

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY HARRIS,

Defendant-Appellant.

UNPUBLISHED
October 29, 1999

No. 215637
Ingham Circuit Court
LC No. 97-072163 FC

Before: Whitbeck, P.J., and Gribbs and White, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted his plea-based conviction of criminal sexual conduct in the second degree, MCL 750.520c; MSA 28.788(3). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On May 16, 1997 defendant was charged with criminal sexual conduct in the first degree, MCL 750.520b; MSA 28.788(2). The case was bound over to Ingham Circuit Court for trial and was assigned to Judge Giddings. Trial was adjourned on several occasions, and then rescheduled for December 1, 1997. On December 9, 1997 defendant moved to dismiss based on a violation of the 180-day rule. The trial court denied the motion, finding that the prosecution had taken good faith action within the 180-day period to prepare the case for trial. Subsequently, defendant pleaded guilty to criminal sexual conduct in the second degree and was sentenced to six to fifteen years in prison, with credit for 540 days.

The 180-day rule, MCL 780.131; MSA 28.969(1), provides that a person incarcerated in a state facility or detained in a local facility awaiting incarceration in a state facility must be brought to trial within 180 days after either the prosecution is given notice of the existence of untried charges against him, or the Department of Corrections knows or has reason to know that a criminal charge is pending against the person. Trial need not actually commence within 180 days. *People v Bell*, 209 Mich App 273, 278; 530 NW2d 167 (1995). If the prosecution takes good faith action within that period and proceeds promptly to prepare the case for trial, the rule is satisfied. *Id.*; MCR 6.004(D)(1). The burden is on the prosecution to justify the delay. *People v Wolak*, 153 Mich App 60, 64; 395 NW2d

240 (1986). We review a trial court's attribution of delay for clear error. *People v Crawford*, 232 Mich App 608, 612; 591 NW2d 669 (1998).

Defendant argues that the trial court erred by denying his motion to dismiss based on a violation of the 180-day rule. We disagree. Although more than 180 days elapsed between either May 16, 1997, the date on which defendant contended that the 180-day period commenced, or May 22, 1997, the date on which the prosecution contended that the period commenced, and December 1, 1997, dismissal of this case was not warranted. The delay in this case was due largely to Judge Giddings' involvement in the trial of a large class action suit brought by inmates of the Department of Corrections. Judge Giddings' participation in this trial necessitated the division of his criminal docket among the other judges on the Ingham Circuit Court bench. Both the prosecutor and the court made good-faith efforts to bring the case to trial. The delay was not due to chronic court congestion, but, rather, to "exceptional and unavoidable circumstances and, thus, was excusable." *Wolak, supra* at 66-67.

Affirmed.

/s/ William C. Whitbeck

/s/ Roman S. Gibbs

/s/ Helene N. White