# STATE OF MICHIGAN

# COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY BOYKINS,

Defendant-Appellant.

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UNPUBLISHED
October 21, 1997

No. 189367
Recorder's Court
LC No. 95-000655-FH

Before: Corrigan, C.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Defendant was convicted at a bench trial of second-degree home invasion, MCL 750.110a(3); MSA 28.305(a)(3). Subsequently, defendant pleaded guilty to being a fourth habitual offender and was sentenced to five to fifteen years' imprisonment as enhanced by the habitual offender statute, MCL 769.12; MSA 28.1084. He appeals as of right. We affirm.

Defendant first argues on appeal that the trial court erred when it granted him a personal bond instead of dismissing his case when he made a pretrial motion under the 180-day rule. MCR 6.004(C) and (D). Defendant contends that pursuant to MCR 6.004(D), his case should have been dismissed because he was housed in a local facility awaiting incarceration in a state prison and more than 180 days had passed since he was arraigned on the information. MCR 6.004(D)(1)(a). When defendant was arrested for this crime, the Department of Corrections placed a parole hold upon him because he had violated the terms of his parole on another matter. When the trial court granted defendant a personal bond, he was still unable to be released because of the parole hold.

The question to be decided is whether a parolee, who is detained in a local facility pursuant to a parole hold, is a person awaiting incarceration in a state prison. This Court has consistently answered that question in the negative. *People v Metzler*, 193 Mich App 541; 484 NW2d 695 (1992); *People v Hastings*, 136 Mich App 380, 382; 356 NW2d 645 (1984), rev'd on other grounds 422 Mich 267; 373 NW2d 533 (1985); *People v Rose*, 132 Mich App 656, 658; 347 NW2d 774 (1984); *People v Wright*, 128 Mich App 374, 378; 340 NW2d 93 (1983). We have held that although a person might be detained because of a parole hold, it is still possible that that person will not be returned to state

prison. *Id.* Here, because defendant was a parolee who was detained in a local facility pursuant to a parole hold, he was not a person awaiting incarceration in a state prison for purposes of MCR 6.004(D)(1)(a). Therefore, dismissal was not a remedy available to defendant pursuant to the rule.

Defendant's next argument is that he was denied the effective assistance of counsel because defense counsel did not specifically move for dismissal when she made the 180-day motion. Our review of this issue is limited to the record below, because defendant did not move for an evidentiary hearing or a new trial on this basis. *People v Maleski,* 220 Mich App 518, 523; 560 NW2d 71 (1996). To establish a denial of effective assistance of counsel, the defendant must prove that counsel made errors that are so serious that counsel was not functioning as the counsel guaranteed by the Sixth Amendment and this deficient performance prejudiced the defendant's trial. *People v Mitchell,* 454 Mich 145, 156; 560 NW2d 600 (1997) (citing, *Strickland v Washington,* 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984)). To establish prejudice, the defendant must show that, but for defense counsel's deficient performance, the result would have been different. *People v LaVearn,* 448 Mich 207, 216; 528 NW2d 721 (1995).

As we stated earlier, defense counsel made a pretrial motion pursuant to the 180-day rule. When the trial court inquired whether counsel was asking for bond or for a dismissal, defense counsel did not respond. Defendant now maintains that this was deficient performance. However, even assuming deficient performance, defendant cannot demonstrate prejudice. Had defense counsel moved to dismiss the charges, the trial court was bound to follow our precedent which states that the remedy of dismissal is not available to parolees being detained in local facilities pursuant to a parole hold. *Wright, supra* at 378. Therefore, defendant was not denied the effective assistance of counsel.

Finally, defendant argues that there was insufficient evidence to support his conviction. We disagree. We review the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime are proved beyond a reasonable doubt. *People v Wolfe,* 440 Mich 508, 515; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992); *People v Reeves,* 222 Mich App 32, 34; 564 NW2d 476 (1997). Circumstantial evidence and reasonable inferences drawn from the evidence may provide sufficient evidence to support the conviction. *Id.* Second-degree home invasion is defined as:

> A person who breaks and enters a dwelling with intent to commit a felony or larceny in the dwelling or a person who enters a dwelling without permission with intent to commit a felony or a larceny in the dwelling is guilty of home invasion in the second degree. [MCL 750.110a(3); MSA 28.305(a)(3).]

In this case, the victim left her house and locked the front door. When she returned three hours later, she discovered that someone had tampered with her front door lock. Several items were missing from the home, including two television sets and jewelry. During her absence, the police received a call that there was a burglary in progress at the victim's house. When an officer arrived at that location, he noticed defendant getting into a late model blue Chrysler automobile, which was parked next to the house in the alley. The officer pulled into the alley, whereupon defendant placed his car in reverse and began accelerating at a high rate of speed away from the officer. Defendant's exit was halted by the

officer's patrol car. All of the items that the victim listed as missing were discovered either on defendant's person or in his automobile. The victim identified defendant's blue Chrysler from a police photograph as being the same car that she saw in the alley the day before the incident. The victim testified that she did not give defendant permission to enter her home.

Viewing the evidence in a light favorable to the prosecution, a rational trier of fact could certainly find that all of the essential elements of the crime had been proven beyond a reasonable doubt. *Reeves, supra* at 34.

Affirmed.

/s/ Maura D. Corrigan
/s/ Richard Allen Griffin
/s/ Joel P. Hoekstra