

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY JOHNSTONE, a/k/a SAMUEL
JOHNSTONE,

Defendant-Appellant.

UNPUBLISHED

July 31, 2001

No. 225967

Wayne Circuit Court

LC No. 98-013239

Before: Wilder, P.J., and Hood and Griffin, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial convictions for resisting and obstructing a police officer, MCL 750.479, and aggravated assault, MCL 750.81a. We affirm defendant's convictions, but remand for correction of the judgment of sentence.

Defendant asserts that the trial court erred in denying him credit for time served. At the time of this offense, defendant was on supervised federal release. Although trial counsel conceded that the sentences in the instant case would be consecutive to the federal sentence, and that credit would be applied against federal time, defendant requested sentence credit.

MCL 769.11b provides:

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 primary purpose of the sentencing credit statute is to equalize the position of one who cannot post bond with that of a person who is financially able to do so. *People v Scott*, 216 Mich App 196, 199; 548 NW2d 678 (1996). Where a defendant is confined because of another, unrelated offense, he is not entitled to credit on this offense. *People v Prieskorn*, 424 Mich 327; 381 NW2d 646 (1985). Where defendant's sentence was to be served consecutively to his federal sentence, the trial court correctly found that credit for time served should be applied to

the remaining portion of his federal sentence, and not the instant sentences. *People v Brown*, 186 Mich App 350, 359; 463 NW2d 491 (1990).

The prosecutor has conceded that the judgment of sentence does not have the appropriate citation for defendant's resisting and obstructing conviction. The judgment should show that defendant was convicted under MCL 750.479, not MCL 750.479b.

Affirmed in part and remanded for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin