

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT JAMES MASTY,

Defendant-Appellant.

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UNPUBLISHED

April 30, 1999

No. 205780

Macomb Circuit Court

LC No. 94-000611 FH

Before: Kelly, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant pleaded guilty to second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), and was sentenced to five years' probation. Defendant subsequently pleaded nolo contendere to violating the terms of his probation and was sentenced to four to fifteen years' imprisonment. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant is not entitled to sentencing credit pursuant to MCL 769.11b; MSA 28.1083(2), for the time he spent incarcerated between his arraignment on the probation violation and his sentencing on that violation because the record indicates that defendant was incarcerated during this time due to his inability to post bond in another criminal matter. *People v Givans*, 227 Mich App 113, 124-126; 575 NW2d 84 (1997). He also is not entitled to this sentence credit pursuant to the Double Jeopardy Clauses because this incarceration was not served as a condition of probation. *People v Wagner*, 193 Mich App 679, 682; 485 NW2d 133 (1992). The record does indicate, however, that defendant did serve fourteen days in jail as a condition of his continued probation. As a general proposition, defendant would be entitled to a sentence credit of fourteen days. *Id.* In this case, however, defendant reaffirmed his plea after the trial court rejected the sentencing agreement upon which defendant's plea was initially conditioned and informed defendant that if he ratified his plea the court would impose a sentence of four years and award no sentence credit. Defendant does not argue that he lacked the ability to waive his entitlement to sentencing credit. This failure to brief this issue constitutes an abandonment of his

claim to an entitlement of the fourteen-day credit. *People v Kent*, 194 Mich App 206, 210; 486 NW2d 110 (1992).

Affirmed.

/s/ Michael J. Kelly

/s/ Janet T. Neff

/s/ Michael R. Smolenski