STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD GEORGE NADEAU, JR.,

Defendant-Appellant.

UNPUBLISHED
December 19, 1997

No. 187476
Calhoun Circuit Court
LC No. 95-000143 FH

Before: Griffin, P.J., and Markman and Whitbeck, JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to attempted breaking and entering an occupied dwelling with intent to commit larceny, MCL 750.110; MSA 28.305; MCL 750.92; MSA 28.287, and was sentenced to one to five years' imprisonment. Defendant appeals as of right. We affirm.

While in jail awaiting disposition of the charge in this case, defendant escaped from jail. Defendant subsequently pleaded guilty to escape and was sentenced on the escape conviction before the instant criminal matter was resolved. Defendant argues that because the trial court imposed sentence on the escape conviction before it imposed sentence in the instant case, the trial court lost the authority to require that the sentence imposed in this case be served prior to the escape sentence and, therefore, the court was required to impose a concurrent sentence. Defendant relies on the statutory language of MCL 768.7b; MSA 28.1030(2), to support his claim. Defendant's reliance is misplaced. Defendant's consecutive sentence was not imposed pursuant to MCL 768.7b; MSA 28.1030(2), which gives the trial court discretion in some circumstances to impose consecutive sentences where a subsequent felony is committed while a prior felony charge is pending. (With regard to a subsequent major controlled substance offense, the consecutive sentencing is mandatory under § 768.7b.) Rather, under MCL 750.197(2); MSA 28.394(2), defendant's sentence for the escape offense was required to "begin to run at the expiration of any term of imprisonment imposed for the offense for which the person was imprisoned at the time of the escape violation."

In the instant case, the trial court imposed a one to five-year sentence on the escape conviction. The court gave defendant no sentence credit against the escape sentence, but did indicate that the

sentence would be served subsequently and consecutively to any sentence imposed in the instant case. Several months later, the trial court sentenced defendant in the instant case consistent with the terms of a sentence agreement. The court granted defendant 235 days of sentence credit. Additionally, the court ordered that the instant sentence be served prior to the escape sentence. On this record, the trial court's method of sentencing defendant, while out of the ordinary, did ensure that defendant's sentences comport with the dictates of MCL 750.197; MSA 28.394. In effect, the trial court announced the sentence for escape but suspended its operation pending defendant's sentencing for the subsequent offense of breaking and entering. During this time, while defendant remained in jail, he continued to accumulate credit toward the breaking and entering sentence. The trial court had no discretion but to make the sentences consecutive under the plain language of MCL 750.197(2); MSA 28.394(2). See, e.g., *People v McCullough*, 221 Mich App 253, 255; 561 NW2d 114 (1977) (plain language of clear and unambiguous statute must be applied). We find no legal error in the trial court's imposition of consecutive sentences.

Defendant next argues that he is entitled to a remand for resentencing because the record is unclear with regard to whether the trial court recognized its discretion to impose concurrent sentences. However, as explained above, the trial court had no discretion to impose a concurrent sentence under MCL 750.197; MSA 28.394

Affirmed.

/s/ Richard Allen Griffin
/s/ Stephen J. Markman
/s/ William C. Whitbeck