

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ANTHONY GLASS,

Defendant-Appellant.

UNPUBLISHED

January 29, 2002

No. 221045

Ingham Circuit Court

LC No. 96-071141-FH

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

PER CURIAM.

Defendant appeals as of right his conviction by jury of conspiracy to deliver 650 grams or more of cocaine. MCL 333.7401(2)(a)(i); MCL 750.157a. The trial court sentenced defendant to forty to sixty years' imprisonment. We affirm.

Defendant first argues that there was insufficient evidence to support his conviction. We disagree. When determining whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Godbold*, 230 Mich App 508, 522; 585 NW2d 13 (1998).

In order for a defendant to be convicted of conspiracy with the intent to deliver more than 650 grams of cocaine, the prosecution must prove beyond a reasonable doubt that the defendant and his coconspirators specifically intended to combine with each other to deliver cocaine in excess of 650 grams to a third person. *People v Mass*, 464 Mich 615, 618, 629-630, 638-640; 628 NW2d 540 (2001); *People v Justice (After Remand)*, 454 Mich 334, 337, 349; 562 NW2d 652 (1997). Direct proof of the conspiracy is not necessary; a conspiracy may be proven by the circumstances, acts, and conduct of the parties involved. *Justice, supra* at 347.

Here, the testimony at trial, if believed by the jury, demonstrated that defendant knowingly made an agreement with other individuals to deliver more than 650 grams of cocaine. The head of a cocaine-distribution operation testified that he dealt in amounts of cocaine from a couple of ounces to a kilogram or more and that defendant worked with him. Defendant packaged and helped deliver the cocaine, collected money, and generally assisted him with whatever he needed on a daily basis. Other witnesses testified to their own knowledge of the

quantities of cocaine, their intention to further the distribution of cocaine, and defendant's participation in the delivery of the cocaine. In its entirety, the testimony supported the jury's finding that defendant knowingly and intentionally participated with other individuals to deliver to third parties quantities of cocaine in excess of 650 grams.

Defendant next argues that his right to a speedy trial was violated where the length of time between defendant's arrest and his trial exceeded forty-three months. We disagree. Whether a defendant was denied a speedy trial raises constitutional issues that we review de novo. *People v Cain*, 238 Mich App 95, 111; 605 NW2d 28 (1999).

In determining whether a defendant was denied a speedy trial, we consider four factors: “(1) the length of the delay, (2) the reasons for the delay, (3) the defendant's assertion of the right, and (4) prejudice to the defendant.” *Cain, supra* at 112, quoting *People v Williams*, 163 Mich App 744, 755; 415 NW2d 301 (1987). The *Cain* Court explained:

This fourth element, prejudice, is critical to the analysis. A delay that is under eighteen months requires a defendant to prove that the defendant suffered prejudice. However, a delay of eighteen months or more, as in this case, is presumed prejudicial and places a burden on the prosecutor to rebut that presumption. [*Id.* (citations omitted).]

Having reviewed the record in the present case, we conclude that defendant was not denied his right to a speedy trial. Although the delay was quite lengthy, much of the delay resulted from defense motions and defendant's interlocutory appeals. Time necessary to adjudicate defense motions is attributed to the defendant. *People v Gilmore*, 222 Mich App 442, 461; 564 NW2d 158 (1997). Any delay for docket congestion and other court scheduling difficulties weighs minimally against the prosecution. *Cain, supra* at 113. The record here does not demonstrate that the lengthy delay was unwarranted or that the prosecution is substantially to blame for the delay in this case. See *Cain, supra*. Further, a defendant's failure to pursue his right to a speedy trial weighs against a finding that the defendant was denied this right. *People v Wickham*, 200 Mich App 106, 112; 503 NW2d 701 (1993). Although defendant asserted his right to a speedy trial when first charged with conspiracy, he did not pursue this right for approximately forty months. See *Cain, supra* at 113-114. In addition, defendant was not incarcerated during the many months preceding his trial, and thus he cannot show prejudice to his person, and defendant offered no concrete proof that his defense was prejudiced by the delay. *Gilmore, supra* at 462. A defendant's general allegations of prejudice to his defense are not sufficient to support a claim that he was denied a speedy trial. *Id.*; *Wickham, supra* at 112-113. On this record, we conclude that defendant's right to a speedy trial was not violated.

Defendant next presents three separate arguments, each of which defendant previously presented to this Court in an interlocutory appeal. *People v Michael A Glass*, unpublished opinion per curiam of the Court of Appeals, issued March 13, 1998 (Docket No. 202235). Defendant contends that the trial court erred in not quashing an indictment that issued from a grand jury at which an unauthorized person was present during a witness' testimony, that he was unable to obtain adequate assistance of counsel because the prosecutor improperly edited the grand jury transcript, and that his indictment is invalid because the order by which the grand jury was convened failed to specify the scope of the inquiry to be conducted. Because this Court already has addressed these issues in defendant's interlocutory appeal, we are bound by the law

of the case and further review is precluded. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001); *People v Herrera (On Remand)*, 204 Mich App 333, 340; 514 NW2d 543 (1994). Defendant is entitled to no further relief.

Defendant also argues that he “has established a prima facie case of racial discrimination under the equal protection clause of the Fourteenth Amendment” and that this Court, in *People v Willie Glass*, 235 Mich App 455; 597 NW2d 876 (1999), properly ordered the grand jury record to be unsealed for the defendant’s in-camera review to use in supporting his claim of racial discrimination. Recently, the Michigan Supreme Court, in *People v Willie Glass (After Remand)*, 464 Mich 266; 627 NW2d 261 (2001), rejected these two contentions in an appeal by another defendant indicted by the same grand jury as was the instant defendant. Defendant admittedly “simply repeat[ed] the arguments and proofs previously presented in the companion case [*Willie Glass*] so as to preserve the issues for application of the Supreme Court’s resolution” to defendant’s own appeal. The Supreme Court’s decision rejecting these same issues in *Willie Glass, supra*, is binding on us, and thus defendant herein is entitled to no relief.

Affirmed.

/s/ Hilda R. Gage
/s/ Joel P. Hoekstra
/s/ Patrick M. Meter