

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE LANDRUM,

Defendant-Appellant.

UNPUBLISHED
September 3, 2009

No. 285952
Wayne Circuit Court
LC No. 08-001873-FH

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

MEMORANDUM.

Defendant appeals as of right his jury trial convictions of carrying a concealed weapon (CCW), MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 46 months to 20 years for CCW and felon in possession of a firearm, and to a consecutive two-year term for felony-firearm, with credit for 112 days served. We remand for correction of the judgment of sentence.

Defendant's sole argument on appeal is that the trial court erred in ordering that his sentence for CCW run consecutively to his sentence for felony-firearm. He asserts that because the predicate felony for the charge of felony-firearm was felon in possession of a weapon, his sentence for felony-firearm can be consecutive only to the sentence for felon in possession of a firearm. We agree. We review de novo the question of whether a consecutive sentence is statutorily mandated. *People v Clark*, 463 Mich 459, 464 n 9; 619 NW2d 538 (2000).

Our Supreme Court has interpreted MCL 750.227b(2) to mean that a sentence for felony-firearm must be served consecutively and prior to a sentence for the underlying felony, but not consecutively to a sentence imposed for any other offense. *Clark, supra* at 463-464; see also *People v Fortson*, 202 Mich App 13, 20-21; 507 NW2d 763 (1993). Further, the offense of CCW cannot serve as the underlying felony for felony-firearm. MCL 750.227b(1); *People v Cortez*, 206 Mich App 204, 207; 520 NW2d 693 (1994). Given the foregoing, it is plain that the trial court erred when it ordered that defendant's CCW sentence run consecutively to his felony-firearm conviction.

Accordingly, we remand to the trial court for correction of the judgment of sentence to provide that defendant's sentence for felony-firearm is to run consecutively to his sentence for felon in possession of a firearm, and concurrently with his sentence for CCW. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro