

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRYL ALAN WESTON,

Defendant-Appellant.

UNPUBLISHED

December 16, 2010

No. 294813

Wayne Circuit Court

LC No. 94-008592-FC

Before: SHAPIRO, P.J., and SAAD and KELLY, JJ.

PER CURIAM.

Defendant pleaded guilty in 1995 to second-degree murder, MCL 750.317, assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced in 2009 to concurrent prison terms of 10 to 15 years' imprisonment each for the murder and assault convictions, and a consecutive two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. BASIC FACTS

Defendant's convictions arise from an incident that occurred on July 31, 1994. Defendant pleaded guilty on March 10, 1995. Defendant failed to appear for his scheduled sentencing one month later, in April 1995, and absconded. Sometime in 2007, defendant was arrested in Florida on a federal narcotics charge. He was convicted and sentenced in that matter in 2007 or 2008. The Wayne County Prosecutor became aware of the federal charge in June 2007, but no immediate action was taken to bring defendant to Michigan for sentencing until March 2009. Eventually, defendant was extradited to Michigan. He appeared in court in Michigan in July 2009, and was sentenced in October 2009. Defendant now appeals, arguing he should be entitled to sentence credit for the two years he spent in federal prison from June 2007 until July 2009, during which time the prosecutor knew defendant was in prison in Florida, but failed to extradite him to Michigan for sentencing.

II. INTERSTATE AGREEMENT ON DETAINERS

Defendant claims that he should be entitled to sentence credit because the prosecutor failed to make a good faith effort to sentence defendant within 180 days of discovering defendant was in Florida as required under the interstate agreement on detainers (IAD), MCL 780.601. We

disagree. Questions of statutory interpretation are reviewed de novo. *People v Seiders*, 262 Mich App 702, 705; 686 NW2d 821 (2004).

“The purpose of the IAD is to facilitate the prompt disposition of outstanding charges against an inmate incarcerated in another jurisdiction.” *People v Patton*, 285 Mich App 229, 232; 775 NW2d 610 (2009). It pertains to an “untried indictment, information or complaint” that is pending in one state against a person serving “a term of imprisonment” in another state. MCL 780.601, art III(a), art IV(a). A violation of the IAD requires dismissal of the charges. MCL 780.601, art III(d), art IV(e), art V(c). Because there is nothing in the statute authorizing sentence credit for a violation, and the statute was not violated because there was no untried information pending against defendant, the IAD does not provide a basis for relief for defendant.

III. SENTENCE CREDIT STATUTE

Defendant contends that he was also entitled to sentence credit under the sentence credit statute, MCL 769.11b, for the time he spent in prison in Florida waiting to be extradited to Michigan. We disagree. Questions of statutory interpretation are reviewed de novo. *Seiders*, 262 Mich App at 705.

MCL 769.11b provides:

Whenever any person is hereafter convicted of any crime within this state and has served any time in jail prior to sentencing because of being denied or unable to furnish bond for the offense of which he is convicted, the trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing.

This statute “provides that if a sentencing court has before it a convict who has served time in jail before sentencing because he or she could not afford or was denied bond, the court must credit that person with time served.” *People v Stead*, 270 Mich App 550, 551; 716 NW2d 324 (2006). Apart from the fact that defendant posted bond on August 31, 1994, “§ 11b ‘neither requires nor permits sentence credit’ in cases where a defendant is incarcerated ‘as a result of charges arising out of an unrelated offense or circumstance’ and then seeks credit in another case for the unrelated period of confinement.” *People v Ovalle*, 222 Mich App 463, 468-469; 564 NW2d 147 (1997), quoting *People v Prieskorn*, 424 Mich 327, 340; 381 NW2d 646 (1985). Therefore, since defendant was confined in Florida on unrelated federal charges, § 11b does not afford a basis for relief in this case.

IV. DUE PROCESS

Defendant argues that he was entitled to sentence credit because his due process rights were violated by the prosecutor’s unnecessary delay in extraditing and sentencing him. Constitutional issues are reviewed de novo on appeal. *People v Gillam*, 479 Mich 253, 260; 734 NW2d 585 (2007).

Both the Michigan Constitution and the United States Constitution prohibit the government from depriving a person of life, liberty, or property without due process of law. US Const, Am V; Const 1963, art 1, § 15; *People v Walker*, 234 Mich App 299, 303; 593 NW2d 673

(1999). Due process protections promote “fundamental fairness” in criminal procedure. See *People v Sierb*, 456 Mich 519, 526 n 13; 581 NW2d 219 (1998). There are two types of due process rights: procedural and substantive. *People v Kevorkian*, 447 Mich 436, 475; 527 NW2d 714 (1994). Substantive due process protects individuals against “the arbitrary exercise of government power.” *People v Sierb*, 456 Mich 519, 523; 581 NW2d 219 (1998). Procedural due process generally requires reasonable notice of the nature of the proceedings, especially the nature of the charge, and an opportunity to be heard. *People v McGee*, 258 Mich App 683, 699; 672 NW2d 191 (2003).

Defendant has not shown that he was subjected to an arbitrary exercise of government power by virtue of being sentenced after he was located and brought to Michigan. Nor has he claimed that he did not have notice of the sentencing hearing or that he was not given an opportunity to participate in the hearing.

