

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 18, 2012

v

KENNETH JAMES INMAN,

Defendant-Appellant.

No. 308143
Jackson Circuit Court
LC No. 11-004423-FH

Before: WHITBECK, P.J., and FITZGERALD and BECKERING, JJ.

PER CURIAM.

Defendant pleaded guilty to operating or maintaining a methamphetamine laboratory, MCL 333.7401c(2)(a). The trial court sentenced defendant as an habitual offender, second offense, MCL 769.11, to a prison term of 20 to 180 months. Defendant appeals by leave granted, raising only an issue related to sentence credit. We affirm.

On April 19, 2011, defendant and his ex-wife were involved in an altercation that culminated in defendant approaching a police officer with photographs of his ex-wife's methamphetamine laboratory. During the subsequent investigation, defendant admitted to purchasing Sudafed for his ex-wife's methamphetamine production. Police took defendant into custody on April 19, 2011, for reasons apparently unrelated to his admission. Defendant was arrested on July 27, 2011, for operating or maintaining a methamphetamine laboratory. Defendant's bond was set the following day. On August 30, 2011, defendant pleaded guilty to operating or maintaining a methamphetamine laboratory pursuant to a plea agreement involving additional charges not related to the present offense.

At sentencing on October 13, 2011, on the charge to which defendant pleaded guilty, defendant objected to receiving only 78 days worth of credit for time served. Defendant contended that he should have received credit for time served between November 17, 2010, and January 18, 2011, while he was in jail on unrelated charges that were dismissed as part of his plea agreement in this case. Defendant also claimed he was entitled to credit for time served from April 19, 2011, until his sentencing. The prosecution disagreed with defendant's contention on the ground that the time spent in jail before July 27, 2011, was unrelated to the offense for which defendant was convicted. The trial court stated that it would send the file back to the probation department to calculate the amount of time to which defendant was entitled, but the trial court entered 78 days of credit on the judgment of sentence. The trial court also stated at

sentencing that it would remove from the presentence investigation report (PSIR) the characterization of defendant's methamphetamine use as "daily." However, page 12 of the PSIR still contains such characterization.

This Court granted defendant's delayed application for leave to appeal in part on the issue of the amount of sentence credit to which defendant is entitled under MCL 769.11b. In all other respects the delayed application was denied. We review de novo a defendant's claim that he is entitled to sentence credit. *People v Patton*, 285 Mich App 229, 238; 775 NW2d 610 (2009). The Michigan Court Rules require a trial court, when sentencing a defendant, to calculate the amount of sentence credit to which the defendant is entitled and state that amount on the record. MCR 6.425(E)(1)(d). MCL 769.11b governs when a defendant is entitled to credit for time served:

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. *Id.*

The Michigan Supreme Court in *People v Prieskorn*, 424 Mich 327; 381 NW2d 646 (1985), held that this statute is limited by its plain language to only that time spent in jail because of defendant's failure to post bond on the charges of which he is later convicted (or because of being denied bond). This Court, in several cases that followed, held that time spent in jail on unrelated charges does not qualify for sentence credit, see, e.g., *People v Ovalle*, 222 Mich App 463; 564 NW2d 147 (1997), even if those unrelated charges are dismissed as part of a plea bargain in the case for which the defendant later seeks credit. *People v McKnight*, 165 Mich App 66; 418 NW2d 402 (1987).

Here, defendant was arrested on the charge for which he pleaded guilty on July 27, 2011. Defendant's time spent in jail would not be "for the offense of which he is convicted" until he had been arrested for that offense. Accordingly, the earliest the clock could have started running on defendant's sentence credit was July 27, 2011. Defendant's sentencing was on October 13, 2011. Defendant's incarceration from July 27 to October 13 was 78 days – the same amount of time for which defendant received credit in the judgment of sentence. Any error that occurred as a result of the trial court's failure to state on the record the amount of sentence credit to which defendant was entitled pursuant to MCR 6.415(E)(1)(d) is harmless because the outcome would not have changed had the trial court complied with MCR 6.415(E)(1)(d). *People v Hawthorne*, 474 Mich 174, 180-181; 713 NW2d 724 (2006). The PSIR correctly states the amount of sentence credit to which defendant was entitled.

We need not address the remaining issues raised by defendant because this Court's order granting defendant's delayed application for leave to appeal specifically limited the appeal to the issue discussed above. See *People v Farquharson*, 274 Mich App 268, 279; 731 NW2d 797 (2007).

Affirmed.

/s/ William C. Whitbeck
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering