

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM OWDISH,

Defendant-Appellant.

UNPUBLISHED

June 12, 1998

No. 200496

Macomb Circuit Court

LC No. 90-001554 FH

Before: Wahls, P.J., and Jansen and Gage, JJ.

MEMORANDUM.

Defendant appeals as of right from the sentence imposed on his guilty plea based conviction for possession with intent to deliver more than 225 grams but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii) and conspiracy to possess with intent to deliver more than 225 grams but less than 650 grams of cocaine, MCL 750.157(a); MSA 28.354(1). We affirm.

After defendant was arrested he fled the country, and failed to appear on the date set for trial. A bench warrant was issued for his arrest. Defendant was subsequently arrested in Windsor, Ontario on an unrelated narcotics offense. He was convicted and served two years in prison on the narcotics charge, plus an additional four months for escape. In February 1996 defendant was returned to Macomb County.

On appeal, defendant argues that the trial court erred in failing to grant him sentence credit for time served in prison in Canada. The statute defendant relies on is inapplicable to his situation. MCL 769.11b; MSA 28.1083(2) provides:

Whenever any person is hereinafter 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, a trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing.

Here, defendant did not serve time in Canadian prison due to an inability to furnish bond. He was convicted on a new offense, which was unrelated to the instant charges. He is not entitled to sentence credit. *People v Adkins*, 433 Mich 732; 449 NW2d 400 (1989); *People v Ovalle*, 222 Mich App 463, 468; 564 NW2d 147 (1997).

Defendant also argues that his sentence is disproportionate considering the circumstances surrounding the offense and the offender. However, defendant was sentenced in accord with a generous plea bargain. Rather than face the mandatory minimum sentence of 20 years on each count, to be served consecutively, under the plea agreement the prosecutor agreed to recommend a four year minimum sentence cap on each of the charges. The trial court imposed minimum sentences of three years on each count, under the cap. Where defendant was sentenced in accord with a valid plea bargain, he has waived any challenge to the proportionately of his sentence where he has failed to move to withdraw his plea. *People v Blount*, 197 Mich App 174; 494 NW2d 829 (1992).

Affirmed.

/s/ Myron H. Wahls
/s/ Kathleen Jansen
/s/ Hilda R. Gage