Defendant’s reliance on cases such as *People v Parshay*, 104 Mich App 411; 304 NW2d 593 (1981), *People v West*, 100 Mich App 498; 299 NW2d 59 (1980), and *People v Cohen*, 35 Mich App 706; 192 NW2d 652 (1971), is misplaced. These cases are not binding on this Court because they were published before 1990. “A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990[.]” MCR 7.215(J)(1). Moreover, these cases were decided not on due process grounds, but under MCL 769.11b. Further, the cases predate the decision in *Priesskorn*, in which the Supreme Court resolved the conflicting interpretations given to § 11b. *Priesskorn*, 424 Mich at 333-341. Specifically, the Court rejected the so-called “liberal” interpretation “that ordinarily affords credit for any presentence confinement served for whatever reason, and whether related or unrelated to the crime for which the sentence in issue is imposed,” and held that sentence credit is not allowed if “a defendant is released on bond following entry of charges arising from one offense and, pending disposition of those charges, is subsequently incarcerated as a result of charges arising out of an unrelated offense or circumstance and then seeks credit in the former case for that latter period of confinement.” *Id.* at 334, 340. This holding was reaffirmed in *People v Adkins*, 433 Mich 732, 737, 751; 449 NW2d 400 (1989) (concluding that the defendant was not entitled to credit for time served on sentences imposed for offenses committed in other states while the defendant was on bond awaiting trial on the prior offense). Furthermore, “[w]hen a defendant is incarcerated in another jurisdiction, whether a hold has, or could have, entered against the defendant is irrelevant for purposes of determining how much time the defendant has served for the offense of which he is convicted.” *Patton*, 285 Mich App at 238-239 (internal quotation marks and citation omitted). Accordingly, defendant has failed to establish a due process violation.

V. SPEEDY TRIAL

Finally, defendant argues that he is entitled to sentence credit because he was denied his right to a speedy trial by the extradition delay. We disagree. Whether a defendant was denied his constitutional right to a speedy trial is a mixed question of law and fact. *People v Gilmore*, 222 Mich App 442, 459; 564 NW2d 158 (1997). We review the trial court’s factual findings for clear error and review constitutional questions of law de novo. *Id.*

Both the United States Constitution and Michigan Constitution grant a criminal defendant the right to a speedy trial. US Const, Am VI; Const 1963, art 1, § 20; *People v Williams*, 475

Mich 245, 261; 716 NW2d 208 (2006). To determine whether there has been a violation of that right, any delay from the date of the defendant's arrest until the time the trial begins is considered. *People v Waclawski*, 286 Mich App 634, 665; 780 NW2d 321 (2009). This Court has held that the right to a speedy trial may also encompass sentencing. See *People v Levandoski*, 237 Mich App 612, 620 n 3; 603 NW2d 831(1999), citing *People v Garvin* 159 Mich App 38, 46; 406 NW2d 469 (1987). To determine whether there has been a violation of a defendant's right to a speedy trial, this Court weighs the following factors: (1) the length of the delay, (2) the reasons for the delay, (3) defendant's assertion of the right, and (4) prejudice to the defendant. *People v Cain*, 238 Mich App 95, 112; 605 NW2d 28 (1999).

According to an analysis of the factors, defendant was not denied his right to a speedy trial. The length of the delay, 14-1/2 years, from the date defendant pleaded guilty until he was sentenced, is considerable. However, defendant was on absconder status and then committed a new crime in another jurisdiction for which he was incarcerated. Defendant cannot be denied his right to speedy trial by his own abscondment. Moreover, a defendant's incarceration in another jurisdiction on an unrelated charge is a valid reason for delay in bringing the defendant to trial. *People v Waclawski*, 286 Mich App 634, 666-667; 780 NW2d 321 (2009). Defendant argues that the prosecutor should have acted more quickly to extradite him to Michigan to face sentencing. The prosecutor's office became aware that defendant was being held in Florida in June 2007. There is no explanation for why no immediate action was taken to bring defendant to Michigan until March 2009. Unexplained delays are attributed to the prosecutor. *Id.* at 666. The delay between March and July 2009 appears to be due to an error in the court systems. Delays caused by the court system are also attributed to the prosecutor, but should be given "a neutral tint" and "only minimal weight[.]" *People v Gilmore*, 222 Mich App 442, 460; 564 NW2d 158 (1997). The delay between July and October 2009 was caused by the need to complete a presentence report and by defendant's motion for sentence credit. Delays caused by the adjudication of defense motions are attributable to the defendant. *Id.* at 461. Thus, the prosecutor is responsible for approximately two years of the delay.

Defendant failed to assert his right to sentencing and did not raise the issue until the date of sentencing. A defendant's failure to assert his right to a speedy trial weighs against defendant. *Williams*, 475 Mich at 263. "In considering the prejudice to the defendant, the most serious inquiry is whether the delay has impaired the defendant's defense." *People v Simpson*, 207 Mich App 560, 564; 526 NW2d 33 (1994). In this case, because the delay was subsequent to defendant's conviction, defendant did not suffer any prejudice to his defense. Therefore, we cannot conclude that defendant was deprived of his right to a speedy trial.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Henry William Saad
/s/ Kirsten Frank Kelly