STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 28, 2009
v	No. 284056 Lenawee Circuit Court
JAMES LAVERN HOWARD, Defendant-Appellant.	LC No. 07-013048-FH

Before: Borrello, P.J., and Murphy and M. J. Kelly, JJ.

PER CURIAM.

Defendant entered a plea of guilty to a charge of unarmed robbery, MCL 750.530, and was sentenced to five years, nine months to 15 years in prison. Defendant appeals pursuant to this Court's order granting his delayed application for leave to appeal. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that there was an insufficient factual basis for the plea. He asserts that no evidence established that he used force or violence, or that he assaulted or put someone in fear, as required for unarmed robbery under MCL 750.530(1). We disagree.

The trial court did not abuse its discretion by denying defendant's motion to withdraw the plea. See *People v Harris*, 224 Mich App 130, 131; 568 NW2d 149 (1997). In *People v Jones*, 190 Mich App 509, 511-512; 476 NW2d 646 (1991), this Court stated that "[a] factual basis to support a plea exists if an inculpatory inference can be drawn from what the defendant has admitted," even when "an exculpatory inference could also be drawn and the defendant asserts that the latter is the correct inference." "Even if the defendant denies an element of the crime, the court may properly accept the plea if an inculpatory inference can still be drawn from what the defendant says." *Id.* at 511-512. Here, defendant admitted that he entered a Seven-Eleven store, went behind the counter, demanded money from the clerk, she opened the cash register because of the demand, and defendant then took money from the register. From these facts, it can be inferred that the clerk was placed in fear, thereby satisfying MCL 750.530(1). Accordingly, the factual basis for the plea was sufficient.

Defendant next argues that he did not receive proper credit for time spent in jail. We disagree.

The presentence investigation report indicates that, as the result of the instant offense, defendant incurred pending parole violations for 1988 and 1996 armed robbery convictions. The report further states that defendant was on a parole detainer. Defendant represents on appeal that no action was taken on the parole violations and that he was never required to serve any additional time. Even if he could establish that this is the case, a defendant is entitled to credit for time served against his sentence only if he was being held because of a denial of bond or an inability to furnish bond for the offense of which he was convicted. MCL 769.11b; *People v Filip*, 278 Mich App 635, 642; 754 NW2d 660 (2008)(jail credit statute, MCL 769.11b, "simply does not apply to parole detainees"). Where a parole detainer has been filed, time served in jail is not because of an inability or denial of bond. "When a parolee is arrested for a new criminal offense, he is held on a parole detainer until he is convicted of that offense, and he is not entitled to credit for time served in jail on the sentence for the new offense." *People v Seiders*, 262 Mich App 702, 705; 686 NW2d 821 (2004). The jail credit is applied only to the sentence from which parole was granted. *People v Stead*, 270 Mich App 550, 552; 716 NW2d 324 (2006). "Moreover, if a defendant is not required to serve additional time on the previous sentence because of the parole violation, [as defendant claims here,] then the time served is essentially forfeited." *Filip, supra* at 642.

Defendant next argues that there was no disclosure that his parole officer made a recommendation to his probation agent for a sentence at the high end of the guidelines range, and that this violated MCL 771.14. Preliminarily, defendant's allegation is not supported by the record on appeal. Regardless, such a failure would not be grounds for relief. MCL 771.14 governs the preparation of and challenges to presentence investigation reports. Defendant cites to the following subsections in arguing that disclosure was required:

> (5) The court shall permit the prosecutor, the defendant's attorney, and the defendant to review the presentence investigation report before sentencing.
>
> (6) At the time of sentencing, either party may challenge, on the record, the accuracy or relevancy of any information contained in the presentence investigation report. The court may order an adjournment to permit the parties to prepare a challenge or a response to a challenge. If the court finds on the record that the challenged information is inaccurate or irrelevant, that finding shall be made a part of the record, the presentence investigation report shall be amended, and the inaccurate or irrelevant information shall be stricken accordingly before the report is transmitted to the department of corrections.

Nothing in these subsections requires disclosure of a parole officer's statements to a probation agent. Defendant also cites *People v Strunk*, 172 Mich App 208, 210; 431 NW2d 223 (1988), in which this Court stated:

> It would not be useful to the trial court to consider a sentencing recommendation without information on how the probation officer arrived at the recommended sentence, and it would not be reasonable for the probation officer to make a sentencing recommendation without considering the guidelines.

In the present case, the probation officer gave a detailed summary of defendant's extensive prior criminal history and also recapped defendant's strengths. However, the agent stated:

> Based on a review of the defendant's prior twelve felony cases, parole files, and prison files, it appears he has become "institutionalized" thus making him unable to adjust to society outside of a prison setting.

There is no indication that a recommendation from a parole officer would have had any significant bearing on the probation agent's recommendation.

Finally, defendant argues that Offense Variable 19, MCL 777.49 (interference with the administration of justice), should not have been scored because the score was based on fleeing and eluding, and a charge of fleeing and eluding was dismissed. However, the trial court was free to consider this conduct regardless of whether it was the subject of a charge against defendant, as the minimum sentence of an indeterminate sentence may be based on judicially ascertained facts. See *People v Drohan*, 475 Mich 140, 164; 715 NW2d 778 (2006). While there was no reference to defendant fleeing police following the robbery when the court took defendant's plea, the presentence investigation report (PSIR) states that defendant fled the scene in a vehicle, leading to a vehicle pursuit by police and eventually a police foot pursuit after defendant stopped his vehicle and ran away. At sentencing, defendant expressed that there was no challenge to the accuracy of the information in the PSIR. A sentencing court may consider all record evidence before it when calculating and scoring the guidelines, including the PSIR. *People v Althoff*, 280 Mich App 524, 541; 760 NW2d 764 (2008). Accordingly, there was no error.

Affirmed

/s/ Stephen L. Borrello
/s/ William B. Murphy
/s/ Michael J. Kelly