STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEONA JEAN STRAIGHT, a/k/a SUSAN STRAIGHT, a/k/a SUSAN KAYE MATICE,

Defendant-Appellant.

UNPUBLISHED
May 2, 2000

No. 214037
Kent Circuit Court
LC No. 97-010296 FH

Before: Gage, P.J., and Meter and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and sentenced to a term of 1½to 4 years' imprisonment. Defendant appeals as of right, and we affirm.

Defendant first contends that the prosecutor's 245-day delay in bringing her to trial violated the 180-day rule. MCL 780.131; MSA 28.969(1), MCR 6.004(D). The 180-day rule requires the prosecutor to bring an inmate to trial within 180 days of receiving notice of the inmate's place of incarceration. The rule intends to dispose of untried charges against prison inmates and permit inmates the opportunity to have sentences run concurrently. *People v Connor*, 209 Mich App 419, 425; 531 NW2d 734 (1995). According to MCL 768.7a(2); MSA 28.1030(1)(2), however, where, as here, a person commits a felony "while that person is on parole from a sentence for a previous offense," the sentence for the new conviction must be served consecutively to the remaining portion of the prior sentence. Thus, "the statutory goal of allowing sentences to be served concurrently 'does not apply in a case where a mandatory consecutive sentence is required upon conviction.'" *People v Chavies*, 234 Mich App 274, 280; 593 NW2d 655 (1999), quoting *People v McCullum*, 201 Mich App 463, 465; 507 NW2d 3 (1993). In light of the fact that concurrent sentencing was impossible in this case because, if found guilty, defendant would receive mandatory consecutive sentences, we conclude that the prosecutor was not obligated to bring defendant to trial within the time prescribed by MCL 780.131; MSA 28.969(1); *Chavies*, *supra*.

Defendant also argues that the prosecutor's delay in bringing her to trial violated her constitutional right to a speedy trial. US Const, Am VI; Const 1963, art 1, § 20. In determining whether a defendant was denied a speedy trial, this Court considers the length of the delay, the reason for the delay, the defendant's assertion of the right to a speedy trial, and any prejudice to the defendant. *People v Wickham*, 200 Mich App 106, 109; 503 NW2d 701 (1993). In this case, the total delay between defendant's September 17, 1997 arrest and the beginning of trial on May 26, 1998 constituted approximately 8½ months. Because the delay was less than eighteen months, the burden is on defendant to prove prejudice resulting from the delay. *People v Daniel*, 207 Mich App 47, 51; 523 NW2d 830 (1994). Defendant has failed to explain, however, how the delay prejudiced her, even failing to set forth a general allegation of prejudice. Therefore, even assuming the entire 8½ month delay to be attributable to the prosecutor, we conclude that defendant was not denied a speedy trial. *Daniel, supra*.[1]

Defendant next asserts that the trial court erred in instructing the jury concerning the definition of possession, specifically that the court, after reading the standard jury instruction regarding possession, offered examples of possession and control that varied from an illustration to which the parties had agreed in chambers.

We note that this issue has not been properly preserved for appeal because although defendant initially objected to the trial court's instructions, defendant effectively withdrew any objection when she declined the trial court's repeated offers to clarify the instructions before the jury. *People v Puroll*, 195 Mich App 170, 171; 489 NW2d 159 (1992). Furthermore, the specific objection now asserted by defendant on appeal was that of her codefendant's counsel, not her own. Accordingly, we review this issue for manifest injustice. *People v Kelly*, 423 Mich 261, 272; 378 NW2d 365 (1985); *People v Poindexter*, 138 Mich App 322, 331; 361 NW2d 346 (1984) (issue not properly preserved by codefendant's objection where defendant failed to object as well).

It is well established that trial courts possess considerable discretion in formulating jury instructions. *People v Emmert*, 76 Mich App 26, 32; 255 NW2d 757 (1977). A requested instruction need not be given in the precise language sought, but is sufficient when the substance of the requested instruction is included in the charge. *People v King*, 58 Mich App 390, 403; 228 NW2d 391 (1975). No error exists when the trial court's instructions, viewed in their entirety, fairly presented the issues to be tried and sufficiently protected the defendant's rights. *Daniel, supra* at 53. In this case, the substance of the specific instruction purportedly agreed on by the court and parties in chambers was never made a part of the lower court record, and is therefore not available for this Court's review. Even assuming that the requested instructions were not given exactly as agreed on, however, our review of the trial court's illustrative instruction regarding possession and control together with the court's repeated instructions pursuant to the standard jury instruction concerning possession reveals that the court properly instructed the jury regarding the legal definition of possession. Thus, we find no manifest injustice. *Kelly, supra*.

Affirmed.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Donald S. Owens

[1] We further note defendant's acknowledgment that she failed to demand a speedy trial before the trial court. This failure weighs heavily against a finding that defendant was denied a speedy trial. *People v Gravedoni*, 172 Mich App 195, 199; 431 NW2d 221 (1988).