

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ALFRED TURK,

Defendant-Appellee.

UNPUBLISHED

June 17, 2004

No. 246978

Wayne Circuit Court

LC No. 02-012633-01

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

MEMORANDUM.

Plaintiff appeals as of right the order dismissing charges against defendant based on a violation of the 180-day rule, MCL 780.131. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On November 20, 2000, while considered parole absconder, defendant was accused of receiving and concealing stolen property and third-degree fleeing and eluding. The case was dismissed when a witness failed to appear. The warrant was reissued after defendant was found guilty of violating parole. The matter was not set for trial until after defendant was discharged by the Department of Corrections. The trial court granted defendant's motion to dismiss.

MCL 780.131(1) provides that whenever the department of corrections receives notice that there is pending any untried warrant against any inmate of a state correctional facility for which a prison sentence might be imposed, the inmate shall be brought to trial within 180 days after the department gives written notice to the prosecuting attorney. Subsection (2) states:

(2) This section does not apply to a warrant, indictment, information, or complaint arising from either of the following:

(a) A criminal offense committed by an inmate of a state correctional facility while incarcerated in the correctional facility.

(b) A criminal offense committed by an inmate of a state correctional facility after the inmate has escaped from the correctional facility and before he or she has been returned to the custody of the department of corrections.

Legal issues presented under the 180-day rule are subject to de novo review. *People v McLaughlin*, 258 Mich App 635, 643; 672 NW2d 860 (2003). In *People v Chavies*, 234 Mich App 274; 593 NW2d 655 (1999), the Court noted that the purpose of the 180-day rule is to dispose of untried charges against prison inmates so that sentences may run concurrently. The statutory goal does not apply in a case where a mandatory sentence is required upon conviction, such as when a person commits a crime while on parole. *Id.*, 280. The Court found that the trial court erred as a matter of law in applying the 180-day rule where the defendant committed a murder while on parole, and would receive mandatory consecutive sentences under MCL 768.7a(2). *Id.*, 280-281.

The exception to the 180-day rule is met in this case. Defendant was a parole absconder at the time the instant crime was allegedly committed. Where concurrent sentences were impossible because of the mandatory consecutive sentences required by MCL 768.7a(2), the court erred as a matter of law in applying the 180-day rule to defendant. *Chavies, supra*, 280-281.

Reversed.

/s/ David H. Sawyer

/s/ Hilda R. Gage

/s/ Donald S. Owens