

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OMAR KHYAL CURRIE,

Defendant-Appellant.

UNPUBLISHED

May 17, 1996

No. 163222

LC No. 89-001554-FH

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

MEMORANDUM.

Defendant pleaded guilty of unlawfully driving away a motor vehicle, MCL 750.413; MSA 28.645, and was sentenced to one to five years' imprisonment, to be served consecutive to a prior sentence defendant was then serving. Defendant appeals as of right. We vacate the judgment of sentence in part. This case has been decided without oral argument pursuant to MCR 7.214(A).

The trial court erred in making defendant's sentence consecutive to either of his prior sentences for drug offenses from Macomb County and Wayne County. Because the sentences for the drug offenses were imposed before the sentence in the case at bar, consecutive sentencing was not available under MCL 333.7401(3); MSA 14.15(7401)(3). *People v Frederick Jones*, 207 Mich App 253, 259-260; 523 NW2d 888 (1994). Consecutive sentencing was also not appropriate pursuant to MCL 768.7b; MSA 28.1030(2) because this case was not pending when defendant committed the drug offenses. Defendant was on probation as a Holmes Youthful Trainee Act offender, MCL 762.13; MSA 28.853(13). Therefore, there was no pending charge that would support consecutive sentencing. *People v Hardy*, 212 Mich App 318, 322; 537 NW2d 267 (1995), lv pending.

*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.

That part of the judgment of sentence requiring defendant to serve his sentence in this case consecutive to a prior drug sentence is vacated. The instant sentence shall run concurrently with defendant's prior drug sentences. In all other respects, defendant's sentence is affirmed.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.