

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARRON JAMES WIELAND,

Defendant-Appellant.

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UNPUBLISHED

May 12, 2009

No. 282699

Saginaw Circuit Court

LC No. 05-026271-FC

Before: K. F. Kelly, P.J., and Cavanagh and Beckering, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for first-degree murder, MCL 750.316, conspiracy to commit first-degree murder, MCL 750.316; MCL 750.157a, three counts of possession of a firearm during the commission of a felony, MCL 750.227b, carjacking, MCL 750.529a(1), conspiracy to commit carjacking, MCL 750.529a(1); MCL 750.157a, conspiracy to commit armed robbery, MCL 750.529; MCL 750.157a, and carrying a concealed weapon, MCL 750.227. We affirm.

**I. Basic Facts and Procedural History**

The sole issue raised on appeal is whether defendant was denied the right to a speedy trial. Defendant was arrested on December 1, 2004, and remained incarcerated for a total of 34 months before trial commenced on October 2, 2007. A number of procedural events attributed to this delay, including: defendant's petition for a forensic and competency examination that resulted in delay of three months; defendant's joinder in a motion in limine filed by his co-defendant to suppress certain evidence, which the trial court granted on October 13, 2005, and which resulted in a delay of only a few weeks; and, the prosecution's appeal of the trial court's ruling on the motion in limine shortly thereafter, which resulted in a delay of 17 months while the matter was pending before this Court, see *People v Wieland*, unpublished per curiam opinion of the Court of Appeals, issued March 27, 2007 (Docket Nos. 265799 and 265800). In addition, a number of other delays occurred that appear to be without reason on the record. On numerous occasions before trial, defendant asserted his right to a speedy trial—once when his attorney filed his appearance and later in numerous letters addressed to the trial court.

Subsequently, after defendant was convicted, he filed a post-judgment motion seeking dismissal with prejudice on the basis that he was denied his right to a speedy trial. In response, the prosecution argued that it was not responsible for the delay and that defendant had not been

prejudiced because the delay had not affected defendant's ability to prepare a defense. The trial court denied defendant's motion, stating:

The Court has read the motion and answer and authorities cited in both, and I'll deny the motion at this time. I agree that the 17 months that the Court of Appeals took to decide this decision was quite a bit of time, but I guess I can't tell the Court of Appeals when to do their thing, and they can tell me how to do mine.

This appeal followed.

## II. Standard of Review

Whether a defendant was denied the right to a speedy trial is a mixed question of fact and law. *People v Gilmore*, 222 Mich App 442, 459; 564 NW2d 158 (1997). We review the trial court's findings of fact for clear error. *Id.* "Clear error exists if the reviewing court is left with a definite and firm conviction that a mistake has been made." *People v Johnson*, 466 Mich 491, 497-498; 647 NW2d 480 (2002). Constitutional issues present questions of law that we review de novo. *Gilmore*, *supra* at 459.

## III. Applicable Law

Both the United States and Michigan Constitutions guarantee a criminal defendant a right to a speedy trial. US Const, Am VI; Const 1963, art 1, § 20; see also MCL 768.1; MCR 6.004(A). In determining whether a defendant has been denied this right, we apply a four-part balancing test. *People v Williams*, 475 Mich 245, 261-262; 716 NW2d 208 (2006). The four-factors include: "(1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of the right, and (4) the prejudice to defendant." *Id.* at 261-262. The first and fourth factors are critical to this analysis. If the total delay, which runs from the date of defendant's arrest until the time that trial commences, *id.* at 261, is under 18 months, then the burden is upon defendant to show that he suffered prejudice. *People v Cain*, 238 Mich App 95, 112; 605 NW2d 28 (1999). Conversely, if the delay is over 18 months, prejudice is presumed and the burden is on the prosecution to rebut the presumption. *Id.*

## IV. Application

Applying these principles to the present matter, we cannot conclude, despite the considerable length of delay in this matter, that the trial court erred in finding that defendant's right to a speedy trial was not violated.

### A. Length of Delay

Because the length of the delay between defendant's arrest and his trial was approximately 34 months, the delay was presumptively prejudicial and the burden was upon the prosecution to rebut the presumption. *Id.* Although the length of delay in this case tends to reach the outer limits of other delays that we have addressed, *People v Cutler*, 86 Mich App 118, 126-127; 272 NW2d 206 (1978) (37-month delay, but no violation); *People v Smith*, 57 Mich App 556, 563-567; 226 NW2d 673 (1975) (19-year delay, but no violation), we note that there is no set number of days between a defendant's arrest and trial that is determinative of a speedy

trial claim, *Williams*, *supra* at 261. In any case, this factor weights in defendant's favor and, since the delay in this case is presumptively prejudicial, it is necessary for us to examine the remaining factors. *Id.* at 262.

