

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWAYNE KEVIN KRAMER,

Defendant-Appellant.

UNPUBLISHED

September 15, 2000

No. 214351

Ottawa Circuit Court

LC No. 97-021016-FH

Before: McDonald, P.J., and Neff and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of breaking and entering with intent to commit a felony, MCL 750.110; MSA 28.305. The trial court sentenced defendant as a fourth felony offender, MCL 769.12; MSA 28.1084, to an enhanced prison term of 48 to 180 months. Defendant appeals as of right. We affirm.

This case arises out of a breaking and entering that occurred at the business offices of Mid Michigan Homes in Coopersville on May 28, 1997, and the high-speed chase that occurred following the commission of the breaking and entering. Defendant was originally charged with one count of breaking and entering and one count of fleeing and eluding. However, following a preliminary examination, the district court dismissed the breaking and entering charge against defendant for lack of probable cause. Defendant then pleaded guilty to fleeing and eluding. Shortly thereafter, the prosecution filed a felony complaint again charging defendant with breaking and entering for the same incident. The prosecution presented additional evidence at the second preliminary examination, and the district court bound defendant over upon a finding of probable cause. The trial court denied defendant's motion to dismiss the breaking and entering charge on double jeopardy grounds, and defendant was eventually convicted by a jury of the offense.

Defendant first argues that double jeopardy principles precluded his prosecution for breaking and entering because it arose out of the same transaction as the fleeing and eluding charge. We disagree. A double jeopardy issue is a question of law that this Court reviews de novo. *People v White*, 212 Mich App 298, 304-305; 536 NW2d 876 (1995).

The validity of successive prosecutions under the Double Jeopardy Clause of the Michigan constitution is measured by the “same transaction” test. *White, supra*, 305-306. Under Michigan’s “same transaction” test, the prosecutor is required to join at one trial all charges that grow out of a “continuous time sequence” and that demonstrate “a single intent and goal.” *People v Spicer*, 216 Mich App 270, 272; 548 NW2d 245 (1996).

In this case, defendant did not commit the charged crimes with a single intent and goal. While the goal of the breaking and entering into Mid Michigan Homes was to steal money, the crime of fleeing and eluding was committed in order to evade apprehension by the police. *People v Grant*, 102 Mich App 368, 373; 301 NW2d 536 (1980). Because the crimes had clearly different objectives, defendant’s prosecution for breaking and entering did not violate his right against double jeopardy. *Id.*

Next, defendant challenges the validity of his sentence as an habitual offender, arguing the prosecution failed to timely file the supplemental information. We disagree.

After the district court bound defendant over to circuit court in July 1997, the prosecution filed an information in circuit court which included the underlying felony of breaking and entering with intent to commit a felony, MCL 750.110; MSA 28.305 and notice that the prosecution intended to proceed against defendant as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084. This supplemental information was clearly timely filed because it was included on the same information charging the underlying felony and was filed the same day as defendant’s waiver of arraignment. MCL 769.13(1); MSA 28.1085(1); *People v Bollinger*, 224 Mich App 491, 492-493; 569 NW2d 646 (1997). Defendant’s argument that the prosecution was required to file another supplemental information after the circuit court remanded the matter to the district court for additional findings of fact is without merit. The circuit court denied defendant’s motion to quash the information and never divested itself of jurisdiction of the matter. In any event, defendant had sufficient notice of the prosecution’s intent to proceed against him as an habitual offender because the prosecution included notice of its intent as early as the felony complaint filed in this matter.

Defendant next argues that his constitutional right to a speedy trial was violated because of the thirteen-month delay between the filing of the complaint in this matter and the beginning of the jury trial. We disagree. A defendant must make a formal demand on the record to preserve a speedy trial issue for appeal. *People v Cain*, 238 Mich App 95, 111; 605 NW2d 28 (1999). Because defendant failed to make such a demand, this issue is not properly preserved. In order to avoid forfeiture of an unpreserved constitutional claim issue on appeal, a defendant must show: 1) that an error occurred; 2) “that the error was plain, i.e., clear or obvious”; and 3) that the plain error affected substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Once a defendant satisfies these three requirements, an appellate court must “exercise its discretion in deciding whether to reverse.” *Id.* at 763. Reversal is warranted only when the plain, unpreserved error resulted in “the conviction of an actually innocent defendant or when an error “seriously affected the fairness, integrity or public reputation of judicial proceedings’ independent of the defendant’s innocence.” *Id.* at 763-764.

This Court balances the following four factors to determine whether a defendant has been denied his right to a speedy trial: “(1) the length of the delay, (2) the reasons for the delay, (3) the

defendant's assertion of the right, and (4) prejudice to the defendant." *Cain, supra* at 112. Applying the test to this case, we find no constitutional violation. The length of the delay in this case, thirteen months, is not presumptively prejudicial; therefore, defendant must prove that he suffered prejudice. *Id.* Defendant has failed to meet this burden because the only prejudice that he claims is an adverse impact on his sentence. See *People v Ervin*, 163 Mich App 518, 520; 415 NW2d 10 (1987). Moreover, we agree with the prosecution that much of the delay in this case was attributable to defendant. Finally, we cannot ignore the fact that defendant did not assert his right to a speedy trial. Accordingly, defendant has not established that plain error occurred and we decline to reverse on this basis. *Carines, supra* at 763-764.

Defendant next argues that his rights under the 180-day rule were violated. Defendant's argument is without merit. Defendant concedes that, during the period of time relevant to this issue, he was incarcerated in a county jail. The 180-day rule is not applicable in this case because defendant was not lodged in a state prison. MCL 780.131; MSA 28.969(1); *People v Wyngaard*, 151 Mich App 107, 112; 390 NW2d 694 (1986).

Affirmed.

/s/ Gary R. McDonald

/s/ Janet T. Neff

/s/ Brian K. Zahra