

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
September 16, 2014

v

DAVID LAMAR CHAPMAN,  
Defendant-Appellant.

No. 316196  
Saginaw Circuit Court  
LC No. 09-033172-FH

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Before: MURRAY, P.J., and DONOFRIO and BORRELLO, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of attempted felon in possession of a firearm, MCL 750.92 and MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced as a habitual offender, second offense, MCL 769.10, to 11 to 45 months' imprisonment for the attempted felon in possession of a firearm conviction, and to a consecutive two years' imprisonment for the felony-firearm conviction. He appealed those convictions, and this Court affirmed. *People v Chapman*, unpublished opinion per curiam of the Court of Appeals, issued September 27, 2012 (Docket No. 305465). However, we remanded "for a determination of proper sentence credit for time served." *Id.* at 1. On remand, the court entered credit for 36 days. Defendant now appeals that determination by right. We affirm.

Defendant was originally given only one day jail credit on his sentence for the attempted felon in possession conviction. On appeal, we "emphasize[d] that defendant's one day of jail credit may be accurate. . . . [But] [o]n this record, we are simply unable to determine whether defendant's credit is accurate, and it does not appear . . . that defendant was afforded an adequate opportunity to rebut any matter he . . . believes to be inaccurate." *Id.* at 2 (quotations marks and citation omitted).

After remand, an updated presentence investigation report (PSIR) was prepared. The updated jail credit information noted defendant was arrested on August 20, 2009 and posted bond the same day. This resulted in one day of jail credit. Defendant was arrested on separate federal charges on February 1, 2010, and held in Huron County, but his state bond was not revoked until conclusion of his jury trial. Therefore, the updated PSIR calculated credit only for those days after the state bond was revoked, i.e., the 34 days between May 27 and June 29, 2011.

Defendant argued that the total credit should be 35. Defendant was awarded 36 days credit by the court.

Defendant now argues that he should be given credit for additional delays because he was remanded to the custody of the sheriff, which implicitly revoked his bond before the end of trial, because of the delays in prosecuting the case, and because the court abused its discretion in failing to consider additional credit. Whether defendant is entitled to additional jail credit involves statutory interpretation, which is reviewed de novo. *People v Filip*, 278 Mich App 635, 640; 754 NW2d 660 (2008).

MCL 769.11b provides that a person who is unable to furnish bond will be credited for time served against any final sentence imposed. The statute reads 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. [MCL 769.11b.]

Our Supreme Court has stated that MCL 769.11b

neither requires nor permits sentence credit in cases . . . where a defendant is released on bond following entry of charges arising from one offense and, pending disposition of those charges, is subsequently incarcerated as a result of charges arising out of an unrelated offense or circumstance and then seeks credit in the former case for that latter period of confinement. [*People v Prieskorn*, 424 Mich 327, 340; 381 NW2d 646 (1985).]

In *Prieskorn*, the defendant was “arrested and then released on bond in one case and then, pending disposition of that charge, [was] subsequently arrested and incarcerated as a result of unrelated charges brought in another case.” *Id.* at 337. Given that the “incarceration for which the defendant seeks credit is unrelated to the offense before us for which he has been convicted,” the Court concluded, “he is not entitled to sentence credit for that confinement.” *Id.* at 344. Here, defendant was on bond for the instant offense when he was arrested on unrelated federal felony charges. Defendant does not contest that the arrest was unrelated. Jail credit is not permitted for defendant’s time incarcerated on the federal charges. *Prieskorn*, 424 Mich at 340.<sup>1</sup>

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<sup>1</sup> Defendant argues that there was some misconduct or violation of due process because, first, there was a delay between the charged conduct (January 2008) and the arrest (August 2009) and second, the delay between arrest and trial (May 2011). Defendant does not have a vested interest in being arrested such that the first cited delay would warrant additional jail credit. Further, defendant was released on bond following his arrest, and he does not allege that his right to a speedy trial was violated.

Defendant also argues that his trial counsel was ineffective for failing to advise the court it had discretion to grant greater jail credit than required under the statute and also alleges the court abused its discretion in failing to recognize its discretion. No *Ginther*<sup>2</sup> hearing was held on defendant's ineffective assistance claim, thus review is limited to errors apparent on the record. *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007). Whether a defendant has been deprived of the effective assistance of counsel presents a mixed question of law and fact. *People v Trakhtenberg*, 493 Mich 38, 47; 826 NW2d 136 (2012). Findings of fact are reviewed for clear error and questions of law are reviewed de novo. *Id.*

The case defendant cites makes clear that the trial court in that case only erred because it had a duty to exercise discretion and failed to do so. *People v Stafford*, 434 Mich 125, 133-135; 450 NW2d 559 (1990). Here there is no requirement to award extra jail credit. *People v Adkins*, 433 Mich 732, 750-751; 449 NW2d 400 (1989). Because the trial court was not required to award additional jail credit, the court properly exercised its discretion. *Priekorn*, 424 Mich at 344. Because the court properly exercised discretion, any objection by defense counsel would be meritless. Defendant's counsel cannot be ineffective in failing to raise a meritless issue, and thus there is no ineffective assistance. *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

Defendant also argues that he is entitled to jail credit because he was remanded to the sheriff pending further proceedings. He does not cite any authority for this argument. See *People v Waclawski*, 286 Mich App 634, 679; 780 NW2d 321 (2009) ("We cannot analyze what defendant has not presented."). Further, he does not cite, and the lower court record does not appear to contain, any direct order remanding defendant to the custody of the sheriff. His only proffered evidence is from the register of actions. However, the file indicates defendant remained in federal custody as it reveals that on the eve of trial defendant's custodian was not Saginaw County, but "Huron County Jail Federal Inmate." In other words, the record seems to indicate any custody of the local sheriff was merely to transport defendant to and from federal custody. Such "mere temporary detention" would not operate to revoke defendant's bond. *People v Robb*, 98 Mich 397, 400; 57 NW 257 (1894).

Affirmed.

/s/ Christopher M. Murray

/s/ Pat M. Donofrio

/s/ Stephen L. Borrello

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<sup>2</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).