

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ORLANDO GAMELIA HARDAWAY,

Defendant-Appellant.

UNPUBLISHED

April 29, 2021

No. 354269

Sanilac Circuit Court

LC No. 18-007784-FH

---

Before: O'BRIEN, P.J., and STEPHENS and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted<sup>1</sup> the trial court's sentence of a prison term of 40 months to 5 years with credit for 485 days served, entered after the trial court revoked defendant's probation. We conclude that defendant is entitled to 60 days good-time credit and an additional 90 days credit for time served, and remand for the trial court to amend the judgment of sentence accordingly.

**I. PERTINENT FACTS AND PROCEDURAL HISTORY**

In 2018, defendant pleaded guilty to operating while intoxicated, third offense (OWI-III), MCL 257.625(1)(b); MCL 257.625(9)(c). At the plea hearing, the prosecution indicated that as part of the plea agreement, it would dismiss additional charges against defendant and would not seek a habitual offender (fourth offense) sentencing enhancement. The prosecution also indicated that the parties had come to a sentencing agreement under which defendant would serve one year in jail with “[n]o credit for time served.” The trial court sentenced defendant to two years' probation and 365 days in the Sanilac County jail, with no credit for time served.

---

<sup>1</sup> This Court granted defendant's delayed application for leave to appeal with respect to his claims that he was entitled to jail credit and good-time credit, but denied the application with regard to his claim that his sentence was disproportionate. See *People v Hardaway*, unpublished order of the Court of Appeals, entered September 11, 2020 (Docket No. 354269).

Defendant served 305 days in jail and was released on April 6, 2019. Thirteen days later, he was arrested for another OWI-III offense and was subsequently charged with multiple probation violations. In September 2019, defendant pleaded guilty to three probation violation charges. The trial court revoked defendant's probation. At sentencing, defendant argued that he should receive credit for the 90 days in jail that he had served before his original sentencing, and that he additionally should receive credit for 365 days in jail (rather than 305 days), because the remaining 60 days were good-time credit he had earned in jail by good behavior. The trial court declined to grant either the good-time credit or the credit for time served, stating that it would not give defendant "credit for those days not served because of good time behavior" and that defendant was not entitled to 90 days jail credit because defendant "specifically agreed to forgo that credit and he got something in return for it, which was a county jail sentence of one year as opposed to a prison sentence at that time."

This appeal followed.

## II. GOOD-TIME CREDIT

Defendant argues that the trial court was required to consider his good-time credit days as the equivalent of days he actually served in jail. We agree. We note that the prosecution makes no specific argument regarding this issue and merely states in its brief on appeal that it "defers to the court" on this issue.

MCL 51.282(2) provides:

Every prisoner whose record shows that there are no violations of the rules and regulations shall be entitled to a reduction from his or her sentence as follows: 1 day for each 6 days of the sentence. The sheriff may, by general rule, subject to amendment from time to time, prescribe how much of the good time earned under this subsection a prisoner shall forfeit for any infraction of the general rules and regulations, and for any act of insubordination the sheriff may by special order take away any portion of or the whole of the good time made by any prisoner up to the date of such offense. The sheriff may as a reward for especially good conduct, in case of insubordination, restore to any prisoner the whole or any portion of the good time lost because of any minor infraction of the rules.

This Court has stated that MCL 51.282(2) is "clear and unambiguous," and that there are "no exceptions in the provision for probationers or otherwise." *Cannon*, 206 Mich App at 655-656.

In *People v Resler*, 210 Mich App 24, 25; 532 NW2d 907 (1995), this Court concluded that a defendant is entitled to his good-time credit when his probation is subsequently revoked and he is sentenced on the original charge, reasoning that the Legislature had not revoked good-time credit for conditional probation. *Id.* at 27. This Court held that the trial court had exceeded its authority by declining to credit the defendant for 60 days of good time earned in jail. *Id.* This Court has questioned whether *Resler* was correctly decided. See *People v Grazhidani*, 277 Mich App 592, 595-599; 746 NW2d 622 (2008). However, the Court in *Grazhidani* declined to declare a conflict with *Resler*. We also decline to do so in this case, in part because neither party has even

requested that such a conflict be declared. *Resler* remains binding on this Court, and requires that defendant be granted the good-time credit he was awarded by the sheriff. MCR 7.215(J)(1).