### B. Reasons for Delay

In assessing the reasons for delay, we must examine whether each period of delay is attributable to the defendant or the prosecution. *People v Walker*, 276 Mich App 528, 541-542; 741 NW2d 843 (2007), vac'd in part on other grounds 480 Mich 1059 (2008). "Unexplained delays are charged against the prosecution. Scheduling delays and docket congestion are also charged against the prosecution." *Walker*, *supra* at 542 (footnotes omitted). However, "[a]lthough delays inherent in the court system, e.g., docket congestion are technically attributable to the prosecution, they are given a neutral tint and are assigned only minimal weight in determining whether a defendant was denied a speedy trial." *Williams*, *supra* at 263 (citations and quotation marks omitted).

Here, many of the reasons for delay are not discernable from the record, while in other instances it is clear that defendant caused some of the delays. Shortly after defendant's arrest, defendant petitioned for a forensic examination and a ruling on his competence to stand trial. The proceedings were delayed for approximately three months between his petition, submitted on December 27, 2004, and the date he was found competent to stand trial, March 28, 2005. Because defendant sought the competency examination, this delay is attributable to defendant. Subsequently, there was a three-month delay between the competency ruling and the preliminary examination, held on July 8, 2005. No reason for this delay is apparent on the record. Similarly, an unexplained six-month delay occurred between the time that this Court issued its opinion ruling on the prosecutor's interlocutory appeal on March 27, 2007 and the time that trial commenced on October 2, 2007. Because these delays are unexplained, they were likely due to docket congestion. Thus, these unexplained delays, totaling approximately nine months, are attributable to the prosecutor, but we give them a "neutral tint" and assign them only minimal weight in defendant's favor. *Id.*

Defendant's main contention, however, is that the delay caused by the prosecutor's interlocutory appeal that pended before this Court for 17 months should be weighed against the government. Defendant argues that this delay is not attributable to the prosecution, but is more generally attributable to the government due to this Court's failure to give precedence to the prosecutor's interlocutory criminal appeal as required by MCR 7.213(C). However, this Court has held that the period of time the prosecution takes to successfully pursue an interlocutory appeal is "taken out of the calculation." *People v Missouri*, 100 Mich App 310, 321; 299 NW2d 346 (1980). Thus, we decline to assign this delay any weight in favor of either party.

In sum, both the prosecution and the defendant were responsible for some of the shorter delays, while the 17-month delay is not attributable to either party. Accordingly, we conclude that this factor favors neither party.

### C. Assertion of Right

After our review of the record, it is plain that defendant timely asserted his right to a speedy trial. When defense counsel entered his appearance on December 14, 2004, defendant

articulated his demand for a “speedy trial pursuant to the United States and Michigan Constitutions . . . .” The record also contains letters from defendant to the trial court, the earliest of which was dated February 1, 2007, requesting information regarding the status of his case and reasons for the delay. We conclude that this factor weighs in defendant’s favor.

#### D. Prejudice

With respect to prejudice, defendant argues that he was personally prejudiced because he was incarcerated throughout the 34-month delay and suffered anxiety during this time, but concedes that his defense was not prejudiced by the delay. We agree that defendant suffered personal prejudice, but conclude that this factor weighs heavily against defendant. In assessing this factor, we recognize that “there are two types of prejudice[:] prejudice to the person and prejudice to the defense.” *People v Wickham*, 200 Mich App 106, 112; 503 NW2d 701 (1993). Of the two types, “[p]rejudice to the defense is the more serious concern, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.” *Williams*, *supra* at 264 (quotation marks and citations omitted).

Here, it is obvious that defendant suffered personal prejudice: Defendant was incarcerated pending a trial that would decide the future course of his life and suffered anxiety as a result. While we are sympathetic to defendant’s personal plight, “anxiety, alone, is insufficient to establish a violation of [his] right to a speedy trial.” *Gilmore*, *supra* at 462. Defendant also makes much of the fact that he was incarcerated for the entire 34-month period and that in other cases of lengthy pretrial delay that did not violate the defendants’ constitutional rights, the defendants were not incarcerated but free on bond. Our Supreme Court, however, has repeatedly recognized in the context of lengthy pre-trial incarcerations, that the most significant concern is whether defendant’s ability to defend himself has been prejudiced. *Williams*, *supra* at 264 (19-month delay while incarcerated); *People v Chism*, 390 Mich 104, 115; 211 NW2d 193 (1973) (27-month delay while incarcerated); *People v Grimm*, 388 Mich 590, 606-607; 202 NW2d 278 (1972) (19-month delay while incarcerated), overruled on other grounds in *People v White*, 390 Mich 245 (1973), overruled on other grounds in *People v Nutt*, 469 Mich 565 (2004). That is not the case here, as defendant has admitted. Accordingly, this factor weighs heavily against defendant.

Although a 34-month delay is presumptively prejudicial and defendant timely asserted his right, we cannot conclude that the trial court erred in finding that defendant’s right to a speedy trial was not violated, where the reasons for the delay favored neither party and defendant’s ability to prepare a defense was not thereby prejudiced.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Mark J. Cavanagh  
/s/ Jane M. Beckering