

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BILLY LOMOR WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

June 10, 2010

No. 291366

Kalamazoo Circuit Court

LC No. 2008-000590-FH

Before: OWENS, P.J., and O'CONNELL and TALBOT, JJ.

MEMORANDUM.

Defendant appeals as of right the sentence imposed on his bench trial conviction of second-degree fleeing and eluding, MCL 257.602a(4). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to 29 months to 10 years in prison, to be served consecutively to the sentence defendant was serving on parole. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant, who was on parole at the time of the instant offense, argues that the trial court's failure to award him credit for the 344 days spent in jail pending trial and sentencing in this case based on his parole status violates Michigan law regarding consecutive sentencing and jail credit, specifically MCL 769.11b. We disagree.

Pursuant to MCL 769.11b:

Whenever any person is hereafter convicted of any crime within this state and has served any time in jail prior to sentencing because of being denied or unable to furnish bond for the offense of which he is convicted, the trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing.

However, this Court has held that a parolee who is arrested for a new criminal offense is not entitled to credit for time served in jail on the sentence for the new offense, but is instead entitled to have jail credit applied exclusively to the sentence from which parole was granted. *People v Filip*, 278 Mich App 635, 641-642; 754 NW2d 660 (2008); *People v Seiders*, 262 Mich App 702, 705; 686 NW2d 821 (2004). This is true even where the defendant is not required to serve additional time on the sentence from which he was paroled. *Filip*, 278 Mich App at 642. Recently, our Supreme Court addressed this issue in *People v Idziak*, 484 Mich 549; 773 NW2d

616 (2009), and agreed with this position. The *Idziak* Court held that, under MCL 769.238(2), a defendant resumes serving his earlier sentence when he is arrested on the new charge, “unless and until discharged by the Parole Board.” *Idziak*, 484 Mich at 562. As long as time remains on the sentence for the earlier conviction, the defendant remains incarcerated on this earlier conviction. Thus, because the defendant is not being held “because of being denied or unable to furnish bond,” MCL 769.11b does not apply, and the defendant is not entitled to receive jail credit for his new sentence. *Idziak*, 484 Mich at 552, 562-563, 566-568. The *Idziak* Court also held that the denial of credit against a new minimum sentence does not violate the double jeopardy clauses or the equal protection clauses of the United States or Michigan constitutions. *Id.* at 552, 569-574. Consequently, defendant’s arguments in this appeal are without merit.

Affirmed.

/s/ Donald S. Owens
/s/ Peter D. O’Connell
/s/ Michael J. Talbot