

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TAVARIS MARKEITH BLANKS,

Defendant-Appellant.

UNPUBLISHED

April 22, 2008

No. 255257

Wayne Circuit Court

LC No. 03-013651-01

ON REMAND

Before: Hoekstra, P.J., and Wilder and Donofrio, JJ.

PER CURIAM.

Our Supreme Court remanded this case to us for reconsideration of defendant's 180-day-rule violation claim in light of its holding in *People v Williams*, 475 Mich 245; 716 NW2d 208 (2006).¹ Further, the order vacated "the judgment of the Court of Appeals that *excused* the 180-day-rule violation based on the prosecutor's good faith efforts to bring the defendant to trial within 180 days." *People v Blanks*, 480 Mich 914; 739 NW2d 872 (2007) (emphasis added).

The analysis in our prior opinion pertaining to defendant's claim of a 180-day-rule violation stated:

Defendant also argues that the trial court erred in not dismissing the charges because the prosecutor violated the 180-day rule. This issue presents a legal question that we review de novo. *People v McLaughlin*, 258 Mich App 635, 643; 672 NW2d 860 (2003).

The 180-day rule, which is contained in MCL 780.131 and MCR 6.004(D), requires the prosecutor to bring an inmate to trial within 180 days of receiving notice of the inmate's incarceration in a state prison. *People v Smielewski*, 235 Mich App 196, 198; 596 NW2d 636 (1999). The rule does not require that trial be commenced or concluded within the 180-day period, only that the prosecutor make a good faith effort to bring the case to trial within that period. *People v Hendershot*, 357 Mich 300, 303-304; 98 NW2d 568 (1959); *People v Bell*, 209 Mich App 273, 278; 530 NW2d 167 (1995). The record reflects that the

¹ In all other respects, defendant's application for leave to appeal was denied.

prosecution did not receive notice of defendant's incarceration until August 2003. Thus, there was no violation of the 180-day rule because defendant's preliminary examination was conducted on December 8, 2003, within 180 days of when the prosecution received notice of defendant's incarceration. See *People v Finley*, 177 Mich App 215, 219-220; 441 NW2d 774 (1989). [*People v Blanks*, unpublished opinion per curiam of the Court of Appeals, issued September 15, 2005 (Docket No. 255257), slip op 8-9.]

From the plain language of the Supreme Court's remand order, we conclude that the above-quoted analysis, which applied the "good-faith exception,"² constituted "excus[ing]"³ what otherwise under MCL 780.131 would have been a violation of the 180-day-rule. In other words, the fact that a preliminary examination was held within 180 days of notification cannot forgive or overlook the 180-day-rule violation that otherwise occurred in this case. This holding regarding application of the "good faith exception" is somewhat curious because *Williams* did not directly address the "good-faith exception."⁴ However, the import of this order as it relates to the "good-faith exception" is not totally surprising given the emphasis *Williams* placed on adhering to the plain language of the statute, which does not provide for a "good-faith exception" in its text, and the statement in *Williams* that the remedy section of the 180-day-rule, MCL 780.133, requires dismissal with prejudice if trial does not commence within 180 days. See *Williams*, *supra* at 252, 254-255.

In its supplemental brief after remand, plaintiff argues that the "good-faith exception" remains viable as applied to the remedy section of the 180-day-rule, MCL 780.133, because *Williams* did not overrule *Hendershot*, *supra*, and the comment regarding MCL 780.133 is dicta. Plaintiff is correct that *Hendershot* was not overruled in *Williams*, but neither was its holding reaffirmed. Rather, *Hendershot* was cited as one of three cases that interpreted the 180-day-rule and whose holdings were codified by MCR 6.004(D) as amended in 1989. The other two cases, *People v Hill*, 402 Mich 272; 262 NW2d 641 (1978) and *People v Castelli*, 370 Mich 147; 121 NW2d 438 (1963) were analyzed and overruled,⁵ *Williams*, *supra* at 259, but no further mention was made of *Hendershot*. Thus, *Williams* leaves the effect of the "good faith exception" announced in *Hendershot* in doubt. Further, we agree that arguably the language in *Williams* regarding MCL 780.133 is dicta. Nevertheless, the remand order, which finds a violation of the

² The "good-faith exception" was articulated in *Hendershot*, *supra* at 304, which held that no violation occurs where "apparent good-faith action is taken well within the period and the people proceed promptly and with dispatch thereafter toward readying the case for trial"

³ Excuse is defined as "to regard or judge with indulgence; pardon or forgive; overlook (a fault, error, etc.)." *Random House Webster's College Dictionary* (1992).

⁴ The exception at issue in *Williams* was the holding in *People v Smith*, 438 Mich 715; 425 NW2d 337 (1991), that the 180-day-rule does not apply when the pending charge provides for mandatory consecutive sentencing.

⁵ *Hill* and *Castelli* were overruled because they "improperly expanded the scope of the 180-day-rule statute by requiring the prosecutor to bring a defendant to trial within 180 days of the date that the Department of Corrections knew or had reason to know that a criminal charge was pending against the defendant. MCR 6.004(D)(1)(b)." *Williams*, *supra* at 259.

180-day-rule in this case despite our application of the “good-faith exception,” precludes us from engaging in the analysis advanced by plaintiff. See *K & K Constr, Inc v Dep’t of Environmental Quality*, 267 Mich App 523, 544; 705 NW2d 365 (2005) (“[W]hen an appellate court gives clear instructions in its remand order, it is improper for a lower court to exceed the scope of the order”).

What then must we reconsider in light of *Williams* on remand? *Williams* requires strict conformity with the notification requirements of MCL 780.131(1).⁶ *Williams*, *supra* at 256. We believe that it is a review of the compliance, or lack of compliance, with the notice requirements that we are directed to conduct on remand. However, a review of the record in this case reveals that the trial court and the parties did not address whether the notice sent in this case conforms to the strict requirements set forth in the statute, nor is the notice itself part of the record. Consequently, we remand the case to the trial court to make the requisite factual determination regarding whether the notice sent in this matter complied with MCL 780.131(1) and to apply those findings consistent with *Williams*.

Remanded for further proceedings. We retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Pat M Donofrio

⁶ MCL 780.131(1) provides:

Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint. The request shall be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. The written notice and statement shall be delivered by certified mail.

Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI v TAVARIS MARKEITH BLANKS

Docket No. 255257

LC No. 03-013651-01

Joel P. Hoekstra
Presiding Judge

Kurtis T. Wilder

Pat M. Donofrio
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 35 days of the Clerk's certification of this order and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, the trial court shall develop the record and make the requisite findings of fact and application regarding compliance with the notice provisions of MCL 780.131.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 22 2008

Date

Sandra Schultz Mengel
Chief Clerk