showing of good cause, the court may grant one or more of the parties an increased number of peremptory challenges." According to the staff comment, the rule is based on 3 ABA Standards for Criminal Justice (2d ed), Standard 15-2.6(a), which allows allocating additional challenges "when special circumstances justify doing so."

Here, defendant based his request for additional challenges on his contention that the trial court should have excused two of the seated jurors for cause, and that its failure to do so forced defendant to use his remaining two challenges to excuse the two jurors. Decedent's sister, a witness, approached one of the jurors on the morning of the second day of trial. According to the

record, the woman identified herself as the decedent's sister and told the juror she recognized her "from the bank." That was apparently the extent of the conversation. Upon questioning, the juror stated that she did not know the woman, nor did she know the decedent and that the encounter would not affect her ability to be fair and impartial. Defendant exercised one of his remaining peremptory challenges to excuse the juror. Defendant exercised his last peremptory challenge on a juror who, also after the start of trial, disclosed that she recognized decedent's sister as someone she had gone to school with, but did not know.

Defendant has not identified on which basis these jurors should have been dismissed for cause under MCR 2.511(D), and nothing in the record supports defendant's contention that the two jurors at issue should have been excused for cause. Cf. *People v Lee*, 212 Mich App 228, 248-252; 537 NW2d 233 (1995). Moreover, defendant identified no other jurors he would have peremptorily challenged had he been granted additional challenges, he did not otherwise establish any potential unfairness in exercising all of his peremptory challenges, and he identified no prejudice suffered by him resulting from the makeup of the jury. Having failed, then, to establish "good cause" for additional peremptory challenges, defendant's argument fails.

Defendant next contends that the evidence was insufficient to support his conviction. Citing *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004), defendant argues that plaintiff failed to establish that his passenger sustained a serious impairment of a body function under the standard applicable in civil no-fault cases. However, defendant has provided no authority suggesting that the *Kreiner* standard applies to criminal charges under MCL 257.625. The no-fault statute and the statute under which defendant was convicted (MCL 257.625(5)) do not relate to the same subject or share a common purpose. "The no-fault act provides a system of civil compensation and liability for automobile accidents. . ." *People v Thomas*, 263 Mich App 70, 75; 687 NW2d 598 (2004), whereas the statute at issue here prohibits and criminalizes the operation of a motor vehicle while intoxicated.

Moreover, if "a statute supplies its own glossary, courts may not import any other interpretation but must apply the meaning of the terms as expressly defined." *People v Brown*, 249 Mich App 382, 385; 642 NW2d 382 (2002). The phrase "serious impairment of a body function" is defined in the Motor Vehicle Code (a violation of which defendant was convicted of) at MCL 257.58c to encompass several specific injuries, including a "serious bone fracture." The record in this case demonstrates that the passenger sustained a fractured pelvis, and that he would have been permanently disabled by that injury, had he survived. That his death resulted from the complications of prior chronic conditions does not alter the severity of the injuries caused by defendant's intoxicated driving.

Lastly, defendant argues that he should have received sentencing credit for the time he spent incarcerated on a parole violation while awaiting trial. Defendant acknowledges that this Court rejected this argument in *People v Filip*, 278 Mich App 635; 754 NW2d 660 (2008). We are bound by MCR 7.215(J)(1), then, to apply *Filip* and, accordingly, hold that defendant is not entitled to a sentencing credit. We would, however, note our agreement with Justice Kelly's dissent in *People v Conway*, 474 Mich 1140; 716 NW2d 554 (2006) with respect to the Department of Correction's (DOC) policies in crediting jail time to paroled defendants pursuant to MCL 768.7a(2). MCL 768.7a(2) provides:

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.

As noted by Justice Kelly:

There is reason to believe that the DOC is committing a real injustice against prisoners who seek credit for time spent in jail awaiting trial and appeal. The problem involves those who were on parole when they committed a felony and then were arrested and jailed pending trial and appeal. . . The DOC has apparently adopted an across-the-board practice. It treats the time those individuals were jailed as equal to the time not completed on the conviction for which they were on parole when the second offense occurred. At first blush, this may appear to be evenhanded and fair to all. But, on closer inspection, it becomes clear that similarly situated individuals are being treated very differently. The difference in treatment is not reasoned, but arbitrary.

I believe that these are important issues that have arisen because of the DOC's handling of sentencing credit accrued by prisoners who were on parole when they committed a felony. This Court should grant leave to appeal in this case to explore these issues.

We echo the above concerns about DOC policies and procedures and further point out that in some instances, the DOC does not proceed on a parole violation, in which case, the time a defendant spends in jail on a parole detainer while awaiting resolution of a new offense is credited toward neither the sentence for defendant's previous offense nor the sentence on the new offense. This precise situation concerned Justice Markman, dissenting, in *People v Wright*, 474 Mich 1138; 716 NW2d 552 (2006):

Here, a defendant is serving presentence jail time that is neither formally imposed for a violation of parole, nor credited to the sentence that is eventually imposed for the later crime. Because the length of that indefinite interim period of incarceration is not dependent on an official determination of how much time should be served for a violation, but rather is solely dependent on the fortuity of how long it takes the criminal justice system to proceed to a defendant's final sentencing, the DOC's practice in this regard leads to a result that seems wholly arbitrary.

While it is not clear which of the above two circumstances occurred in the matter at hand, the fact remains that a prison or jail term serves as a punishment for a criminal conviction or violation. When a defendant is held in jail on a parole detainer and the DOC does not proceed on a parole violation a defendant is, in essence, serving a punishment for which there is no corresponding criminal conviction or violation. Such a circumstance undermines basic principles of fairness and justice upon which our legal system is based. We would join, then in

Justice Markman's and Justice Kelly's urging that the DOC's policies concerning jail credit for paroled defendants should be reviewed by the Supreme Court.

Affirmed.

/s/ Deborah A. Servitto

/s/ Michael J. Kelly