

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN PAUL SMITH,

Defendant-Appellant.

UNPUBLISHED

May 23, 2006

No. 259441

Schoolcraft Circuit Court

LC No. 04-006381-FH

Before: Sawyer, P.J., and Kelly and Davis, JJ.

MEMORANDUM.

Defendant appeals as of right his jury trial convictions for breaking and entering, MCL 750.110, and burning other real property, MCL 750.73. Defendant was sentenced as a second offense habitual offender, MCL 769.10, to two terms of 3 ½ to 15 years' imprisonment on the charges. The sentences were to run concurrent to each other and to the sentence he was serving for an unrelated offense. The court denied defendant's request for credit for any time served prior to sentencing. We affirm.

Defendant first argues that his rights under the 180-day rule, MCL 780.131(1), and his right to a speedy trial, US Const, Ams VI and XIV; Const 1963, art 1, § 20; MCL 768.1, were violated when his trial took place 181 days after the arrest warrant was issued in this case. However, defendant waived appellate review of this issue by specifically requesting that trial be delayed until August or September 2004 due to the unavailability of a key witness. *People v Griffin*, 235 Mich App 27, 45-46; 597 NW2d 176 (1999) ("Because error requiring reversal cannot be error to which the aggrieved party contributed by plan . . . , defendant has waived appellate review of this issue.").

Defendant alternatively argues that he was entitled to credit for the time he was incarcerated from the issuance of the arrest warrant to the time of sentencing. MCL 769.11b provides that a defendant is entitled to credit for "any time [served] in jail prior to sentencing because of being denied or unable to furnish bond for the offense of which he is convicted." "[T]he primary purpose of the sentencing credit statute is to equalize, as far as possible, the status of the indigent or lower-income accused with the status of the accused who can afford to post bail." *People v Givans*, 227 Mich App 113, 125; 575 NW2d 84 (1997). In this case, defendant was in prison for an unrelated sentence prior to sentencing in the case at hand and therefore is not entitled to credit for the time served before sentencing. *People v Prieskorn*, 424 Mich 327, 341; 381 NW2d 646 (1985).

Defendant finally argues that he is entitled to resentencing because the trial court's scoring of offence variables 9, 13, and 16 constituted impermissible fact-finding by the court. Defendant relies on *Blakely v Washington*, 542 US 296, 301; 124 S Ct 2531; 159 L Ed 2d 403 (2004), in making this argument. However, in *People v Claypool*, 470 Mich 715; 684 NW2d 278 (2004), a majority of the Justices of our Supreme Court stated that *Blakely* does not apply to Michigan's statutory guidelines. See *id.* at 730-731 n 14 (Taylor, J., joined by Markman, J.), 741 (Cavanagh, J.), and 744 (Weaver, J.). This Court has concluded that it is bound by *Claypool's* conclusion that *Blakely* does not impact Michigan's sentencing scheme. *People v Drohan*, 264 Mich App 77, 89 n 4; 689 NW2d 750 (2004), lv gtd 472 Mich 881; 693 NW2d 823 (2005). Therefore, we conclude that defendant is not entitled to resentencing.

Affirmed.

/s/ David H. Sawyer
/s/ Kirsten Frank Kelly
/s/ Alton T. Davis