STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 17, 2005
v	No. 255429 Oakland Circuit Court
DAVID JAMES MONTAGUE, Defendant-Appellant.	LC No. 2003-188605-FH

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of possession of a controlled substance, MCL 333.7403(2)(b), indecent exposure, MCL 750.335a, and operating a motor vehicle while impaired, MCL 257.625. He was sentenced as a second habitual offender, MCL 769.10, to concurrent terms of one year in jail for the possession and operating while impaired convictions, and to ninety-three days in jail for the indecent exposure conviction. He received 448 days of sentencing credit. We affirm defendant's convictions but remand for correction of the judgment of sentence.[1] This appeal is being decided without oral argument pursuant to MCR 7.214(A) and (E).

On appeal, defendant argues that the trial court was required to dismiss the charges against him because he was not brought to trial within 180 days. MCL 780.131; MCR 6.004(D). Defendant's trial began on April 1, 2004, but the events leading to his convictions occurred on March 11, 2002. Defendant maintains that, before the warrant was issued in this case on June 17, 2002, he was arrested on unrelated charges on May 15, 2002, and was sentenced on those charges pursuant to a plea on August 26, 2002. Defendant presents evidence that the Department of Corrections notified the court of his incarceration on October 14, 2002; however, the

[1] During sentencing, the trial court indicated that it intended to sentence defendant to ninety-three days in jail for the operating while impaired conviction, and to one year in jail for the other convictions. This discrepancy does not impact the issue raised in this appeal, nor does it have practical meaning considering the time imposed, the sentencing credit, and defendant's current status. However, the judgment of sentence indicates that defendant was found guilty of OUIL, not operating while impaired. Because defendant was acquitted of this greater charge, we remand the case for correction of the judgment of sentence.

prosecutor maintains that it did not receive actual notice of defendant's incarceration until November 14, 2002, when the trial court prepared a writ for him. Therefore, the 180-day period ended on May 13, 2003.

MCL 780.131(1) provides in part:

> Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint.

The purpose of the statute is to dispose of untried charges against prison inmates so that sentences can run concurrently. *People v Woodruff*, 414 Mich 130, 136-137; 323 NW2d 923 (1982), overruled on other grds *People v Smith*, 438 Mich 715; 475 NW2d 333 (1991); *People v Chavies*, 234 Mich App 274, 280; 593 NW2d 655 (1999). MCL 780.133 requires dismissal of a prosecution with prejudice where an action is not commenced within the 180-day time limit set forth in MCL 780.131; the court no longer has jurisdiction. The 180-day rule does not, however, require that trial actually commence within 180 days. Rather, if apparent good-faith action is taken well within that period, and the prosecutor proceeds promptly toward readying the case for trial, the rule is satisfied. MCR 6.004(D); *People v Hendershot*, 357 Mich 300, 303-304; 98 NW2d 568 (1959); *People v Bell*, 209 Mich App 273, 278; 530 NW2d 167 (1995). If the prosecutor takes good-faith action, jurisdiction over the case will not be lost unless the initial action is followed by an inexcusable delay that evidences an intent not to bring the case to trial promptly. *People v Bradshaw*, 163 Mich App 500, 505; 415 NW2d 259 (1987).

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). A trial court's attribution of delay is reviewed for clear error. *People v Crawford*, 232 Mich App 608, 612; 591 NW2d 669 (1998).

Defendant maintains that the trial court failed to properly examine each delay in the instant case and to determine which party was responsible for each delay. However, both parties acknowledged on the first day of trial that the trial court had previously considered and rejected defendant's 180-day rule arguments, and it again rejected the arguments in cursory fashion on day one of the trial. The transcripts provided to this Court do not include any pretrial proceedings regarding the previous motion to dismiss under the 180-day rule, nor are there any transcripts, if indeed hearings were held, concerning adjournments, despite the fact that the lower court docket entries reference four adjournments for "investigation" spanning 2003 and early 2004. Because defendant has failed to provide transcripts of all pretrial proceedings, we lack a portion of the record necessary to thoroughly review this claimed error. Therefore, we deem the issue waived. *People v Anderson*, 209 Mich App 527, 535; 531 NW2d 780 (1995); *People v Thompson*, 193 Mich App 58, 61; 483 NW2d 428 (1992); *People v Coons*, 158 Mich App 735, 740; 405 NW2d 153 (1987). In addition, our review of the portion of the record that has been furnished suggests that any delay in early 2003 was due to scheduling difficulties precipitated by

defendant's additional pending felony charges in Macomb County, and this delay is not charged to the prosecution. *People v Jones (On Rehearing After Remand)*, 228 Mich App 191, 196; 579 NW2d 82 (1998), mod and remanded on other grounds 458 Mich 862 (1998) (time consumed in trying a defendant's other charge not counted against the 180-day period); see also *Hendershot, supra* at 304; *People v Freeman*, 122 Mich App 260, 265; 332 NW2d 460 (1982) (delay reasonably necessary to try an intervening case against a defendant does not necessarily militate against a finding of good-faith prosecutorial action). Moreover, as mentioned above, the lower court docket entries indicate that there were four adjournments for investigation covering 2003 and early 2004. At trial, as well as on appeal, the prosecutor argued that the adjournments were attributable to defendant as he made the requests for more time, and defendant did not and does not argue to the contrary. Adjournments granted to a defendant are not charged against the prosecutor for purposes of the 180-day rule. *Jones, supra* at 196, citing *Hendershot, supra* at 304. On the record before us, and confined to the arguments presented on appeal by defendant, we find no violation of the 180-day rule.

Defendant's convictions are affirmed; however we remand this case to the trial court for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Patrick M. Meter