

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SUNDAY IM,

Defendant-Appellant.

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UNPUBLISHED

March 16, 2001

No. 222590

Ottawa Circuit Court

LC No. 99-022634-FH

Before: Saad, P.J., and Fitzgerald and O’Connell, JJ.

PER CURIAM.

Following a jury trial, defendant, a second habitual offender, MCL 769.10; MSA 28.1082, was convicted of felonious assault, MCL 750.82; MSA 28.277 and felony-firearm, MCL 750.227b; MSA 28.424(2). He received consecutive sentences of twenty-four months’ imprisonment on the felony-firearm conviction and thirty-two to forty-eight months’ imprisonment on the felonious assault conviction. We affirm.

Defendant contends that the 137 days that passed between the time that he asserts “the police had accumulated all of the evidence” they needed to charge him and the time that the warrant issued should factor into the calculation for determining whether the prosecution violated the 180-day rule, MCL 780.131; MSA 28.969(1). We disagree. The applicable statute, court rule, and case law regarding the 180-day rule clearly establish that the 180 days does not begin to run until there is a pending warrant, indictment, information, or complaint issued against a defendant. MCL 780.131; MSA 28.969(1); MCR 6.004(D)(1); *People v Hill*, 402 Mich 272, 280-281; 262 NW2d 641 (1978). See also *People v Chavies*, 234 Mich App 274, 278; 593 NW2d 655 (1999).

Defendant also argues that this preaccusation delay violated his constitutional due process rights. This argument also fails. Defendant has not shown that any delay deprived him of the opportunity to present his defense, nor has he shown that delay resulted in substantial prejudice to his right to a fair trial or that it was a purposeful device used to gain tactical advantage over him. Defendant’s due process violation claim is based on mere speculation, which is insufficient to establish the constitutional claim. *People v Cain*, 238 Mich App 95, 108-109; 605 NW2d 28 (1999). Further, defendant has not shown that the prosecution deliberately delayed charging him. Finally, we agree with the prosecution that it was entitled a reasonable amount of time to collect sufficient evidence. *Id.* at 111. Therefore, defendant’s due process argument fails.

Defendant next argues that the 213 days that passed between the time that he was charged and the time of his trial violated the 180-day rule. We agree with the trial court that no violation of the 180-day rule occurred.

Time attributable to an adjournment that a defendant requested is not charged against the prosecutor. *People v Jones (On Rehearing After Remand)*, 228 Mich App 191, 196; 579 NW2d 82, modified 458 Mich 862; 587 NW2d 637 (1998). Further, the 180-day rule does not require that trial commence within 180 days. Rather, if apparent good-faith action is taken well within that period, and the prosecutor proceeds promptly toward readying the case for trial, the rule is satisfied. MCR 6.004(D); *People v Hendershot*, 357 Mich 300, 303-304; 98 NW2d 568 (1959); *People v Bell*, 209 Mich App 273, 278; 530 NW2d 167 (1995). If the prosecutor takes such good-faith action, jurisdiction over the case will not be lost unless the initial action is followed by an inexcusable delay that evidences an intent not to bring the case to trial promptly. *People v Bradshaw*, 163 Mich App 500, 505; 415 NW2d 259 (1987).

Our review of the record indicates that the trial was originally scheduled to occur well within the 180-day time period. At the defense's request, the parties stipulated to an adjournment which delayed the holding of trial. The trial was then promptly rescheduled to occur on July 8, 1999. Our review of the record revealed no indication that the prosecution failed to act in good faith, within the initial 180-day time period and thereafter, to ready this case, which involved numerous potential defendants and witnesses, for trial. Therefore, the record does not support a finding of a violation of the 180-day rule.

Finally, defendant argues that the prosecutor violated his constitutional right to a speedy trial. Again, we disagree. The determination whether defendant was denied a speedy trial is a mixed question of fact and law. The factual findings are reviewed for clear error, while the constitutional issue is a question of law subject to de novo review. *People v Gilmore*, 222 Mich App 442, 459; 564 NW2d 158 (1997).

In determining whether a defendant has been denied a speedy trial, we must balance four factors: (1) the length of the delay; (2) the reasons for the delay; (3) whether the defendant asserted his right to a speedy trial; and (4) prejudice to the defendant from the delay. *People v Mackle*, 241 Mich App 583, 602; 617 NW2d 339 (2000).

In the instant case, the length of time that elapsed between the time the warrant was issued until the time of trial – 213 days – does not begin to approach the “outer limits of other delays” this Court has addressed. See *Cain, supra* at 112-113. The delay in this case was attributable in part to defendant and in part to the complexity of this case. In the latter regard, the record indicates that the investigation was lengthy and complicated and involved numerous defendants and potential witnesses. Moreover, defendant failed to assert his speedy trial right before trial. The record indicates that the assertion was not made promptly or genuinely. Defendant's failure to promptly assert his right to a speedy trial weighs against his subsequent claim that he was denied the right, *People v Rosengren*, 159 Mich App 492, 508; 407 NW2d 391 (1987), as does his insincere assertion of that right, *id.*; *People v Ovegian*, 106 Mich App 279, 284-285; 307 NW2d 472 (1981). Finally, because the delay in this case was far less than eighteen months, defendant bears the burden of proving prejudice, which he has failed to do.

*People v Collins*, 388 Mich 680, 695; 202 NW2d 769 (1972); *Cain, supra* at 112.

Affirmed.

/s/ Henry William Saad  
/s/ E. Thomas Fitzgerald  
/s/ Peter D. O'Connell