

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE DONELL WHITE,

Defendant-Appellant.

UNPUBLISHED

February 3, 2009

No. 281343

Saginaw Circuit Court

LC No. 05-026404-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ROBERT BLACK,

Defendant-Appellant.

No. 281697

Kent Circuit Court

LC No. 07-002905-FH

Before: Owens, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

These consolidated appeals involve defendants who were convicted of crimes committed while on parole in connection with an earlier sentence and who demanded that the time they served in jail pending resolution of the new charges be credited against their new sentences. This Court granted leave to appeal in both cases, “limited to the issue of whether defendant is entitled to jail credit against the sentences imposed.”¹ We affirm.

In Docket No. 281343, defendant White pleaded no contest to third-degree fleeing or eluding a police officer, MCL 750.479a(3), resisting or obstructing a police officer, MCL

¹ *People v White*, unpublished order of the Court of Appeals, entered December 17, 2007 (Docket No. 281343); *People v Black*, unpublished order of the Court of Appeals, entered December 17, 2007 (Docket No. 281697).

750.81d(1), felon in possession of a firearm, MCL 750.224f, and carrying a concealed weapon, MCL 750.227. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of two to ten years for each conviction, those sentences to be served consecutively to the sentence he was then serving, with no credit for time served in jail. In Docket No. 281697, defendant Black pleaded guilty to larceny by false pretenses, valued at \$1,000 or more but less than \$20,000, MCL 750.218(4)(a). He was sentenced to a term of 38 to 60 months' imprisonment. The judgment of sentence indicates that the sentence commences "AFTER PAROLE," with no jail credit indicated.

In both instances, the Department of Corrections adhered to its usual practice of deeming the original sentence as running until the date of sentencing on the new convictions, with the new sentences then commencing immediately, with no jail credit.

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.

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."

This Court has decreed that "[w]hen 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). A parole detainee convicted of a new offense is thus entitled to have jail credit applied exclusively to the sentence from which parole was granted. *Id.* Accordingly, credit is not available to a parole detainee for time spent in jail attendant to a new offense because "bond is neither set nor denied when a defendant is held in jail on a parole detainer." *Id.* at 707.

In *People v Stead*, 270 Mich App 550, 552; 716 NW2d 324 (2006), this Court, citing *Seiders*, elaborated as follows:

[A] parole detainee convicted of a new offense is entitled to have jail credit applied exclusively to the sentence from which parole was granted. Credit is not available to a parole detainee for time spent in jail attendant to a new offense because bond is neither set nor denied when a defendant is held in jail on a parole detainer. [Internal quotations and citations omitted.]

The Department of Corrections has discretion whether to issue a warrant when a parolee is alleged to have violated the conditions of his parole. See MCL 791.238(1) ("[t]he deputy director of the bureau of field services, upon a showing of probable violation of parole, *may* issue a warrant for the return of any paroled prisoner"). In each of these cases, the trial court conducted an evidentiary hearing and determined that the department authorized parole violation

warrants. Accordingly, these cases do not present the question whether MCL 769.11b requires jail credit if bond is denied or otherwise not met where a parolee commits a new crime but the Department of Corrections does not issue a detainer for a parole violation.

Because defendants were incarcerated pursuant to parole detainer warrants, and not because they could not afford or were denied, bond, MCL 769.11b is inapplicable, and thus defendants may not take advantage of its provision for sentencing credit. *Seiders* and *Stead, supra*.²

We affirm.

/s/ Donald S. Owens

/s/ David H. Sawyer

/s/ Jane E. Markey

² Defendant White argues that *Seiders, supra*, was wrongly decided and asks for a contrary result. Defendant Black, on the other hand, argues that *Stead, supra*, was wrongly decided, and asks for a result inconsistent with it. We decline each invitation to disregard these decisions. We note a special panel of this Court decided *Seiders*, which is binding unless reversed or modified by our Supreme Court. MCR 7.215(J)(6).