

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID DEARIES RUNYON,

Defendant-Appellant.

---

UNPUBLISHED

November 13, 2008

No. 281149

Kent Circuit Court

LC No. 07-004681-FH

Before: Beckering, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), second such offense, MCL 333.7413(2). The trial court sentenced defendant to serve a term of imprisonment of 18 months to 30 years, consecutive to the term of imprisonment from which defendant was on parole at the time. Defendant appeals as of right, challenging only the trial court's refusal to award jail credit in connection with the instant sentence. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

We review a trial court's sentencing decisions for an abuse of discretion. *People v Cain*, 238 Mich App 95, 130; 605 NW2d 28 (1999). However, statutory interpretation presents a question of law, calling for review de novo. *People v Denio*, 454 Mich 691, 698; 564 NW2d 13 (1997). Defendant did not raise this issue at sentencing, leaving it unpreserved. Our review is thus restricted to ascertaining whether there was plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

At issue is 167 days that defendant asserts he spent in jail before receiving the instant sentence. Defendant relies on MCL 769.11b, which 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.

However, where a specific statutory provision differs from a related general one, the specific one controls. *People v Houston*, 237 Mich App 707, 714; 604 NW2d 706 (1999). MCL

791.238(1) provides that a parolee remains legally in the custody of the Department of Corrections, and that “[p]ending a hearing upon any charge of parole violation, the prisoner shall remain incarcerated.” This provision unambiguously declares that parole violators are not eligible to avoid incarceration pending resolution of attendant proceedings. Such a period of incarceration thus constitutes part of the original sentence only. Moreover, “denied,” as used in MCL 769.11b, implies the proper exercise of discretion, not the recognition of outright ineligibility to post bond and thus avoid confinement. The latter statute thus simply does not apply to parole detainees.

Further, MCL 768.7a(2) directs that sentences of persons convicted of felonies committed while on parole for earlier offenses “begin to run at the expiration of the remaining portion of the term of imprisonment imposed for the previous offense.” This statute ensures that terms of incarceration relating to a sentence from which parole was granted are wholly separate from new sentences earned as a consequence of violating that parole.

For these reasons, “When a parolee is arrested for a new criminal offense, he is held on a parole detainer until he is convicted of that offense, and he is not entitled to credit for time served in jail on the sentence for the new offense.” *People v Seiders*, 262 Mich App 702, 705; 686 NW2d 821 (2004). Instead, a parole detainee convicted of a new offense is entitled to have jail credit applied exclusively to the sentence from which parole was granted. *Id.* Credit is not available to a parole detainee for time spent in jail attendant to a new offense, because “bond is neither set nor denied when a defendant is held in jail on a parole detainer.” *Id.* at 707.

Defendant argues that, because a parolee has necessarily served his or her minimum sentence that parolee could never get credit for time spent in jail attendant to a parole violation. We disagree. A parole violator is liable to serve the remainder of the *maximum* sentence for the prior offense before serving the sentence for the new offense. MCL 791.238(2). Thus, time spent in jail on a parole detainer may be applied to the remainder of the sentence for the prior offense.

Defendant additionally frames this issue as a constitutional one, referring to Due Process and Equal Protection in his statement of the question presented, but then arguing principles of Double Jeopardy. These constitutional arguments are unavailing.

As discussed above, time spent in jail on a parole detainer is incarceration attendant to the sentence underlying that now-violated parole. Therefore, in light of the authorization for consecutive sentencing in such situations, MCL 768.7a(2), such time does not count against any new sentence stemming from the offense constituting the parole violation. Wholly separate, consecutive sentences for the earlier crime and the one constituting a parole violation offend no principle of Due Process, Equal Protection, or Double Jeopardy.

Affirmed.

/s/ Jane M. Beckering  
/s/ Stephen L. Borrello  
/s/ Alton T. Davis