

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES EDGAR GREGORY,

Defendant-Appellant.

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UNPUBLISHED

May 23, 2006

No. 256194

Wayne Circuit Court

LC No. 03-011884-01

ON REMAND

Before: Owens, P.J., and Fitzgerald and Schuette, JJ.

MEMORANDUM.

This case returns to this Court on remand from our Supreme Court, which, in lieu of granting leave to appeal, reversed this Court's earlier opinion in this case<sup>1</sup> for the reasons stated in the dissent, and ordered this Court to determine whether defendant is entitled to jail credit.<sup>2</sup> We find defendant was entitled to jail credit for the 222 days served before sentencing. We remand for correction of judgment of sentence.

Probation is not a matter of right but a matter of grace, and a trial court has discretion to impose conditions on probation. *People v Oswald*, 208 Mich App 444, 446; 528 NW2d 782 (1995), citing *People v Whiteside*, 437 Mich 188, 192; 468 NW2d 504 (1991). However, a court may not impose punishment in excess of what the Legislature intended. *People v Tyrpin*, 268 Mich App 368, 373; 710 NW2d 260 (2006). Some of the conditions a court may impose are imprisonment in the county jail for not more than twelve months, MCL 771.3(2)(a), participation in mental health treatment, MCL 771.3(2)(h), participation in mental health or substance abuse counseling, MCL 771.3(2)(i), and participation in a community corrections program, MCL 771.3(2)(j). Here, the judgment of sentence required defendant to complete mental health rehabilitative services in Wayne County's "Jail Based – 3 Phase Program," as a condition of defendant's thirty-six months' probation. The judgment of sentence specifically authorized release from jail upon completion of the program. It did not, however, reflect that defendant was

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<sup>1</sup> *People v Gregory*, unpublished opinion per curiam of the Court of Appeals, issued November 1, 2005 (Docket No. 256194).

<sup>2</sup> 474 Mich 1109 (2006).

given credit for time served. Credit for time served before sentencing shall be specifically granted against an imposed sentence if the time was served as a result of the defendant being denied or unable to furnish bond. MCL 769.11b.

Remanded for correction of judgment of sentence. We do not retain jurisdiction.

/s/ Donald S. Owens  
/s/ E. Thomas Fitzgerald  
/s/ Bill Schuette