

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDREW KENNY OUTLAW,

Defendant-Appellant.

UNPUBLISHED

May 14, 1996

No. 185092

LC Nos. 92-064407-FH;

93-066645-FH

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

MEMORANDUM.

In LC No. 92-064407-FH, defendant pleaded guilty to violating probation on his underlying conviction of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and was sentenced to two to four years' imprisonment, with thirty-nine days credit. In LC No. 93-066645-FH, defendant pleaded guilty to delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and was ultimately sentenced to forty-two months' to twenty years' imprisonment, to be served consecutive to the sentence in the first case. Defendant appeals pursuant to a delayed application for leave to appeal. We affirm in part and remand for the computation of sentence credit. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court was correct in resentencing defendant in LC No. 93-066645-FH because consecutive sentencing was mandated under MCL 333.7401(3); MSA 14.15(7401)(3). Simultaneously imposed sentences may form the basis for consecutive sentencing under § 7401(3). *People v Morris*, 450 Mich 316, 333-335; 537 NW2d 842 (1995).

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

**Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

However, the trial court erred in not crediting defendant for the amount of time he spent in jail pursuant to the court's order of probation in LC No. 92-064407-FH. Defendant was entitled to receive credit for the time he served in jail under the court's order of probation when the court revoked probation and sentenced defendant to prison. *People v Sturdivant*, 412 Mich 92, 96-97; 312 NW2d 622 (1981). We therefore remand this matter to the trial court for a hearing on the amount of sentence credit defendant should receive against his sentence in LC No. 92-064407-FH for time he served in the county jail under the court's order of probation.

Defendant's sentence in LC No. 93-066645-FH is affirmed. However, this matter is remanded for the computation of sentencing credit in LC No. 92-064407-FH. We do not retain jurisdiction.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.