

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BRYAN DONALDSON,

Defendant-Appellee.

UNPUBLISHED

March 3, 1998

No. 203155

Recorder's Court

LC No. 96-002993

Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison*, JJ.

MEMORANDUM.

The Wayne County Prosecutor appeals by right dismissal of this prosecution for unlawfully driving away an automobile, MCL 750.413; MSA 28.645, and receiving and concealing stolen property over \$100, MCL 750.535; MSA 28.803, with prejudice, based on the trial court's finding that defendant's right to speedy trial was violated. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We reverse.

After waiving examination, defendant was bound over on the charges and scheduled for arraignment on the information before the Recorder's Court for the City of Detroit on April 26, 1996. On that date, defendant failed to appear and a bench warrant was issued for his arrest. The warrant was never effectuated, and was canceled when, on February 21, 1997, defendant voluntarily presented himself before the Recorder's Court, informing the court that prior to the original date scheduled for arraignment, he was incarcerated as a parole violator, and had just been released. Defendant moved for dismissal for violation of the 180-day statute, MCL 780.131; MSA 28.969. The prosecutor countered that under MCR 6.004(D) and *People v Taylor*, 199 Mich App 549, 553; 502 NW2d 348 (1993), the prosecutor having had no actual knowledge of defendant's whereabouts and the Department of Corrections having failed to inform the prosecutor of defendant's incarceration, defendant would only be entitled to credit against any sentence imposed for these crimes, in the event of conviction, as a means of protecting his statutory speedy trial right. The court dismissed the prosecution with prejudice, however, finding that defendant's constitutional right to speedy trial had been violated.

* Circuit judge, sitting on the Court of Appeals by assignment.

At the outset, it should be clarified that the 180-day statute simply does not apply in this case. As a parolee, any crimes defendant committed while on parole would mandatorily require the imposition of sentences consecutive to the sentence underlying defendant's parole, MCL 768.7a(2); MSA 28.1030(1)(2), *Wayne County Prosecutor v Department of Corrections*, 451 Mich 569; 548 NW2d 900 (1996), and the 180-day statute has no application in consecutive sentencing situations. *People v Connor*, 209 Mich App 419, 428-429; 531 NW2d 734 (1995).

With respect to the constitutional right to speedy trial, the delay of ten months is longer than the six months necessary to trigger investigation into a claim that the right to speedy trial has been infringed, but less than the eighteen months which would shift the burden of proof to the prosecutor with respect to whether defendant has been prejudiced or not. *People v Ross*, 145 Mich App 483, 490-491; 378 NW2d 517 (1985). The burden of proof being on defendant, defendant has clearly failed to carry his burden. The length of delay is not egregious, the reason for delay, governmental negligence, is neutral, defendant failed to assert his right, and, on these charges, defendant was free on personal bond, and so suffered no prejudice to his person, and defendant made no showing that any witness or evidence had been lost or compromised, so there was no prejudice to defendant's ability to defend the charges. Accordingly, defendant's right to speedy trial was not violated on this record. *People v Ross, supra*, 145 Mich App at 491-492.

Reversed and remanded to the Wayne Circuit Court, Criminal Division, for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ E. Thomas Fitzgerald

/s/ Michael G. Harrison