

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BEN WILLIAM COFFIN JR,

Defendant-Appellant.

UNPUBLISHED
September 3, 2009

No. 285564
Ionia Circuit Court
LC No. 07-013771-FH

Before: Saad, C.J., and Whitebeck and Zahra, JJ.

MEMORANDUM.

Defendant was convicted by jury of armed robbery, MCL 750.529, and the trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to 28 to 50 years in prison, to be served consecutive to any sentence defendant was already serving. Defendant appeals as of right, challenging the trial court's imposition of a consecutive sentence. We remand with instructions that the trial court amend the judgment of sentence to reflect that defendant's sentence for the instant conviction is to be served concurrently with that for the previous conviction. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

At the time defendant committed the armed robbery, he was on probation for attempted larceny in a building. As a result of his arrest for armed robbery, defendant pled guilty to violating his probation in the prior case and was sentenced to 16 to 24 months in prison.

In Michigan, concurrent sentences are the norm; absent an applicable statute permitting a consecutive sentence, a concurrent sentence must be imposed. *People v Henry*, 107 Mich App 632, 635; 309 NW2d 922 (1981). The parties agree that MCL 768.7b(1) authorizes consecutive sentences only when the defendant commits a felony while another felony charge is still pending. A defendant who commits a felony while on probation for a previous crime does not fall within the authority of the statute. Once an individual is placed on probation, the prior felony charge is no longer pending. *Id.* at 636. Further, the "violation of probation is not a crime, and a ruling that probation has been violated is not a new conviction." *People v Kaczmarek*, 464 Mich 478; 628 NW2d 484 (2001) (citing *People v Johnson*, 191 Mich App 222, 226-227; 477 NW2d 426 (1991). "[R]evocation of probation simply clears the way for a resentencing on the original offense." *Id.* (citing MCL 771.4).

Since defendant was on probation at the time he committed armed robbery, his felony charge of attempted larceny of a building was no longer pending. Thus, as defendant argues and

plaintiff concedes, the trial court lacked authority to impose a consecutive sentence upon defendant. We remand the case to the trial court with instructions that the trial court amend the judgment of sentence to provide that the sentence in this case be served concurrently with defendant's previous sentence.

Remanded. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Brian K. Zahra