

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS HOWARD MCDANIEL,

Defendant-Appellant.

UNPUBLISHED

November 14, 2006

No. 264706

Oakland Circuit Court

LC No. 03-190643-FH

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

In 2003, defendant was convicted by a jury of attempted first-degree home invasion, MCL 750.110a(2); MCL 750.92(2). The trial court originally sentenced defendant as a fourth habitual offender, MCL 769.12, to serve a term of imprisonment of twenty to thirty years. The minimum sentence far exceeded the recommended range under the sentencing guidelines. In defendant's first appeal, this Court affirmed the conviction, but ruled that the trial court's stated reasons for the departure did not justify one "sixteen years above and at least five time over the longest recommended minimum sentence," and remanded this case for resentencing. *People v McDaniel*, unpublished per curiam opinion of the Court of Appeals, issued March 29, 2005 (Docket No. 252040), slip op at 4.

In May 2005 the trial court resentenced defendant, imposing a term of imprisonment of four to ten years. This minimum reflected the high end of the recommended range under the guidelines. The trial court specified, "zero credit, it's to run consecutive to the parole violation." Defendant appeals as of right, his sole argument being that the trial court erred in failing to award sentencing credit for the time he served before resentencing. We affirm. This case is being decided without oral argument in accordance with MCR 7.214(E).

We review a trial court's sentencing decisions for an abuse of discretion. *People v Cain*, 238 Mich App 95, 130; 605 NW2d 28 (1999). However, application of the statutes that govern sentencing presents a question of law, calling for review de novo. See *People v Hegwood*, 465 Mich 432, 436; 636 NW2d 127 (2001). "[W]hen a void sentence is set aside and a new sentence is imposed, any time served on the void sentence must be credited against the sentence then imposed." *People v Dorsey*, 107 Mich App 789, 792; 310 NW2d 244 (1981), citing MCL 769.11a. But MCL 768.7a(2) directs that sentences of persons convicted of felonies committed while on parole for earlier offenses "begin to run at the expiration of the remaining portion of the term of imprisonment imposed for the previous offense." At issue is whether, at any time

between sentencing and resentencing in this case, defendant had been discharged from his earlier sentence, thus causing the time he served thereafter to count against the instant sentence.

Defendant's presentence investigation report states that the instant sentence is to run consecutively to active sentences, and indicates that defendant was sentenced on July 25, 1997, to a term of imprisonment of five to twenty years for second-degree home invasion. The evaluation and plan states that defendant is not entitled to jail credit because he was returned to prison as a parole violator. Defendant protests that at the time of his resentencing, "he had spent nearly twenty months in prison for which he was presumably receiving credit against his original twenty year minimum sentence." But defendant gives no indication that he had in fact been discharged from his earlier sentence, the maximum of which could keep that sentence in operation as late as July 2117. Plaintiff in turn provides documentation from the Department of Corrections listing as still active defendant's sentence for second-degree home invasion, MCL 750.110a(3). No discharge date is given for that sentence.

In any event, to obtain relief from this Court, it is not enough for defendant to presume that, for a certain period, he was serving time for the instant offense instead of a prior one subject to consecutive sentencing. Defendant instead is obliged to provide or cite documentation clearly indicating that the sentence for his earlier conviction had been terminated. See MCR 7.212(C)(7); MCR 7.210(B)(1); *People v Mackle*, 241 Mich App 583, 604 n 4; 617 NW2d 339 (2000) ("A party may not merely state a position and then leave it to this Court to discover and rationalize the basis for the claim."). Because defendant has failed to do so in this instance, we decline to disturb the result below.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio