STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LEE HALL,

Defendant-Appellant.

UNPUBLISHED
August 15, 2000

No. 215429
Gratiot Circuit Court
LC No. 91-002353-FC

Before: Wilder, P.J., and McDonald and Doctoroff, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with a dangerous weapon (felonious assault), MCL 750.82; MSA 28.277.[1] Defendant was sentenced as a second habitual offender, MCL 769.10; MSA 28.1082, to four to six years' imprisonment. Defendant appeals as of right. We affirm his assault with a dangerous weapon conviction and remand for further sentencing proceedings.

Defendant first argues that the trial court erred in denying his motion to dismiss, which alleged a violation of the 180-day rule, MCL 780.131(1); MSA 28.969(1)(1). We disagree. Application of a statute is a question of law, which we review de novo. *People v Coutu,* 459 Mich 348, 353; 589 NW2d 458 (1999). We review a trial court's grant or denial of a defendant's motion to dismiss for an abuse of discretion. *People v Adams,* 232 Mich App 128, 132; 591 NW2d 44 (1998).

MCL 780.131(1); MSA 28.969(1)(1) provides in part:

> Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint.

The purpose of the 180-day rule is to dispose of untried charges against prison inmates so that sentences can run concurrently. *People v Chavies*, 234 Mich App 274, 280; 593 NW2d 655 (1999). Thus, the 180-day rule does not apply when the pending charge subjects the defendant to mandatory consecutive sentencing. *Id.* Here, defendant was on parole from a 1977 felony conviction when he committed the 1991 felonious assault. Consecutive sentencing is mandatory when someone commits a crime while on parole. MCL 768.7a(2); MSA 28.1030(1)(2); *Chavies, supra* at 280. Because defendant was subject to mandatory consecutive sentencing, the 180-day rule was inapplicable and the trial court properly denied defendant's motion to dismiss. *Chavies, supra* at 280.

Defendant next argues that the trial court committed error requiring reversal when it instructed the jury regarding felonious assault as a lesser included offense of armed robbery. Specifically, defendant contends that because the period of limitation for felonious assault had long since run prior to his 1998 conviction, the charge was improperly before the jury. However, defendant failed to raise the statute of limitations issue below. Thus, defendant has waived the statute of limitations defense. *People v Everard*, 225 Mich App 455, 461-462; 571 NW2d 536 (1997).

Finally, defendant argues that the trial court committed error requiring reversal in denying his motion to quash the supplemental information, filed in 1991, charging him as an habitual offender. Specifically, defendant contends that because the supplemental information was dismissed by the prosecutor at the conclusion of the 1991 trial, it was necessary that the supplemental information be refiled after the reversal of defendant's 1991 convictions. Again, we disagree. This issue presents a question of law, which we review de novo. *People v Connor*, 209 Mich App 419, 423; 531 NW2d 734 (1995).

Defendant offers no authority to support his argument that the prosecution was required to refile the supplemental information charging defendant as an habitual offender. A party may not leave it to this Court to search for authority to sustain or reject its position. *People v Lynn*, 223 Mich App 364, 368; 566 NW2d 45 (1997). Our reversal of defendant's 1991 convictions returned him to the status quo ante. In other words, when we reversed and remanded for a new trial, defendant returned to the same position he was in when the 1991 trial began. Compare *People v Larkins*, 142 Mich App 679; 369 NW2d 882 (1985). In the present case, the supplemental information was in force when defendant's 1991 trial began; thus, it was in force when his 1998 retrial commenced.

However, we conclude that the trial court erred when it gave retrospective effect to the 1994 amendments regarding the statutory procedures for disposing of a supplemental information charging habitual offender status. Defendant committed the instant offense in May, 1991. At that time, MCL 769.13; MSA 28.1085 stated in pertinent part:

> If after conviction and either before or after sentence it appears that a person convicted of a felony has previously been convicted of crimes . . . the prosecuting attorney . . . may file a separate or supplemental information in the cause accusing the person of the previous convictions. . . . If the offender says he is not the same person, or remains silent, the court shall enter a plea of not guilty, and a jury of 12 jurors shall be impaneled . . . to determine the issues raised by the [supplemental] information and plea.

> . . . If the accused pleads guilty to [supplemental] information or if the jury returns a verdict of guilty, the court may sentence the offender . . . and vacate the previous sentence . . .

MCL 769.13; MSA 28.1085 was amended by 1994 PA 110. The 1994 amendment eliminated a defendant's right to a jury trial as well as the right to have guilt proven beyond a reasonable doubt. MCL 769.13; MSA 28.1085; *People v Zinn*, 217 Mich App 340, 347; 551 NW2d 704 (1996). However, the act specifically stated that the amendment was to take effect on May 1, 1994, and that it "shall apply to prosecutions for criminal offenses committed on or after that date." See Historical and Statutory Notes following MCL 769.13; MSA 28.1085. Because the Legislature expressly indicated its intent to give the amendments to MCL 769.13; MSA 28.1085 prospective effect only, and because defendant committed the instant offense before the effective date of 1994 PA 110, the trial court erred in applying the amendment's changes to defendant's 1991 offense.

We therefore remand to give defendant the opportunity to plead to the supplemental information. If he declines to plead or pleads not guilty, this matter must be resolved by trial pursuant to the pre-1994 amendments to MCL 769.13; MSA 28.1085. If defendant pleads guilty to the supplemental information or if trial proceedings result in a determination of habitual offender status, then defendant's previously imposed enhanced sentence will stand. MCL 769.13; MSA 28.1085. However, if trial proceedings do not result in a determination of habitual offender status, defendant's previously imposed enhanced sentence must be vacated and he must be resentenced.

Defendant's assault with a dangerous weapon conviction is affirmed. We remand for further proceedings consistent with this opinion with respect to the habitual offender issue. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Gary R. McDonald
/s/ Martin M. Doctoroff

[1] Defendant's conviction was a result of a retrial after this Court reversed and remanded his December 9, 1991 convictions for armed robbery, MCL 750.529; MSA 28.797, possession of a short-barreled shotgun, MCL 750.224b; MSA 28.421(2), and possession of a firearm during the commission of a

felony, MCL 750.227b; MSA 28.424(2). See *People v Hall*, unpublished opinion per curiam of the Court of Appeals, issued February 18, 1997 (Docket Nos. 147703, 164837, 181916).