

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ALLEN WEST,

Defendant-Appellant.

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UNPUBLISHED

March 11, 1997

No. 190938

Saginaw Circuit

LC No. 94-009443-FH

Before: Michael J. Kelly, P.J., and Smolenski and W.J. Giovan,\* JJ.

MEMORANDUM.

Defendant pleaded guilty to violating probation on his underlying convictions of operating a motor vehicle under the influence of intoxicating liquor, third offense, MCL 257.625(6)(d); MSA 9.2325(6)(d), operating a motor vehicle while license suspended, second offense, MCL 257.904(1)(b); MSA 9.2604, and habitual offender, fourth offense, MCL 769.12; MSA 28.1084. He was again sentenced to five years' probation, with the first year to be served in the county jail. He appeals as of right. We remand for recalculation of defendant's sentence credit. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant claims that he should have received sentence credit for the twenty-three days served in the county jail after sentencing but prior to being released to the Tri-CAP drug treatment program (February 8, 1995 to March 2, 1995) and that he should have received credit for the 138 days served at the Tri-CAP drug treatment program.

We agree that if defendant actually served twenty-three days in the county jail after sentencing but prior to being released to the Tri-CAP program, he is entitled to sentence credit for those days. *People v Whiteside*, 437 Mich 188; 468 NW2d 504 (1991). Because the record is not clear on this point, we remand this matter to the trial court for a determination of the exact number of days served by defendant in the county jail prior to his release to the Tri-CAP program. We note that defendant is also entitled to six days' credit for the six days served in the county jail after his arrest for probation violation.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

However, we affirm the trial court's refusal to grant sentence credit for the time spent in the drug rehabilitation program. Under the circumstances of this case, the trial court was not required to grant sentencing credit for the 138 days spent in the Tri-CAP drug treatment program. *Id.*; *People v Scott*, 216 Mich App 196; 548 NW2d 678 (1996); *People v Wagner*, 193 Mich App 679; 485 NW2d 133 (1992).

Remanded for recalculation of the amount of sentence credit for which defendant is entitled. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ Michael R. Smolenski

/s/ William J. Giovan