

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN W. CROMER,

Defendant-Appellant.

UNPUBLISHED

April 1, 1997

No. 186412

Oakland Circuit Court

LC Nos. 93-124300-FH;

93-127407-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded guilty to violating probation on his underlying convictions of three counts of first-degree retail fraud, MCL 750.356c; MSA 28.588(3), escape from lawful custody, MCL 750.197a; MSA 28.394(1), and habitual offender, fourth offense, MCL 769.12; MSA 28.1084. He was sentenced to enhanced terms of 2-1/2 to 15 years' imprisonment for the retail fraud convictions and one year in the county jail for the escape conviction, to be served concurrently. He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Defendant argues that he is entitled to credit for time served in jail prior to his sentence of probation. However, consideration of this issue is precluded by the law of the case. *McNees v Cedar Springs Stamping Co*, 219 Mich App 217; ___ NW2d ___ (1996), lv pending. A previous order by this Court denying defendant's application for leave to appeal in Docket No. 184491 for lack of merit on the grounds presented decided the issue raised in this appeal. Defendant's application requesting jail

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

credit included credit for the same days which are the subject of this appeal. As in the present appeal, defendant claimed that the trial court erroneously withheld jail credit because he did not knowingly and voluntarily waive his statutory right to jail credit. The fact that the issue now presents itself in the context of awarding credit on a probation violation and not on the original plea does not constitute a material change in the facts.

Affirmed.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar