

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LEONI, a/a/ NICKOLAS RUSSO, a/k/a
NEIL MILLER,

Defendant-Appellant.

UNPUBLISHED

November 26, 2002

No. 237043

Wayne Circuit Court

LC No. 91-003778-01

Before: Markey, P.J., and Saad and Smolenski, JJ.

MEMORANDUM.

Defendant appeals by right his plea-based conviction for larceny from a person, MCL 750.357. We affirm.

After entering a no contest plea, defendant failed to appear for sentencing scheduled for June 5, 1991. A bench warrant was issued. After a number of convictions, defendant was returned to Wayne Circuit Court after completing a prison sentence. On June 29, 2001, defendant was sentenced to 5½ to 15 years' imprisonment, with credit for 1,475 days served on the other charges.

On appeal, defendant asserts that the ten-year delay in sentencing violated his right to a speedy trial. Sentencing is included within the speedy trial guarantee. *People v McIntosh*, 103 Mich App 11, 20; 302 NW2d 321 (1981). In determining whether a defendant's right to a speedy trial was violated, a four-part balancing test is utilized. The factors considered are: (1) length of delay; (2) reason for the delay; (3) defendant's assertion of his right; and (4) prejudice to the defendant. *Barker v Wingo*, 407 US 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972).

Although there was a lengthy delay, defendant caused it, and he cannot use it to his advantage. *People v Garvin*, 159 Mich App 38, 46; 406 NW2d 469 (1987). Where defendant did nothing to demand a more prompt sentencing, and the delay caused no prejudice where defendant was given credit for the time served between the plea and the sentence, there was no

speedy trial violation. *Id.* The lapse of time does not cause a court to lose jurisdiction to sentence a defendant. *Id.*

We affirm.

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Michael R. Smolenski