### III. CREDIT FOR TIME SERVED

Defendant also argues that the trial court erred by declining to give him credit for the 90 days he served in jail prior to his original sentence. We agree. We review de novo whether defendant is entitled to jail credit for time served before sentencing. *People v Armisted*, 295 Mich App 32, 49; 811 NW2d 47 (2011). Because plea agreements are analogous to contracts, *People v Martinez*, 307 Mich App 641, 651; 861 NW2d 905 (2014), the interpretation of a plea agreement is a question of law that we also review de novo. See *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006).

Generally, a trial court is required to grant a defendant jail credit for time served in jail prior to sentencing. MCL 769.11b provides:

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.

This Court has recognized that “the sentencing credit provision in MCL 769.11b is mandatory, given the statute’s use of the word ‘shall.’ ” *People v Seiders*, 262 Mich App 702, 706; 686 NW2d 821 (2004). However, a defendant may enter into a plea agreement that includes a specific sentence, waiving appellate review of that sentence. *People v Billings*, 283 Mich App 538, 550; 770 NW2d 893 (2009).

In this case, defendant entered into a plea agreement that included a one-year jail sentence without any reduction in that sentence for his time served. Had defendant challenged that sentence at that time on the ground that the trial court had neglected to give him 90 days jail credit, we likely would have found that defendant had waived our review by voluntarily entering into such an agreement. *Id.*

The prosecution argues on appeal that the trial court correctly found that defendant had, as part of a contractual agreement, *forever* waived any right to credit for the 90 days by agreeing to that sentence. We disagree. The goal of contract interpretation is to give effect to the intent of the parties by determining what the parties’ agreement is and enforcing it. *Shefman v Auto Owners Ins Co*, 262 Mich App 631, 637; 687 NW2d 300 (2004). The trial court recited the parties’ agreement as being “that [defendant] receive a one-year sentence in the Sanilac County Jail, but that [defendant] do[es not] receive any credit for the time [he] served up till now.” But nothing in the record shows that either party intended that if defendant’s probation was revoked and he was again sentenced after the probation revocation, he would give up his right to assert that MCL 769.11b should apply such that he would be entitled to the 90 days he spent in jail prior to his original sentencing. The prosecution admits that “[a]t the time of a plea agreement and plea acceptance by Judge [sic] the potential of a violation is never discussed.” We see no evidence that

the parties agreed that defendant would waive his right to jail credit under MCL 769.11b in the context of any future (i.e., post-probation revocation) sentencing proceedings.

Moreover, even if the prosecution subjectively (although mistakenly) believed that the bargain included a waiver of jail credit in the event of a probation violation, it did receive the benefit of its bargain, and the agreement thus remains enforceable. See *People v Pointer-Bey*, 321 Mich App 609, 624; 909 NW2d 523 (5017) (noting that, although the defendant's plea bargain was in part a result of a misunderstanding of the law that led the defendant to believe incorrectly that he was subject to a 25-year minimum sentence, defendant nonetheless received "considerable benefit for his plea" and the agreement was enforceable). In addition to the obvious benefit the prosecution received from being relieved of having to prove its case in a jury trial, the agreement was that defendant serve one year in jail. Defendant served that year (counting his good-time credit).

We conclude that the trial court erred by failing to follow the unambiguous dictate of MCL 769.11b when it sentenced defendant following his probation revocation. Because we resolve this issue on non-constitutional grounds, we decline to address defendant's argument that the sentence was unconstitutional. See *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993).<sup>2</sup>

Remanded for amendment of the judgment of sentence in accordance with this opinion. We do not retain jurisdiction.

/s/ Colleen A. O'Brien  
/s/ Cynthia Diane Stephens  
/s/ Mark T. Boonstra

---

<sup>2</sup> We note, however, that if defendant does not receive credit for time served under MCL 769.11b, he may be subject to a term of imprisonment in excess of the statutory maximum.