

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
September 20, 2012

v

CHARLES THEO TILLMAN,
Defendant-Appellant.

No. 305354
Wayne Circuit Court
LC No. 11-003430-FH

Before: FORT HOOD, P.J., and METER and MURRAY, JJ.

PER CURIAM.

Defendant was convicted of being a felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, second offense, MCL 750.227b. The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to consecutive terms of 18 months to 15 years' imprisonment for being a felon in possession of a firearm and five years' imprisonment for possession of a firearm during the commission of a felony. Defendant appeals as of right. We affirm.

Defendant was sent to prison for a parole violation after being found with drugs and a firearm. A warrant was issued while he was incarcerated, and 182 days after its issuance, he was arraigned on the charges of which he was eventually convicted.

Defendant argues that, even though the Michigan Department of Corrections never sent notice of his incarceration to the prosecutor, the prosecutor's duty should have been triggered by actual or imputed knowledge of defendant's circumstances. Whether the 180-day rule mandates reversal of a conviction is a question of law that this court reviews de novo. *People v McLaughlin*, 258 Mich App 635, 643; 672 NW2d 860 (2003). The 180-day rule reads, in pertinent part:

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. [MCL 780.131(1) (emphasis added).]

The Michigan Supreme Court has held that the explicit language of this statute sets the commencement of the 180-day period at the time of “notice to the prosecutor” and that an attempt to set an alternate trigger based on actual or constructive knowledge is an impermissible expansion of the statute. *People v Williams*, 475 Mich 245, 259; 716 NW2d 208 (2006). Further, the statute does not mandate that the Department of Corrections send the notice; it only indicates that the notice triggers the 180-day requirement. See, generally, *id.* If the Department fails to send the notice, as was the case here, the clock never begins to run on a defendant’s 180 days. See *People v Holt*, 478 Mich 851; 731 NW2d 93 (2007).

Because the Department of Corrections never sent the notice at issue, the clock never began to run on defendant’s 180 days, and the 180-day rule was not violated.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Patrick M. Meter
/s/ Christopher M. Murray