

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES WILLIAMS,

Defendant-Appellant.

---

UNPUBLISHED  
February 15, 2002

No. 226298  
Wayne Circuit Court  
LC No. 98-013853

Before: White, P.J., and Whitbeck, C.J., and Holbrook, Jr., J.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of carrying a concealed weapon in a motor vehicle, MCL 750.227. Defendant was sentenced to two to five years' imprisonment. We affirm.

Defendant first argues that the prosecution failed to present sufficient evidence to support his conviction. We disagree. "When reviewing a claim regarding the sufficiency of the evidence, this Court examines the evidence in a light most favorable to the prosecution to determine if a rational jury could find that the essential elements of the offense were proved beyond a reasonable doubt." *People v Joseph*, 237 Mich App 18, 20; 601 NW2d 882 (1999). "To support a conviction for carrying a weapon in [a vehicle], the prosecution must show: (1) the presence of a weapon in a vehicle operated or occupied by the defendant, (2) that the defendant knew or was aware of its presence, and (3) that he was 'carrying' it." *People v Courier*, 122 Mich App 88, 90; 332 NW2d 421 (1982).

Officers Gross, Smith, Hamilton, and Nehs, stopped the taxicab because the three individuals riding in the rear of the taxicab, including defendant, matched the description given of suspects involved in earlier shootings on Whithorn Street. Officer Gross found a weapon on the right rear passenger side of the taxicab, near where defendant had been sitting. Further, defendant and the prosecution stipulated that if Officer William Niarhos testified at trial, he would say that residue samples done on defendant's hands detected gunshot residue particles. We believe that this evidence was sufficient to establish the requisite intent, *People v Combs*, 160 Mich App 666, 673; 408 NW2d 420 (1987), and that defendant was carrying the weapon, *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999).

Second, defendant argues that the trial court erred in failing to give defendant credit for time served while awaiting trial. We disagree. Defendant failed to preserve this issue for our

review because he did not request that the credit be given or otherwise raise this issue before the trial court. *People v Van Wert*, 149 Mich App 128, 130; 385 NW2d 622 (1985). Unpreserved issues are considered under the plain error rule. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (2001). “To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain . . . , 3) and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice . . . .” *Id.* at 763. Further, if the three elements of the plain error rule are established, “[r]eversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error “seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings” independent of the defendant’s innocence.” *Id.*, quoting *United States v Olano*, 507 US 725, 736-737; 113 S Ct 1770; 123 L Ed 2d 508 (1993), quoting *United States v Atkinson*, 297 US 157, 160; 56 S Ct 391; 80 L Ed 555 (1936).

Defendant has failed to establish that a plain error occurred. Defendant pleaded guilty on June 5, 1996, to one count of armed robbery. On October 4, 1996, defendant was placed at the W. J. Maxey Training School for Boys, where he stayed for nineteen months while obtaining his G.E.D. certificate. On June 25, 1998, defendant was transferred to a halfway house in Flint, Michigan. On October 18, 1998, while defendant was serving this juvenile sentence at the halfway house, he walked away. A halfway house is a prison for purposes of the escape statute. *People v Mayes*, 95 Mich App 188, 190; 290 NW2d 119 (1980).

“Where a consecutive sentence is imposed, a defendant is not entitled to credit for presentence time served that he was already obliged to serve under a prior sentence.” *People v Connor*, 209 Mich App 419, 431; 531 NW2d 734 (1995). MCL 768.7a(1) provides:

A person who is incarcerated in a penal or reformatory institution in this state, or who escapes from such an institution, and who commits a crime during that incarceration or escape which is punishable by imprisonment in a penal or reformatory institution in this state shall, upon conviction of that crime, be sentenced as provided by law. The term of imprisonment imposed for the crime shall commence to run at the expiration of the term or terms of sentence which the person is serving or has become liable to serve in a penal or reformatory institution in this state.

Therefore, because defendant was already obliged to serve under a prior sentence he is not entitled to credit for presentence time served. *Connor, supra* at 431.

Affirmed.

/s/ Helene N. White  
/s/ William C. Whitbeck  
/s/ Donald E. Holbrook, Jr.