

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY RAY HANKINS,

Defendant-Appellant.

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UNPUBLISHED

January 16, 2001

No. 225336

Oakland Circuit Court

LC No. 95-139807-FH

Before: Markey, P.J., and Whitbeck and J. L. Martlew\*, JJ.

PER CURIAM.

Defendant Terry Hankins appeals as of right from his sentences for his plea-based convictions of carrying a concealed weapon,<sup>1</sup> felon in possession of a firearm,<sup>2</sup> possession of morphine,<sup>3</sup> driving while license suspended,<sup>4</sup> and habitual offender, fourth offense.<sup>5</sup> We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Hankins pleaded guilty on May 1, 1997. The trial court evaluated the case pursuant to *People v Cobbs*,<sup>6</sup> and indicated that it would be willing to sentence Hankins to serve one year in the county jail with work release privileges. Sentencing was scheduled for July 30, 1997, but was adjourned to August 20, 1997. When Hankins failed to appear on that date, the trial court issued a warrant for his arrest. Hankins was arrested on the warrant on December 20, 1999.

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<sup>1</sup> MCL 750.227; MSA 28.424.

<sup>2</sup> MCL 750.224f; MSA 28.421(6).

<sup>3</sup> MCL 333.7403(2)(b); MSA 14.15(7403)(2)(b).

<sup>4</sup> MCL 257.904(1); MSA 9.2604(1).

<sup>5</sup> MCL 769.12; MSA 28.1084.

<sup>6</sup> *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993),

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Hankins had been in the Wayne County jail from June 2, 1998, through August 30, 1999, on other charges. He was released after being acquitted of those charges.

At sentencing on January 19, 2000, Hankins requested that he be given credit for 454 days, which included the time he spent incarcerated in Wayne County, because the prosecution failed to exercise due diligence in executing the warrant for his arrest. The trial court denied the request, finding that Hankins did not support his assertion that the prosecution failed to exercise due diligence. The trial court noted that Hankins failed to turn himself in when he was released from the Wayne County jail. The trial court sentenced Hankins as a habitual offender to concurrent terms of two to fifteen years in prison for the weapons offenses and one to fifteen years in prison for the narcotics offense, and to ninety days for the license offense. He received credit for fifty-one days. The trial court denied Hankins' motion to withdraw his *Cobbs*, plea, observing that the plea assumed that Hankins would appear for sentencing as required.

## II. Sentence Credit

### A. Standard Of Review

This case raises the issue of the proper interpretation of MCL 769.11b; MSA 28.1083(2), the sentence credit statute. We review a question of law regarding statutory interpretation on a de novo basis.<sup>7</sup>

### B. Interpreting *People v Gleason*

Hankins argues that the trial court erred by failing to grant him 454 days' additional credit toward his sentences. He asserts that because the prosecution knew or should have known that he was incarcerated in Wayne County for much of this time, the unnecessary delay in executing the arrest warrant entitled him to the additional sentence credit on due process grounds pursuant to *People v Gleason*.<sup>8</sup> We disagree.

When Hankins failed to appear for sentencing on August 20, 1997, the trial court issued a warrant for his arrest. The warrant was not executed until December 20, 1999. From June 2, 1998, through August 30, 1999, Hankins was incarcerated in the Wayne County jail on unrelated charges. A defendant is not entitled to credit for time served on an unrelated offense.<sup>9</sup> Lack of diligence by the prosecutor's office can entitle a defendant to sentence credit on due process grounds.<sup>10</sup> However, Hankins' reliance on *Gleason, supra*, is misplaced. In that case, the defendant was arrested, convicted, and sentenced in Oceana County while a warrant for his arrest on an unrelated charge was pending in Newaygo County.<sup>11</sup> The same judge presided over both

<sup>7</sup> *People v Givans*, 227 Mich App 113, 124; 575 NW2d 84 (1997).

<sup>8</sup> *People v Gleason*, 139 Mich App 445; 363 NW2d 3 (1984).

<sup>9</sup> *People v Prieskorn*, 424 Mich 327, 340; 381 NW2d 646 (1985); *People v Ovalle*, 222 Mich App 463, 468-469; 564 NW2d 147 (1997).

<sup>10</sup> See, e.g., *People v Parshay*, 104 Mich App 411, 416; 304 NW2d 593 (1981).

<sup>11</sup> *Id.* at 446-447.

cases.<sup>12</sup> After being released by Oceana County, the defendant was arrested on the outstanding Newaygo County warrant.<sup>13</sup> The Newaygo County court declined to grant the defendant credit for the time he served in Oceana County.<sup>14</sup> We reversed, finding that under the circumstances, the police department holding the warrant in Newaygo County should have known that the defendant was incarcerated in Oceana County.<sup>15</sup>

Here, Hankins did not appear for sentencing in Oakland County as required on August 20, 1997. Subsequently, he was arrested, incarcerated, and tried in Wayne County. Unlike the matters in *Gleason, supra*, Hankins' cases were handled by entirely separate courts and law enforcement agencies. No basis exists for concluding that either the Oakland County prosecutor's office or Oakland County law enforcement agencies knew that Hankins was incarcerated in Wayne County. Hankins' assertion that he notified the prosecutor and the trial court by letter of his incarceration in Wayne County is unsubstantiated. We conclude that under the circumstances, the trial court correctly denied Hankins' request for additional credit.

### III. Disproportionate Sentencing

#### A. Standard Of Review

We review the sentence imposed on an habitual offender for an abuse of discretion.<sup>16</sup>

#### B. Hankins' Sentence

Hankins does not challenge the trial court's denial of his motion to withdraw his pleas pursuant to *Cobbs, supra*. However, he argues that the minimum terms of two years for the weapons offenses are disproportionate.<sup>17</sup> We disagree. Hankins had seven prior felony convictions, including four for armed robbery and one for escape. Hankins has demonstrated that he cannot conform his conduct to the requirements of the law. His sentences were within the statutory limits, MCL 769.12; MSA 28.1084, and did not constitute an abuse of discretion under the circumstances.<sup>18</sup>

Affirmed.

/s/ Jane E. Markey  
/s/ William C. Whitbeck  
/s/ Jeffrey L. Martlew

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<sup>12</sup> *Id.* at 447.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *People v Williams*, 223 Mich App 409, 410, 413; 566 NW2d 649 (1997).

<sup>17</sup> *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

<sup>18</sup> *People v Hansford (After Remand)*, 454 Mich 320, 323-324; 562 NW2d 460 (1997).