

Court of Appeals, State of Michigan

ORDER

People of MI v Kenneth Milton Tarter

Docket No. 308740

LC No. 11-009894-01-FH

Elizabeth L. Gleicher
Presiding Judge

Mark J. Cavanagh

Deborah A. Servitto
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the delayed application for leave to appeal, the Court VACATES the August 24, 2011 order of probation. Although defendant is incorrect that the trial court could not sentence defendant to *jail* and probation, see MCL 762.13(1)(b) and 771.3(2)(a), defendant is correct that the trial court was without authority to impose a one-year *prison* term as a condition of probation. MCL 762.13 unequivocally provides that once a court places a juvenile on youthful trainee status, it must choose only one of the alternatives stated in subsection (1) of that statute, and none of those alternatives permit both a prison term and probation. In addition, the record indicates that defendant was entitled to credit for the time served between his arrest and sentencing, but none of the orders in this case indicate that defendant was given such credit.

The matter is REMANDED for resentencing. In conjunction with the resentencing, the circuit court shall determine the appropriate amount of credit to which defendant is entitled and grant him such credit. The circuit court shall resentence defendant within 21 days of the date this order is certified by the Clerk of the Court. This order shall have immediate effect. MCR 7.215(F)(2). In all other respects, the application is DENIED for lack of merit on the grounds presented. We do not retain jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

FEB 19 2013

Date


Chief Clerk