

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
March 29, 2012

v

BRIAN JAMES VEILLEUX,
Defendant-Appellant.

No. 302335
Oakland Circuit Court
LC No. 2008-221029-FH

Before: SERVITTO, P.J., and TALBOT and K.F. KELLY, JJ.

PER CURIAM.

We granted defendant's application for leave to appeal to determine the limited issue of whether the trial court erred in ordering that defendant's prison term for possession of less than 25 grams of cocaine, MCL 333.7403(2)(A)(v), run consecutive to his prior sentences for contempt of court. Because we find no error, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

In 2008, defendant was on parole for two other drug convictions from 2004 and 2005. He was 50 years old and had an on-going problem with drug and alcohol abuse dating back to 1976. His prior criminal record was extensive, including seven felony and three misdemeanor convictions, most of which were related to drunk driving or narcotics. As a result, defendant was charged as an habitual offender for the instant offense. The sentencing guidelines recommended a minimum of 0 to 34 months' imprisonment. Defendant tendered his guilty plea pursuant to a *Cobbs*¹ agreement whereby the trial court indicated that it would either sentence defendant to 1 to 15 years' imprisonment, or three years' probation with one year in the county jail. On August 7, 2008, the trial court sentenced defendant to 3 years' probation with 365 days in jail, with work-release. As a condition of his probation defendant was not to use drugs or alcohol and was to submit to regular tests for substance abuse. The trial court admonished defendant that it could have sentenced defendant to a lengthy prison term under the circumstances, but that it was showing leniency. The trial court declined to suspend defendant's sentence for 90 days to allow defendant to enter the Zero Tolerance Program.

¹ *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

Very shortly after being sentenced, defendant began to shout and curse at the trial court judge. He persisted in this behavior despite being told that he was being found in contempt for each outburst. The trial court held defendant in contempt a total of seven times before defendant was removed from the courtroom. The outburst was not transcribed, but defendant does not contest the characterization of his behavior. The trial court entered an order on August 12, 2008, sentencing defendant to jail terms of 90 days for each contempt citation. The terms were to be served consecutive to one another and consecutive to defendant's one-year jail term that defendant was serving as part of his probation sentence. Defendant never appealed from the sentences.

On June 29, 2009, defendant was released from the Oakland County Jail after serving just one year in jail. Defendant had been released in error and should have been held to serve his seven 90-day sentences for contempt (an additional 630 days). On July 18, 2009, less than three weeks after his erroneous release, defendant was arrested for assault. As part of their investigation into the matter, Ferndale police gave defendant a breath test, which revealed a blood alcohol level of .17%. Defendant was charged with violating his probation based on the assault and his consumption of alcohol while on probation. The assault charge against defendant was subsequently dismissed due to the complainant's failure to appear. At defendant's January 13, 2010, probation violation hearing, the trial court declined to find that defendant engaged in assaultive conduct, but found that his high blood alcohol content served as a sufficient basis for revocation of defendant's probation.

At the January 28, 2010, re-sentencing hearing the trial court first noted that defendant should receive credit for time spent in jail following his July 18, 2009, arrest because he had been denied bond. Defendant was also entitled to credit for the 365 days served in jail as part of his original sentence of probation. Noting that this Court may disagree with awarding credit under the circumstances, the trial court nonetheless granted defendant credit for 189 days held in custody pending the violation of parole hearing, plus 365 days served on the original sentence, for a total of 554 days of credit. The trial court then sentenced defendant to 34 months to 15 years' imprisonment, which was to be served consecutive to the contempt sentences that had never been served. Defense counsel argued that any new sentence should run concurrent to the prior sentences for contempt. The trial court disagreed. Citing *People v Kevin Williams*, unpublished opinion per curiam of the Court of Appeals, issued May 12, 2005 (Docket No. 254628) (2005), and MCL 768.7a(1), the trial court found that any new sentence would be consecutive to the contempt sentences. Again, the trial court pointed out its leniency despite defendant's criminal record, parolee status at the time he committed his crimes, and the fact that he tested positive for narcotics at the original sentencing hearing in 2008.

We granted defendant's delayed application for leave to appeal, limiting our inquiry to whether the trial court erred in ordering defendant's 34 month to 15-year prison term run consecutive to his sentences for contempt of court.

II. ANALYSIS

A. CONSECUTIVE SENTENCES

Defendant argues that the trial court had no authority to order that his sentence for the possession charge run consecutive to his contempt sentences. We disagree. Whether a consecutive sentence may be imposed is a question of law subject to de novo review by this Court. *People v Gonzalez*, 256 Mich App 212, 229; 663 NW2d 499 (2003). A consecutive sentence may be imposed only if specifically authorized by law. *Id.*

Both parties discuss at length this Court's decision in *Williams*, a case similar to the case at bar, in which a criminal defendant engaged in rude and disruptive behavior following his sentence on an assault conviction. The same trial court judge as the case at bar held the defendant in contempt four times before the defendant was taken out of the courtroom. The trial court ordered that the four 30-day sentences run consecutive to one another and consecutive to the defendant's sentence for the assault conviction. *Williams*, unpub slip op at 6. In *Williams*, the defendant raised the narrow issue of whether the trial court could order the four contempt sentences to be served consecutive to one another. He did not contest the trial court's authority to order the contempt sentences consecutive to the assault sentence. *Id.* We found that statutory authority existed to allow the trial court to act as it did:

