

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES LEE WINWARD, III,

Defendant-Appellant.

UNPUBLISHED

May 28, 2002

No. 229932

St Clair Circuit Court

LC No. 00-000982

Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

MEMORANDUM.

Defendant appeals as of right his bench trial conviction for possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant asserts that the case should have been dismissed for violation of the 180-day rule, MCL 780.131, and violation of his right to a speedy trial. The 180-day rule provides that an inmate of the Department of Corrections must be brought to trial within 180 days after the prosecution is given notice of untried charges against him. When a pretrial delay greater than 180 days occurs, the rule is satisfied if the prosecutor has taken good faith action within that period to promptly ready the case for trial. *People v Crawford*, 232 Mich App 608, 612; 591 NW2d 669 (1999). This Court will review a trial court's attributions of delay for clear error. *Id.* The defendant need not object to the delay to preserve the issue. *People v Hewitt*, 176 Mich App 680, 682; 439 NW2d 913 (1989).

Defendant has failed to show that the trial court clearly erred in denying dismissal. The delay between the issuance of the warrant and the arraignment was attributable to the prosecutor, but it was less than 180 days. Where defendant agreed to the trial date outside the 180-day period, that delay may be properly attributable to defendant. *Crawford, supra*, 613-614. There was no violation of the rule.

There is no showing that defendant was denied his constitutional right to a speedy trial. In determining whether a defendant was denied a speedy trial, courts will consider (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of the right to a speedy trial, and (4) the prejudice to the defendant. *Barker v Wingo*, 407 US 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972); *People v Metzler*, 193 Mich App 541; 484 NW2d 695 (1992). Here, the delay was not lengthy, it was due to inadvertence, defendant did not assert his right to a speedy

trial, and there was no harm to defendant, where he was incarcerated on another charge and received sentence credit for time served. Defendant was not denied his constitutional right to a speedy trial.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff