

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY BOLES,

Defendant-Appellant.

UNPUBLISHED

January 29, 2013

No. 309564

Saginaw Circuit Court

LC No. 09-032163-FH

Before: WHITBECK, P.J., and SAAD and SHAPIRO, JJ.

PER CURIAM.

This appeal follows a remand ordered in *People v Boles*, unpublished opinion per curiam of the Court of Appeals, issued June 28, 2011 (Docket No. 296684). In the prior appeal, this Court vacated defendant's racketeering conviction, MCL 750.159i(1), and remanded for resentencing on the remaining two convictions of larceny in a building, MCL 750.360. On remand, the court sentenced defendant as a habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of 46 months to 15 years, with 1,199 days credit for time served. For the reasons set forth below, we affirm.

I. CREDIT FOR JAIL TIME

Defendant maintains that he should have been awarded 1,263 days jail credit instead of the 1,199 days awarded by the trial court. Defendant was arrested for this offense on September 13, 2008, and was resentenced on February 28, 2012. He claims that he was never released from jail after his arrest, and thus is entitled to the full 1,263 days that elapsed between the two dates.

The extent to which a convicted defendant should receive credit for jail time served prior to sentencing is a question of law that this Court reviews de novo. *People v Armisted*, 295 Mich App 32, 49; 811 NW2d 47 (2011). We review for clear error the court's factual findings. Clear error occurs if this Court "is left with a definite and firm conviction that a mistake was made." *People v Swirles (After Remand)*, 218 Mich App 133, 136; 553 NW2d 357 (1996).

Pursuant to MCL 769.11b, Michigan law requires the court to award credit for time served as follows:

Whenever a 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.

Remand for recalculation is required if the trial court errs in the amount of credit awarded to a convicted defendant. *People v Lyons (On Remand)*, 222 Mich App 319, 321; 564 NW2d 114 (1997).

The Department of Corrections recommended that the court award defendant 1,061 days jail credit. This total did not include the period from July 29, 2009 through January 19, 2010. In a prior prosecution, a jury found defendant guilty of possession of less than 25 grams of cocaine, MCL 333.7402(2)(a)(v). *People v Boles*, unpublished opinion per curiam of the Court of Appeals, issued January 13, 2011 (Docket No. 293592). In that case, the court sentenced defendant on July 28, 2009. A defendant is not entitled to credit for pre-conviction jail time for imprisonment in an unrelated case because that period of incarceration “was not the result of being denied or unable to furnish bond for the [instant] offense.” *People v Ovalle*, 222 Mich App 463, 468; 564 NW2d 147 (1997).¹ Because defendant was serving time for an unrelated offense, the trial court did not err in declining to award defendant credit for that time in jail.

II. PRIOR RECORD VARIABLE SCORING

Defendant argues that the trial court erred when it scored 10 points for prior record variable (PRV) 6, MCL 777.56, because when he committed these crimes, he had no existing involvement with the criminal justice system. Although the factual basis for a court’s scoring decision will always be upheld as long as there is any record evidence supporting the decision, this Court reviews de novo any challenge based on the court’s statutory interpretation of the scoring variables. *People v Anderson*, ___ Mich App ___; ___ NW2d ___ (Docket No. 301701, released October 23, 2012), slip op at 1.

MCL 777.56 considers a defendant’s existing relationship to the criminal justice system. Under MCL 777.56(c)(1), 10 points is scored if “[t]he offender is on parole, probation, or delayed sentence status or on bond awaiting adjudication or sentencing for a felony” when the defendant committed the offense at issue. *Anderson*, ___ Mich App at ___, slip op at 1.

Defendant argues that his presentence investigation report (PSIR) indicates that he had no active relationship with the criminal justice system when he committed this offense on September 13, 2008. He cites the first page of the PSIR, which states that he has no pending charges and, under the heading “PRIOR RECORD,” that he has no active probation or parole. Although the PSIR indicates that defendant was not actively on probation when the report was updated, it also indicates that he was previously on probation, and it specifically states that

¹ The trial court actually erred in granting too much time. However, plaintiff did not cross-appeal on this issue, so it has abandoned any right to seek relief on this ground in this Court. *People v Farquharson*, 274 Mich App 268, 279; 731 NW2d 797 (2007).

defendant “committed the instant offense while on probation.” Because he was on probation when he committed these crimes, the trial court properly scored PRV 6 at 10 points.

Affirmed.

/s/ William C. Whitbeck

/s/ Henry William Saad

/s/ Douglas B. Shapiro