

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
May 17, 2012

v

ROBERT ARGARTHER HOARD IV,

Defendant-Appellant.

No. 303820
Saginaw Circuit Court
LC No. 04-025356-FH

Before: OWENS, P.J., and TALBOT and METER, JJ.

PER CURAIM.

In October 2005, defendant was convicted by a jury of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v), possession of marijuana, MCL 333.7403(2)(d), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, second offense, MCL 750.227b(1). He was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of one year for the possession of marijuana conviction, 46 months to 15 years for the possession of cocaine conviction, and 48 months to 25 years for the felon-in-possession of a firearm conviction, to be served consecutive to a five-year term of imprisonment for the felony-firearm conviction. In a prior appeal, this Court affirmed defendant's convictions and sentences. *People v Hoard*, unpublished opinion per curiam of the Court of Appeals, issued January 31, 2008 (Docket No. 267245). In January 2011, the trial court entered an amended judgment of sentence specifying that defendant's sentences were to be served consecutive to a "parole sentence" that defendant was serving at the time he committed the offenses. Defendant then filed a pro se motion for resentencing in which he claimed entitlement to sentence credit of 355 days. The trial court denied defendant's motion. Defendant appeals as of right. We affirm.

Defendant's entitlement to sentence credit under MCL 769.11b involves a question of statutory interpretation, which is reviewed de novo on appeal. *People v Givans*, 227 Mich App 113, 124; 575 NW2d 84 (1997).

MCL 769.11b provides that "[w]henver 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." This statute "provides that where a sentencing court has before it a convict who has

served time in jail before sentencing because he or she could not afford or was denied bond, the court must credit that person with time served.” *People v Stead*, 270 Mich App 550, 551; 716 NW2d 324 (2006).

At the time defendant was originally sentenced, the law was clear that “[w]hen a parolee is arrested for a new criminal offense, he is held on a parole detainer until he is convicted of that offense, and he is not entitled to credit for time served in jail on the sentence for the new offense.” *People v Seiders*, 262 Mich App 702, 705; 686 NW2d 821 (2004). Rather, a parolee convicted of a new offense is entitled to have jail credit applied only to the sentence from which parole was granted. *Id.* Before defendant moved for resentencing, the Supreme Court clarified in *People v Idziak*, 484 Mich 549, 562, 568; 773 NW2d 616 (2009), “that the jail credit statute does not generally apply to parolees who commit new felonies while on parole” and that a trial court does not have “discretion to grant credit regardless of the applicability of the jail credit statute.” The trial court was bound to follow our Supreme Court’s decision in *Idziak*, as must this Court.¹ *People v Tierney*, 266 Mich App 687, 713; 703 NW2d 204 (2005). Therefore, the trial court properly denied defendant’s motion for sentence credit. While defendant contends that *Idziak* was wrongly decided, that is a matter for the Supreme Court to decide or for the Legislature to address.

Affirmed.

/s/ Donald S. Owens

/s/ Michael J. Talbot

/s/ Patrick M. Meter

¹ Contrary to what defendant asserts, the trial court did not apply *Idziak* “retroactively” in that it did not take away or impair vested rights acquired under existing laws or attach a new disability to past actions. *Hughes v Judges’ Retirement Bd*, 407 Mich 75, 85; 282 NW2d 160 (1979). To the contrary, the court applied existing law to a pending matter. In any event, the general rule is that a judicial decision is to be given “full retroactive effect” unless it “overrules settled precedent or decides an issue of first impression whose resolution was not clearly foreshadowed.” *Holmes v Mich Capital Med Ctr*, 242 Mich App 703, 713; 620 NW2d 319 (2000). In light of this Court’s earlier decision in *Seiders*, the Supreme Court’s decision in *Idziak* did not overrule settled precedent or decide an issue of first impression.