STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED February 6, 2007
v	No. 265713 Genesee Circuit Court
LAMONT ALLEN STINNETT, Defendant-Appellee.	LC No. 05-016744-FH

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order dismissing this case based on a violation of the 180-day rule of the former MCR 6.004(D).[1] We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

We review the trial court's attributions of delay for purposes of the 180-day rule for clear error.[2] *People v Crawford*, 232 Mich App 608, 612; 591 NW2d 669 (1998). A finding is clearly erroneous if, after review of the record, we are left with a firm and definite conviction that a mistake was made. *People v Swirles (After Remand)*, 218 Mich App 133, 136; 553 NW2d 357 (1996).

The trial court did not clearly err in finding that plaintiff failed to take good faith action to bring this case to trial within the relevant 180-day period. Plaintiff failed to take action for over four months of this period, and no explanation was provided for this delay. Further, the trial court's remarks in explaining its decision to dismiss this case reflect that plaintiff, who was

[1] The former version of MCR 6.004(D) was in force throughout the time of the proceedings below. The current version of MCR 6.004(D) took effect on January 1, 2006.

[2] Plaintiff incorrectly cites *People v McLaughlin*, 258 Mich App 635, 643; 672 NW2d 860 (2003), as establishing the rule that all alleged violations of the 180-day rule present legal questions that are reviewed de novo. The *McLaughlin* Court only addressed whether the 180-day rule was applicable to a county jail inmate awaiting trial, and determined that this limited question of law was subject to de novo review. *Id*. at 643-644. Contrary to plaintiff's assertion, *McLaughlin* does not stand for the proposition that all alleged violations of the 180-day rule are to be reviewed de novo.

intimately familiar with local docket congestion and other local scheduling concerns, should have realized the need to act more promptly to begin proceedings in this matter and to bring this case to trial within the 180-day period. On the record before us, we conclude that the trial court did not clearly err in finding that plaintiff failed to make a good faith effort to bring this case to trial within the requisite 180 days.

Citing *People v Finley*, 177 Mich App 215, 219-220; 441 NW2d 774 (1989), plaintiff appears to contend in part that no violation of the 180-day rule occurred because the preliminary examination was held within the applicable 180-day period. We reject such a reading of *Finley*. The *Finley* Court actually stated, "Where a defendant's preliminary examination begins within the 180-day limitation period *and there is no showing of lack of good faith on the part of the prosecution in proceeding promptly towards trial*, reversal is not required." *Id*. (emphasis added). While the preliminary examination in this case was held within 180 days of the charges being brought, there was nevertheless substantial reason for the trial court to find a lack of good faith by plaintiff in proceeding promptly toward trial. Moreover, it would be unreasonable to read *Finley* as establishing the rule that a preliminary examination within the 180-day period is sufficient to comply with the 180-day rule. Such a reading would be contrary to the plain language of the former MCR 6.004(D), which required the prosecution to make a good faith effort to bring a criminal charge *to trial*, not merely to a preliminary examination, within the 180-day period. Lastly, the *Finley* Court held in part that there was no violation of the 180-day rule in that case because trial was delayed by the *defendant's* motion to adjourn. *Id*. at 220. In contrast to the facts presented in *Finley*, there is no indication that defendant was responsible for any delay in bringing the present case to trial. The bare fact that the preliminary examination in this case was held within the applicable 180-day period does not aid plaintiff's argument that the trial court erred in dismissing this matter.

Finally, we note that our Supreme Court's ruling in *People v Williams*, 475 Mich 245, 257-260; 716 NW2d 208 (2006), which struck down certain provisions of the former MCR 6.004(D), does not appear to apply in this case. The former MCR 6.004(D)(1)(b) purported to trigger the commencement of the 180-day pretrial period at the time the department of corrections first became aware or had reason to know that a criminal charge was pending against an inmate. Former MCR 6.004(D)(1)(b); *Williams*, *supra* at 259. However, as our Supreme Court has explained, this provision conflicted with MCL 780.131, which unambiguously triggers the commencement of the 180-day pretrial period at a later time, when "the department of corrections causes to be delivered to the prosecuting attorney of the county in which the [criminal charge] is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the [criminal charge]." MCL 780.131(1). Thus, the *Williams* Court found that the former MCR 6.004(D) impermissibly expanded the scope of MCL 780.131, effectively shortening the permissible 180-day period by triggering the commencement of the period on the date described in MCR 6.004(D)(1)(b) rather than on the later date of notice to the prosecutor described in the statute. *Williams*, *supra* at 259.

In the present case, it is not clear when, or even if, the department of corrections provided to the prosecutor "written notice of the place of imprisonment of the inmate and a request for final disposition of the [criminal charge]" as envisioned by MCL 780.131(1). Thus, the parties and the trial court must have necessarily based their calculations of the 180-day pretrial period on the date that the department of corrections first became aware or had reason to know that a

criminal charge was pending against defendant. Logically, any notice by the department of corrections to the prosecutor would necessarily have occurred *after* the department's first awareness of pending criminal charges against defendant.[3]

Under the rule of *Williams*, *supra*, the 180-day period in this case would actually have commenced *later* than the parties and the trial court apparently believed—not at the time the department of corrections first became aware or had reason to know of the criminal charges against defendant, but rather at the time the department provided proper notice to the prosecutor. Thus, assuming that notice would have been provided to the prosecutor *even one day later* than the date on which the department of corrections first became aware or had reason to know of the pending criminal charges, defendant's scheduled trial would have been timely—falling on the 180th day after proper notice to the prosecutor within the meaning of MCL 780.131 rather than on the 181st day after the department of corrections first became aware of the charges. In sum, if *Williams* were applicable in this case, defendant's ultimate trial would likely have been timely, and reversal would therefore be required.

However, the holding in *Williams* was given "limited retroactive effect" only. *Williams*, *supra* at 259. At a different point in the *Williams* opinion, while discussing a wholly separate legal issue, our Supreme Court stated that a decision with "limited retroactive effect" applies only "to those cases pending on appeal in which [the] issue has been raised and preserved." *Id.* at 247. Because plaintiff in the instant case raised and preserved no issue regarding whether the former MCR 6.004(D) improperly expanded the scope of the statutory 180-day rule, we are compelled to hold that *Williams* does not apply retroactively to the present case. Although the method actually used to calculate the 180-day period in the instant case would have been erroneous under the rule of *Williams*, that method of calculation was not erroneous under the former MCR 6.004(D)(1)(b). Because the invalidation of MCR 6.004(D)(1)(b) was not given full retroactive effect, we must conclude that the trial court did not err in relying on MCR 6.004(D)(1)(b) rather than MCL 780.131(1) to calculate the 180-day period in this case.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper

[3] The trial in this matter was apparently set to begin on the 181st day after the department of corrections first became aware or had reason to know that charges were pending against defendant. However, because the trial court dismissed this case on the 180th day after the department first became aware or had reason to know of the charges, trial never occurred.