

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JONATHON DOUGLAS BURKE,

Defendant-Appellant.

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UNPUBLISHED

October 26, 2006

No. 264071

Grand Traverse Circuit Court

LC No. 02-009046-FC

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

MEMORANDUM.

Following a guilty plea, the trial court sentenced defendant to 7 to 15 years for voluntary manslaughter (aiding and abetting), MCL 750.321, and 3 to 5 years for carrying a concealed weapon, MCL 750.227. The Michigan Supreme Court remanded this case to this Court to consider whether defendant was entitled to credit for time served in the Grand Traverse County Jail. *People v Burke*, 473 Mich 881; 699 NW2d 699 (2005). We reverse and remand for entry of judgment granting defendant 290 days' credit for time served. This case is being decided without oral argument under MCR 7.214(E).

MCL 769.11b provides as follows:

Whenever any person is hereafter convicted of any crime within this state and has served any time in jail prior to sentencing because of being denied or unable to furnish bond for the offense of which he is convicted, the trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing.

The prosecutor acknowledges that defendant is entitled to credit for time served in the Grand Traverse County Jail from November 4, 2002 until August 18, 2003. In denying the credit, the trial court erroneously believed that defendant had been given credit for this time served in an unrelated Washtenaw County case, and that defendant was not entitled to credit here because the sentence was consecutive to that imposed in the Washtenaw County case. However, defendant was given credit for a different incarceration in the Washtenaw County case.

Moreover, defendant committed the crimes in Grand Traverse while out on bond from Washtenaw County. Under *People v Patterson*, 392 Mich 83, 89; 219 NW2d 31 (1974), a defendant cannot receive jail credit for a consecutive sentence when the defendant is already

incarcerated on one offense and could simply delay his sentencing on the second in order to receive more jail credit. However, giving defendant jail credit for time served relative to only the offenses at issue in the case at hand will not shorten his sentence without justification. Defendant was unable to post bond for the present offenses and is thus entitled to the 290 days' jail credit, as the statute specifies.

Remanded for entry of a judgment consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Henry William Saad

/s/ Bill Schuette