

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE STANLEY FULLER,

Defendant-Appellant.

UNPUBLISHED

December 3, 1996

No. 176255

LC No. 92-001643-FH

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

Defendant pleaded guilty to assaulting a jail employee, MCL 750.197c; MSA 28.394(3), and was sentenced to two to four years' imprisonment . He appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant argues that there was no factual basis for his plea. We disagree. Assaulting a jail employee occurs when a "person lawfully imprisoned in a jail . . . , through the use of violence, threats of violence or dangerous weapons, assaults an employee of the place of confinement . . . knowing the person to be an employee" MCL 750.197c; MSA 28.394(3). Defendant testified at the plea hearing that he intentionally threw apple juice outside his cell at an officer during his confinement in the county jail pending the disposition of other charges. These facts sufficiently establish that defendant assaulted the jail employee through the use of violence. *People v Booth*, 414 Mich 343, 360; 324 NW2d 741 (1982); *People v Brownfield (After Remand)*, 216 Mich App 429, 431; 548 NW2d 248 (1996); *People v Boyd*, 102 Mich App 112, 116-117; 300 NW2d 760 (1980).

The trial court's sua sponte correction of defendant's sentence was proper. The sentence was initially made concurrent to the sentences defendant received in another case for breaking and entering

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

and receiving or concealing stolen property. Although a trial court is without jurisdiction to upset a valid sentence, MCR 6.429(A); *In re Dana Jenkins*, 438 Mich 364, 368; 475 NW2d 279 (1991); *People v Kelly*, 213 Mich App 8, 12; 539 NW2d 538 (1995), the assault sentence should have been made consecutive to the sentences imposed for breaking and entering and receiving or concealing stolen property under MCL 768.7b(1); MSA 28.1030(2)(1) because defendant committed the assault while he was confined in the county jail pending the disposition of those charges.

Defendant also argues that he is entitled to additional sentence credit against his assault sentence for the time he spent in confinement prior to the amendment of the sentence. We disagree. When a void sentence is set aside and a new sentence is imposed, any time served on the void sentence must be credited against the sentence then imposed. MCL 769.11a; MSA 28.1083(1); *People v Dorsey*, 107 Mich App 789, 792; 310 NW2d 244 (1981). However, defendant had not begun serving the sentence for assaulting a jail employee prior to the amendment of the sentence; his concurrent sentences for breaking and entering and receiving or concealing stolen property had not yet expired.

Finally, we reject defendant's argument that MCL 768.7b(1); MSA 28.1030(2)(1) violates substantive due process and equal protection. See *People v Sleet*, 193 Mich App 604; 484 NW2d 757 (1992).

Affirmed.

/s/ John H. Gillis
/s/ Glenn S. Allen, Jr.
/s/ Joseph B. Sullivan