

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JEROME L. WOOD,

Defendant-Appellee.

UNPUBLISHED
October 31, 2000

No. 224617
Wayne Circuit Court
LC No. 98-002705

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JEROME L. WOOD,

Defendant-Appellee.

No. 224618
Wayne Circuit Court
LC No. 98-002633

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JEROME L. WOOD,

Defendant-Appellee.

No. 224619
Wayne Circuit Court
LC No. 98-002634

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

PER CURIAM.

Plaintiff appeals by right the order dismissing these cases for violation of the 180-day rule, MCL 780.131; MSA 28.969(1). We reverse. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with committing a number of crimes in different jurisdictions. He waived preliminary examinations in these cases on February 24, 1998, and was bound over to Wayne Circuit Court. Repeated attempts to arraign defendant were unsuccessful because defendant was transferred between other jurisdictions. A *capias* was issued for defendant's arrest on April 3, 1998. Defendant was not located until July 1999, when he was found at the Saginaw Correctional Facility. The trial court granted defendant's motion to dismiss based on a violation of the 180-day rule.

MCL 780.131; MSA 28.969(1) requires that a prisoner charged with a crime be brought to trial within 180 days of the time that the MDOC is notified of the pending charge and the MDOC subsequently notifies the prosecutor in question of the prisoner's location. Appellate courts originally construed the statute to hold that the period began to run when the prosecutor knew or should have known of the incarceration, or the MDOC knew of the pending charge. *People v Hill*, 402 Mich 272; 262 NW2d 641 (1978).

Hill was modified by MCR 6.004(D), effective October 1, 1989. *People v Taylor*, 199 Mich App 549, 551; 502 NW2d 348 (1993). Under MCR 6.004(D), the 180-day period begins to run only when the prosecutor has actual knowledge of the incarceration. *Id.* at 552. Prosecutors are no longer responsible for negligence by the MDOC in the dissemination of the information that invokes the 180-day rule. *Id.* at 553. When the prosecutor's failure to bring the charge to trial is attributable to lack of notice from the Department of Corrections, the defendant is entitled to sentence credit for the period of the delay, rather than dismissal of the charges. MCR 6.004(D)(2).

The prosecutor clearly had reason to know that defendant was incarcerated, based on the number of charges defendant faced, and the unsuccessful writ attempts to obtain his presence for the arraignment. However, there is no showing that the prosecutor had actual knowledge of the incarceration. Following *Taylor, supra*, defendant is only entitled to sentence credit for time served if he is convicted on these charges. The trial court erred in dismissing the charges for lack of jurisdiction.

Reversed and remanded for trial. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage