STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NAJEE HAKEEM FRANKLIN,

Defendant-Appellant.

UNPUBLISHED
December 21, 2021

No. 357557
Kent Circuit Court
LC No. 21-001972-FC

Before: GADOLA, P.J., and SWARTZLE and CAMERON, JJ.

PER CURIAM.

In this interlocutory appeal, defendant, Najee Hakeem Franklin, appeals by leave granted the circuit court's order denying his motion to dismiss the charges against him on the basis that the prosecution violated the 180-day rule, MCL 780.131(1). We affirm.

I. FACTS

On April 24, 2020, the prosecutor charged defendant, as a fourth-offense habitual offender, MCL 769.12, with two counts of first-degree criminal sexual conduct (victim under 13 years old, offender over 17 years old), MCL 750.520b(1)(a) and MCL 750.520b(2)(b), and one count of second-degree criminal sexual conduct (victim under 13 years old, offender 17 years old), MCL 750.520c(1)(a) and MCL 750.520c(2)(b). At the time he was charged, defendant was serving a sentence of 1 to 5 years' imprisonment after conviction of aggravated domestic violence, second offense, MCL 750.81a(3).

On April 28, 2020, the prosecutor's office emailed the Kent County Sheriff's Office, inquiring whether the Michigan Department of Corrections (MDOC) would move defendant to Kent County for court proceedings in this case in light of the COVID-19 pandemic. The prosecutor's office inquired again on May 5, 2020, and the sheriff's office responded that the MDOC had "restricted all inmate traffic, in or out, until May 24. WRIT'S included." On May 5, 2020, the prosecutor's office sent a letter to the correctional facility where defendant was incarcerated, advising the facility that the prosecutor's office would seek a writ to transfer defendant to Kent County when a court date was set.

On May 6, 2020, the prosecutor's office emailed the 63rd District Court Case Management Supervisor, seeking writs for defendant and another inmate. The supervisor replied that in light of the pandemic, the court would not issue writs, would conduct the arraignments by video, and would not schedule the arraignments before June 1, 2020 in hopes that the pandemic would abate sufficiently by that time to resume proceedings. On May 29, 2020, the prosecutor's office emailed the district court supervisor, following up on the request for the writ regarding defendant and alerting the district court supervisor that the case was subject to the 180-day rule.

On June 2, 2020, the sheriff's department forwarded to the prosecutor's office an e-mail from the MDOC, advising that the normal procedure for writs to move prisoners from correctional facilities for court proceedings had not yet resumed. On June 24, 2020, the prosecutor's office sent another e-mail to the district court supervisor inquiring whether a writ was being issued to move defendant and whether anything further was needed from the prosecutor's office. The district court supervisor responded that she was waiting for a reply from the MDOC regarding the writ for defendant.

On September 29, 2020, the prosecutor's office emailed the district court supervisor, reminding her that the case was subject to the 180-day rule and inquiring whether the district court would schedule the proceedings. The district court supervisor responded that the proceeding would be conducted via video conference. On October 19, 2020, the district court supervisor sent an e-mail to the MDOC requesting a video arraignment for defendant on November 6, 2020 at 8:30 a.m. On November 6, 2020, defendant was arraigned by the district court via video conference.

Defendant moved in the district court to dismiss the criminal charges with prejudice, contending that the prosecutor had failed to comply with the 180-day rule, MCL 780.131(1), by failing to move the case to the point of readiness for trial within 180 days after the MDOC provided the prosecutor with notice that defendant was incarcerated. Defendant asserted that MCL 780.133 therefore required that the charges against him be dismissed with prejudice.

The prosecutor opposed the motion, arguing that the prosecutor had commenced action on the case within 180 days of receiving notice from the MDOC, and had not inexcusably delayed proceedings after that point with an evident intent not to bring the matter to trial. The prosecutor asserted that the restrictions upon the trial court and the MDOC caused by the pandemic had prevented the case from moving to trial despite the repeated efforts of the prosecution, and that the consequent delay therefore was excusable. The trial court therefore had not lost jurisdiction of the case under MCL 780.133.

