

Court of Appeals, State of Michigan

ORDER

People of MI v Damien Michael Smith

Docket No. 327157

LC No. 2014-019269-FH

Peter D. O'Connell
Presiding Judge

Patrick M. Meter

Michael F. Gadola
Judges

The Court orders pursuant to MCR 7.205(E)(2) that in lieu of granting the delayed application for leave to appeal, this matter is REMANDED to the Eighth Judicial Circuit Court for Montcalm County for clarification related to defendant's sentence for his parole violation. The record does not contain any information regarding how much time defendant was required to serve for his parole violation, if any, or whether any determination in that regard was made. Defendant cannot begin serving his sentence in this case until he completes whatever portion of his prior sentence for which he was paroled remains to be served, as determined by the parole board. MCL 768.7a(2); *Wayne Co Prosecutor v Dep't of Corrections*, 451 Mich 569, 584 (1996); *People v Howell*, 300 Mich App 638, 647 (2013). Defendant is not entitled to receive jail credit for any time served against his sentence in this case until he completes the remaining portion of his prior sentence for his parole violation, if any. See *People v Idziak*, 484 Mich 549, 552 (2009). On remand, the circuit court shall make a determination whether the 133 days that defendant served in jail between his arrest and sentencing was required in service toward his prior sentence for which he was paroled, and if not, whether any part of that time served should be credited toward his sentence for the instant offense.

We do not retain jurisdiction.

Meter, J., would DENY the delayed application for leave to appeal.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUN - 2 2015

Date

Chief Clerk