

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONIO CLEM EARNEST,

Defendant-Appellant.

UNPUBLISHED
September 18, 2007

No. 271061
Wayne Circuit Court
LC No. 06-001872-01

Before: Markey, P.J., and Saad and Wilder, JJ.

MEMORANDUM.

After a bench trial, defendant was convicted of carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent prison terms of one to five years for carrying a concealed weapon and felon in possession of a firearm, and to a consecutive two-year term for felony-firearm. Defendant appeals by right, challenging the trial court's order that his sentence for carrying a concealed weapon run consecutively to his sentence for felony-firearm. We remand for correction of the judgment of sentence. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

MCL 750.227b provides in pertinent part:

(1) A person who carries or has in his or her possession a firearm when he or she commits or attempts a felony, except a violation of section 223, section 227, 227a or 230, is guilty of a felony, and shall be imprisoned for 2 years. Upon a second conviction under this section, the person shall be imprisoned for 5 years. Upon a third or subsequent conviction under this subsection, the person shall be imprisoned for 10 years.

(2) A term of imprisonment prescribed by this section is in addition to the sentence imposed for the conviction of the felony or the attempt to commit the felony, and shall be served consecutively with and preceding any term of imprisonment imposed for the conviction of the felony or attempt to commit the felony.

The interpretation of a statute presents a question of law that we review de novo on appeal. *People v Clark*, 463 Mich 459, 463 n 9; 619 NW2d 538 (2000).

We remand this case to the trial court with instructions that the trial court correct the judgment of sentence to provide that defendant's sentence for felony-firearm is consecutive to his sentence for felon in possession of a firearm, but concurrent with his sentence for carrying a concealed weapon. A sentence for felony-firearm must be served consecutively and before to a sentence for the underlying felony, MCL 750.227b(2); *People v Fortson*, 202 Mich App 13, 20-21; 507 NW2d 763 (1993), but not consecutively to a sentence imposed for any other offense. *Clark, supra* at 464. The offense of carrying a concealed weapon cannot serve as the underlying offense for felony-firearm. MCL 750.227b(1); *People v Cortez*, 206 Mich App 204, 207; 520 NW2d 693 (2004). Defendant's sentence for felony-firearm must be served consecutively and before to his sentence for felon in possession of a firearm, but concurrently with his sentence for carrying a concealed weapon.

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

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder