STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM DALE SNYDER, JR.,

Defendant-Appellant.

UNPUBLISHED
March 9, 1999

No. 200325
Montcalm Circuit Court
LC No. 95-000116 FC

Before: Cavanagh, P.J., and Markman and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right his conviction by a jury of being a felon in possession of a firearm. MCL 750.224f; MSA 28.421(6). He was sentenced as an habitual offender fourth, MCL 769.12; MSA 28.1084, to fifteen to twenty-five years' imprisonment. We affirm.

The conviction in this case stemmed from an incident in which defendant shot his girlfriend in the hand. In November 1994, defendant and his girlfriend visited his family. Defendant's girlfriend testified that, on November 12, she witnessed defendant cleaning a Winchester rifle and he told her that he was going to use the gun to shoot a deer that weekend. At some point that day, the rifle was moved to the side of defendant's bed. His girlfriend testified that, in the early morning hours, she observed defendant holding the gun when he shot her in the hand. At this time, defendant was on parole for breaking and entering an unoccupied dwelling. His parole officer testified that the terms of defendant's parole prohibited him from possessing a firearm.

Defendant first challenges the trial court's denial of his motion to quash the 'felon in possession of a firearm' charge. He was convicted in a separate trial of possession of a firearm during the commission of a felony (felony-firearm) on the basis of his girlfriend's shooting, MCL 750.227b; MSA 28.424(2),[1] and argues that being punished for both felony-firearm and 'felon in possession of a firearm' constitutes multiple punishments in violation of the double jeopardy clause. US Const, Am V; Const 1963, art 1, § 15. "The court reviews de novo questions of law, including double jeopardy issues." *People v Price*, 214 Mich App 538, 542; 543 NW2d 49 (1995). Whether the punishment under two statutes for the same act violates double jeopardy is determined by the intent of the Legislature. *People v Robideau*, 419 Mich 468, 485; 355 NW2d 592 (1984). If the statutes protect two distinct social

norms, there is no double jeopardy violation where a defendant is punished for both. *Id.* at 487. Here, the statutes prohibiting felony-firearm and 'felon in possession' protect two distinct social norms: "[T]he 'felon-in-possession' statute . . . is aimed at protecting the public from guns in the hands of convicted felons," *People v Mayfield*, 221 Mich App 656, 662; 562 NW2d 272 (1997), while the purpose of the felony-firearm statute is to punish anyone who uses a firearm while committing a felony, *People v Mitchell*, 456 Mich 693, 697; 575 NW2d 283 (1998). The former offense focuses upon a specific category of criminal actor, while the latter offense focuses upon specific criminal act. The former offense can be consummated in the absence of the latter offense, and the latter offense can be consummated in the absence of the former offense. Indeed, even with regard to a felon committing a subsequent criminal act, the 'felon in possession' offense may be consummated prior to the consummation of the felony firearm offense. Thus, we conclude that there was no double jeopardy violation.

Defendant next argues that the trial court clearly erred by determining that there was no violation of the 180-day rule in this case. *People v England*, 177 Mich App 279, 282, 286; 441 NW2d 95 (1989). The 180-day rule, which is codified in MCL 780.131; MSA 28.969(1) and MCR 6.004(D), requires that a prosecutor make a good-faith effort to bring an incarcerated defendant to trial within 180 days on any untried charges as of the time that the prosecutor learns of the incarceration, but does not require that the trial have begun or been completed within 180 days. MCR 6.004(D)(2); *People v Bell*, 209 Mich App 273, 278; 530 NW2d 167 (1995). Moreover, the 180-day rule does not apply when a "mandatory consecutive sentence is required upon conviction," because the purpose of the rule is to allow defendants to serve sentences concurrently to those they are already serving when possible. *People v Connor*, 209 Mich App 419, 429; 531 NW2d 734 (1995). Because defendant was on parole at the time he committed this offense, he must serve the sentence for 'felon in possession' consecutive to the remaining prison term for the offense for which he was paroled. Therefore, we conclude that the 180-day rule did not apply in this case. In addition, even if the 180-day rule did apply to this case, we believe that there would be no violation of the rule: We are not persuaded that there was any bad faith by the prosecutor in this case, and believe that the prosecutor attempted in good faith to prepare and execute three felony charges in two felony trials, and a parole violation determination, in a timely fashion.

Finally, defendant argues that the trial court's denial of his motion to wear street clothing at trial, as opposed to prison garb, was an abuse of discretion. *People v Turner*, 144 Mich App 107, 111; 373 NW2d 255 (1985). "Under ordinary circumstances, a court has no discretion as to a criminal defendant's attire." *People v Shaw*, 381 Mich 467, 474; 164 NW2d 7 (1969). However, the failure to timely object to prison attire will result in the waiver of the right to be tried in civilian clothing. *Turner*, *supra* at 109. To be timely, an objection must be made prior to the impaneling of the jury. *Id.* Here, defendant made his objection immediately prior to the start of trial, after the jury had been impaneled. Therefore, we conclude that defendant waived his right to wear the clothing of his choice and we find no abuse of discretion in the trial court's decision.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Stephen J. Markman
/s/ Michael R. Smolenski

[1] This Court affirmed defendant's separate convictions of assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). *People v Snyder*, unpublished opinion per curiam of the Court of Appeals, issued March 31, 1998 (Docket No. 195666).