

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MELISSA FLETCHER,

Defendant-Appellant.

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UNPUBLISHED

November 20, 2008

No. 280557

Eaton Circuit Court

LC No. 04-020148-FH

Before: Murphy, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant's probation was revoked after she pleaded guilty to a probation violation. She was sentenced as a second habitual offender on her underlying conviction of first-degree retail fraud, MCL 750.356, to 36 to 84 months in prison, with credit for 375 days served. At issue in this case is whether defendant was entitled to 10 days of credit or 52 days of credit for the period between October 18, 2005, and December 8, 2005. The trial court first decided that defendant was entitled to 10 days' credit, then, on defendant's motion to correct the sentence, the court ruled that defendant was entitled to 52 days' credit, and finally, on the prosecutor's motion for reconsideration, the court reverted back to its original position that defendant was entitled to only 10 days' credit. This gave defendant a grand total of 375 days of jail credit. Defendant argues that she is entitled to not only the 10 days of credit actually awarded, but also an additional 42 days of credit, giving her 52 days of credit for the period between October 18, 2005, and December 8, 2005, for a grand total of 417 days' credit. The prosecutor maintains that the trial court correctly determined that defendant was only entitled to 10 days' credit for the period at issue. This Court denied defendant's delayed application for leave to appeal on the issue (see Docket No. 274838), but our Supreme Court remanded for consideration as on leave granted. 480 Mich 865 (2007). We reverse and remand for correction of the judgment of sentence. We hold that defendant was entitled to 31 days' credit for the relevant time period, giving her a total of 396 days' credit. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Originally, defendant was sentenced to 365 days in jail and two years' probation on her retail fraud conviction. On October 11, 2005, while on probation, she was arrested and jailed in Ingham County for failure to pay child support, and she was subsequently charged with uttering and publishing. Eaton County issued a warrant for a probation violation on October 18, 2005, with regard to the retail fraud conviction, based on defendant's failure to report to her probation officer as scheduled and to complete aftercare following treatment at Glass House. Defendant

incorrectly argues that the basis for the probation violation charge was the uttering and publishing and child support infractions.

Pursuant to a writ of habeas corpus issued by the Eaton Circuit Court, defendant was later transferred from the Ingham County Jail to the Eaton County Jail on November 7, 2005, for arraignment on the probation violation. At that arraignment, the Eaton Circuit Court set a \$1 million dollar, 10 percent cash bond. *Defendant was unable to furnish bond.* While the PSIR in this case states that defendant remained in the Eaton County Jail from November 7 until a probation violation hearing on November 17, the record includes a writ of habeas corpus dated November 8, indicating that defendant was lodged in the Ingham County Jail and directing Ingham County to make defendant available for the November 17 hearing. Thus, it would appear that defendant was brought to the Eaton Circuit Court for arraignment on the probation violation and immediately returned to the Ingham County Jail. Ultimately, it makes no difference in our resolution of the case whether defendant was incarcerated in Ingham or Eaton County between November 7 and November 17.

On November 17, 2005, defendant appeared at her probation violation hearing in the Eaton Circuit Court and pled guilty to probation violation. At the conclusion of the hearing, *the trial court remanded defendant to jail.* The court stated, “I’m going to remand you to jail.” The court then set December 8, 2005, as the date for sentencing on the probation violation and informed defendant, “You’re in jail until then.” Pursuant to yet another writ of habeas corpus, dated November 18, 2005, the day after the probation violation hearing, the Eaton Circuit Court ordered Ingham County Jail officials to make defendant available for her December 8 sentencing date on the probation violation. Thus, the record establishes that, while the Eaton Circuit Court remanded defendant to jail for the probation violation pending sentencing, she was sent back to the Ingham County Jail.

On December 8, 2005, defendant was delivered to the Eaton Circuit Court from the Ingham County Jail for sentencing on the probation violation. The sentence is reflected above.

We hold that defendant was not entitled to credit for time spent in jail between October 18, 2005 (date of warrant on probation violation), and November 7, 2005 (date of probation violation arraignment), because that time can only be attributed to the child support and uttering and publishing offenses committed in Ingham County. However, from November 7 until December 8, defendant, whether lodged in the Ingham County or Eaton County Jail, was in jail because she failed to post bond after the probation violation arraignment and because she was remanded to jail following her guilty plea at the probation violation hearing. It makes no difference whether she was in the Eaton County or Ingham County Jail; she was in jail. And it makes no difference that she may have also simultaneously been spending time in the Ingham County Jail on the child support and uttering and publishing offenses. Having no court records from Ingham County, we cannot ascertain, nor do we need to ascertain, the actual length of her confinement in jail there attributable to the child support and uttering and publishing offenses.

MCL 769.11b provides:

Whenever any person is hereafter 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*, the trial court in

imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing. [Emphasis added.]

In *People v Prieskorn*, 424 Mich 327; 381 NW2d 646 (1985), the defendant committed a driving offense while on bond for another offense. He began serving time on the driving offense before his sentence for the first offense commenced. The *Prieskorn* Court noted that before enactment of MCL 769.11b, a defendant received no credit for time served, and it concluded that in computing the sentence for the first offense, the defendant was not entitled to credit for time served on the driving offense. *Id.* at 333, 343. The *Prieskorn* Court observed:

We believe the sentence credit statute neither requires nor permits sentence credit in cases, such as the one before us, where a defendant is released on bond following entry of charges arising from one offense and, pending disposition of those charges, is subsequently incarcerated as a result of charges arising out of an unrelated offense or circumstance and then seeks credit in the former case for that latter period of confinement. [*Id.* at 340.]

The *Prieskorn* Court concluded:

To be entitled to sentence credit for presentence time served, a defendant must have been incarcerated “for the offense of which he is convicted.” Since the fifty-one days of incarceration for which the defendant seeks credit is unrelated to the offense before us for which he has been convicted, he is not entitled to sentence credit for that confinement. [*Id.* at 344; see also *People v Adkins*, 433 Mich 732; 449 NW2d 400 (1989).]

Here, with respect to the period between October 18, 2005, and November 7, 2005, defendant was in the Ingham County Jail, and she was not so incarcerated because of being denied or unable to furnish bond for the probation violation offense. Rather, she was being held on the child support and uttering and publishing offenses arising in Ingham County and completely unrelated to the probation violation charge, even though a warrant on that charge had been issued in Eaton County. There is no indication whatsoever in the record suggesting that defendant remained lodged in the Ingham County Jail between October 18 and November 7 on the basis of the probation violation warrant. However, from November 7, at which time defendant could not post bond after being arraigned on the probation violation charge, through November 17, at which time she was remanded to jail on the probation violation, and up until sentencing on December 8, defendant served time in jail “because of being denied or unable to furnish bond for the offense of which [she was] convicted.” MCL 769.11b. Therefore, she is entitled to 31 days’ credit for this period, giving her a total of 396 days’ credit.<sup>1</sup>

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<sup>1</sup> We have no information of record regarding the outcome of the Ingham County offenses, whether defendant was convicted, any term of jail or imprisonment, whether consecutive sentencing was ordered, or whether defendant was given any credit for jail time encompassed by our case. We do know based on the PSIR and the sentencing transcript here that matters were still pending in Ingham County. Thus, we see no reason to further delay ruling in this case and  
(continued...)

We reverse and remand for correction of the judgment of sentence consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy  
/s/ David H. Sawyer  
/s/ Michael R. Smolenski

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(...continued)

the propriety of any jail credit possibly awarded in those prosecutions are not of our concern.