The clear and unambiguous language of MCL 768.7a(1) requires that each of defendant's sentences for contempt not only be consecutive to the term of imprisonment being served at the time the contemptuous conduct occurred but also be consecutive to "terms of imprisonment which the person ... has become liable to serve." Because as each instance of contempt of court occurred, the trial court properly and immediately found defendant guilty of contempt, MCL 600.1711(1); *In re Contempt of Robertson, supra* at 437-438, 531 NW2d 763, defendant "has become liable to serve" a term of imprisonment for that contempt of court. Thus, as the trial court found defendant guilty of each succeeding contempt as it occurred, defendant was liable to serve his prior contempt sentences. Accordingly, each contempt sentence is required to be served consecutively to those prior contempt sentences for which defendant had already become liable to serve. To the extent construction of the statute is necessary, our view of the statute is supported because it furthers the intent and purpose of the statute as applied here to deter the continuing commission of contempt of court by removing the security of concurrent sentencing. MCL 760.2; *Phillips, supra* at 499, 552 NW2d 487. [*Id.* at unpub slip at 7-8.]

Williams is an unpublished decision and, as such, is not precedentially binding. MCR 7.215(C)(1). It may nevertheless be considered instructive or persuasive. *In re Application of Indiana Michigan Power Co*, 275 Mich App 369, 380; 738 NW2d 289 (2007). We find *Williams* to be instructive only to the extent that it holds that "each contempt sentence is required to be served consecutively to those prior contempt sentences for which defendant had *already become liable to serve.*" Although raised in the context of allowing stacking of multiple contempt sentences, the phrase supports a finding that a defendant should always be required to serve a sentence for which he has become *liable to serve.*

Defendant was sentenced in 2008 for drug possession. Defendant then committed seven distinct acts of contempt for which he was ordered to serve 90-days in jail on each. The contempt sentences were to be consecutive to one another and served consecutive to the drug

possession conviction. Thus, in 2008, defendant became “liable to serve” not only the 365 days in jail as a condition of his three year probation, but also 630 days in jail for his contempt sentences.² Defendant was then *erroneously* released from jail after serving only 365 days. He was quickly arrested for violating his probation. At the time of his re-sentencing in 2010, defendant had not satisfied the trial court’s 2008 judgment of sentence. When he was re-sentenced to 34months to 15 years for the underlying possession conviction, defendant was not “re-sentenced” to the concurrent contempt sentences; rather, *he remained liable* to serve the original sentence as ordered. Defendant cites no authority for the notion that he was excused from serving a valid judgment of sentence simply because the jailhouse committed an error in releasing him. In fact, the opposite is true. Defendant remained “liable to serve” the remaining time. In the context of a trial court’s jurisdiction over a defendant, this Court noted:

[Defendant] contends that the trial court did not have jurisdiction over him because he had been discharged from his sentence. We disagree. If we had agreed with the trial court that the [Department of Corrections] had used an incorrect method for calculating good-time and special good-time credits, then the trial court would have had jurisdiction to vacate defendant’s discharge because the discharge itself would have been improper, since defendant’s release would have been based upon an improper calculation of good-time credit. *Given that no new sentence would have been imposed upon defendant, he would have been required only to complete the sentence from which he would have been improperly discharged.* [*Michigan ex rel Oakland Co Prosecutor v Dep’t of Corrections*, 199 Mich App 681, 694; 503 NW2d 465 (1993) (emphasis added).]

Defendant’s 2008 sentence went unchallenged and is not before us. He was sentenced to a term that he did not serve. Defendant must be made to complete the sentence from which he was improperly discharged. Failure to so order would result in defendant suffering no penalty for his outrageous courtroom behavior and criminal contempt convictions.

B. DISPROPORTIONATE SENTENCING

Defendant next argues that the consecutive nature of the sentences is disproportionate to the crime. We disagree. Our review is limited to determining whether the sentencing court abused its discretion by violating the principle of proportionality. *People v Milbourn*, 435 Mich 630, 635-636, 654; 461 NW2d 1 (1990). A sentence must be proportionate to the seriousness of the crime and the defendant’s prior record. *Id.*

The principle of proportionality applies to individual sentences rather than to the cumulative length of the consecutive sentences. *People v Miles*, 454 Mich 90, 95; 559 NW2d

² To the extent defendant seeks to attack his original 2008 sentence, we remind defendant that leave was granted in this case for the limited purpose of determining whether the trial court erred in ordering defendant’s 34 month to 15-year prison term to run consecutive to his sentences for contempt following defendant’s probation violation in 2010. Because defendant never appealed his 2008 sentence, the sentence is deemed valid and is no longer an issue.

299 (1997); *People v St John*, 230 Mich App 644, 649; 585 NW2d 849 (1998). Defendant's minimum sentence of 34 months was within the range recommended by the sentencing guidelines and is presumed proportional. *St John*, 230 Mich App at 650.

Affirmed.

/s/ Michael J. Talbot
/s/ Kirsten Frank Kelly