

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CALVIN SMITH,

Defendant-Appellant.

UNPUBLISHED
December 30, 1997

No. 198841
Ingham Circuit Court
LC Nos. 96-070449 FH
96-070770 FH

Before: Griffin, P.J., and Markman and Whitbeck, JJ.

MEMORANDUM.

Defendant appeals by right his jury conviction, in two separate files, of possession of cocaine under twenty-five grams, MCL 333.7403(2)(a)(iv); MSA 14.15(7403)(2)(a)(iv) and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2) (L.C. No. 96-070449 FH) and of carrying a concealed weapon, MCL 750.227; MSA 28.424, and being a felon in possession of a firearm, MCL 750.224f; MSA 28.421(6) (L.C. No. 96-070770 FH). As a second offender, MCL 769.10; MSA 28.1082, defendant received enhanced sentences on the drug charge of 3 1/2 to 6 years of imprisonment, 4 to 7 1/2 years for the concealed weapons charge, and 3 to 7 1/2 years for the felon in possession charge, all to be served consecutively to the statutorily mandated two-year sentence for felony-firearm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the trial court erred in making his sentences for carrying a concealed weapon and being a felon in possession of a firearm consecutive to his felony-firearm sentence. The prosecutor concedes error on this point, and correctly so. By the terms of the felony-firearm statute, MCL 750.227b; MSA 28.424(2), the mandatory two-year sentence is to be served prior to and consecutive to the sentence imposed for any underlying felony, not for unrelated, separately committed felonies. Indeed, the charge of carrying a concealed weapon may not serve as the predicate offense for a felony-firearm conviction, again by the terms of the statute. MCL 750.227b(1); MSA 28.424(2)(1); *People v McCrady*, 213 Mich App 474; 540 NW2d 718 (1995).

However, we do not simply correct the sentences imposed for the concealed weapons and felon in possession charges so as to make them concurrent with the felony-firearm sentence. Because defendant was on parole at the time of these offenses, he is subject to having all current sentences run consecutively to the sentence underlying that parole. *Wayne Co Prosecutor v Dep't of Corrections*, 451 Mich 569; 548 NW2d 900 (1996). Defendant should not have been credited for time served as to any of the present offenses, since such time is credited to the sentence for which defendant was on parole, *People v Watts*, 186 Mich App 686, 689-690; 464 NW2d 715 (1991). However, the trial court nevertheless granted such credit here for the felony-firearm sentence. Accordingly, we remand for resentencing as to all three offenses because these two errors in combination may have affected all three sentences.

Defendant's remaining claim is that the conviction for both carrying a concealed weapon and being a felon in possession of a firearm, arising out of the same transaction, violates double jeopardy principles. In *People v Mayfield*, 221 Mich App 656, 661-662; 562 NW2d 272 (1997) the Court rejected this position. We agree with the conclusion in *Mayfield*.

Affirmed in part; sentences vacated and all causes remanded for resentencing in accordance with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Stephen J. Markman

/s/ William C. Whitbeck