

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
March 29, 2012

v

BRIAN JAMES VEILLEUX,

Defendant-Appellant.

No. 302335
Oakland Circuit Court
LC No. 2008-221029-FH

Before: SERVITTO, P.J., and TALBOT and K. F. KELLY, JJ.

SERVITTO, J. (*dissenting*).

I respectfully dissent.

While I agree with the majority’s generalized statement that a defendant should always be required to serve a sentence for which he has become liable to serve, such a generalized statement misses the entire point of defendant’s appeal. In Michigan, concurrent sentencing is the norm. “A consecutive sentence may be imposed only if specifically authorized by statute.” *People v Lee*, 233 Mich App 403, 405; 592 NW2d 779 (1999). I cannot find, and the majority does not cite any statute authorizing consecutive sentencing for possession of less than 25 grams of cocaine, violation of probation, or contempt of court. The circuit court relied upon MCL 768.7a(1) and this Court’s opinion in *People v Kevin Williams*, unpublished opinion per curiam of the Court of Appeals, issued May 12, 2005 (Docket no. 254628). However, as recognized by the majority, the very narrow issue addressed by the unpublished and thus non-binding case of *Williams*, was whether the several contempt sentences were appropriately ordered to be served consecutively to one another. And while I disagree with the conclusion reached by the *Williams* court, the issue presented here is whether defendant’s prison term for possession of less than 25 grams of cocaine may be ordered to run consecutive to his sentences for contempt of court. Moreover, in *Williams*, the defendant conceded that MCL 768.7a applied to his citations for criminal contempt, whereas defendant here vigorously argues, and I agree, that MCL 768.7a is inapplicable.

MCL 768.7a(1) states as follows:

A person who is incarcerated in a penal or reformatory institution in this state . . . and who commits a crime during that incarceration . . . shall, upon conviction of that crime, be sentenced as provided by law. The term of imprisonment imposed for the crime *shall begin to run at the expiration of the*

term or terms of imprisonment which the person is serving or has become liable to serve in a penal or reformatory institution in this state. (Emphasis added).

The obvious purpose behind the relevant portion of MCL 768.7a(1) is to deter incarcerated persons from committing crimes by ensuring that they will actually serve additional time for any subsequent conviction. While the same principle may deter a criminal defendant from committing repeated acts which constitute contempt of court, MCL 768.7a(1) specifically applies to a limited class of persons---“[a] person who is incarcerated in a penal or reformatory institution” rather than a criminal defendant who has just been sentenced but has not yet been incarcerated. Defendant here was not “incarcerated in a penal or reformatory institution in this state” when he committed the acts of contempt. Thus, MCL 768.7a provides no basis for the consecutive sentencing imposed in this matter.

Additionally, although not a part of the instant appeal, I cannot help but be concerned by the imposition of the seven contempt sentences in the first place. There is absolutely no written record of defendant’s specific actions which formed the basis for the contempt findings, which is more than troublesome, but more important is the fact that defendant was found to be in *criminal* contempt and sentenced to consecutive 90-day sentences for each of his seven contempt citations. There is no doubt that the decorum of the court needs to be upheld, but there is also no doubt that “[t]he contempt power is awesome and must be used with the utmost restraint.” *In re Hague*, 412 Mich 532, 555; 315 NW2d 524 (1982). I am sure that most judges have experienced the not-so-respectfully expressed resentment of a defendant at one time or another. But, as observed in *In re Contempt of Dudzinski*, 257 Mich App 96, 107; 667 NW2d 68, (2003), when wielding contempt powers, “[t]rial courts . . . must be on guard against confusing offenses to their sensibilities with obstruction to the administration of justice.” After all, “[j]udges are supposed to be men of fortitude, able to thrive in a hardy climate.” *Id.* In imposing seven consecutive 90-day sentences, it appears as if the trial judge was acting in response to an offense to his sensibilities.

I am not suggesting that a contempt citation was inappropriate. I am simply suggesting that the citation and punishment be proportionate and take into consideration all of the surrounding facts. Here, defendant was sentenced to one year in jail for a drug crime, then, because he was apparently unhappy with his sentence and yelled and cursed at the judge, 630 days were imposed for contempt; nearly twice as long as he was initially sentenced for the drug crime.

/s/ Deborah A. Servitto