Defendant was bound over for trial to the circuit court, where he renewed his motion to dismiss the charges. The circuit court denied defendant's motion to dismiss, explaining, in relevant part:

> A prosecutor satisfies the 180-day rule by commencing the action within the 180 days following the notice letter, "unless the prosecutor's initial steps are followed by inexcusable delay beyond the 180-day period and [there is] an evident intent not to bring the case to trial promptly . . . ." [*People v Lown*, 488 Mich 242; 794 NW2d 9 (2011)] at 247 (citation and quotation marks omitted). When the prosecutor

"takes no action or delays inexcusably after taking preliminary steps, . . . 'the statute opens the door to a finding by the court that good-faith action was not commenced . . . .' " *Id*. at 257-258, quoting [*People v*] *Hendershot*, 357 Mich [300] at 303-304[;98 NW2d 568 (1959)].

Here, the [Michigan Department of Corrections] sent notice to the Prosecutor's Office informing the office of Defendant's imprisonment. This notice was date stamped May 4, 2020. On May 6, 2020, the prosecutor's office emailed case management at the 63rd District Court inquiring about arraigning Defendant over video. On May 29, 2020, the prosecutor's office followed up about the arraignment being scheduled and case management responded they would be working on this case the following week. On June 15, 2020, the prosecutor's office emailed DOC to let her know that they were still waiting to hear from case management regarding arraignment. On June 24, 2020, the prosecutor's office again reached out to case management again to check on the status of the case and case management responded that they were still waiting for the MDOC to email back. On September 29, 2020, the prosecution again reached out to case management and asked if the court was going to set something up. On October 19, 2020, case management emailed the DOC to arrange a Zoom arraignment of Defendant on November 6, 2020.

Defendant challenges the assertion that e-mails between clerical and scheduling personnel constitute evidence of commencement of the action and thus the requisite "good faith." The statutes and interpreting cases decline to define any procedural juncture that must be crossed, and thus referencing unofficial, off the record, actions is not prohibited, though the court understands how they could be problematic. Lacking a "record" of what actions were taken, the court can only examine clerical notes (which presumably could be supported with the author's testimony). These notes are made in the course of case management by the prosecutor's office, but never appear in any court record or filing, until now. Defendant suggests that writs of *habeas corpus*, orders to show cause or other legal proceedings "of record" should have been employed to urge progress in this case. More official action would certainly establish a record that the matter was commenced and readied in "good faith."

However, the lack of record activity in this matter cannot be attributed to bad faith due to the extreme challenges the COVID-19 crisis has posed across the state. The courts and MDOC have been enormously impacted. The 17th Circuit has not conducted a jury trial since March 2020, resulting in previously unimaginable waits for trial dates, let alone actual trials. District court operations have been similarly delayed or modified and conducted remotely. The Michigan Supreme Court has taken the lead in preventing the spread of the virus in courts throughout the state, issuing multiple Administrative Orders. The MDOC adopted restrictions on the movement of prisoners, visitors and other activities to protect both prisoners and staff. Employees of all levels have adapted and learned new technology and procedures.

> Although there was a period of inactivity before Defendant was arraigned, and the court record is lacking, there is no evidence to show that "the prosecutor's initial steps [were] followed by inexcusable delay beyond the 180-day period," that the prosecutor had an "intent not to bring the case to trial promptly," *Lown*, 488 Mich at 247 (citation and quotation marks omitted), or that " 'good-faith action was not commenced.' " *Id.*, at 257-258, quoting *Hendershot*, 357 Mich at 303-304. Even though Defendant has still not been to trial because of the ongoing coronavirus pandemic, the prosecutor did commence action towards trial within 180-days and continued progressing towards trial without unexcused delay throughout the case.

This Court granted defendant's application for leave to appeal. *People v Franklin*, unpublished order of the Court of Appeals, entered July 19, 2021 (Docket No. 357557).

II. DISCUSSION

Defendant contends that the trial court abused its discretion by denying his motion to dismiss the charges against him on the basis that the prosecutor failed to comply with the 180-day rule. We disagree.

We review for an abuse of discretion a trial court's decision on a motion to dismiss charges against a defendant. *People v Nicholson*, 297 Mich App 191, 196; 822 NW2d 284 (2012). A trial court abuses its discretion when its decision falls outside the range of principled outcomes. *Id*. We review de novo questions of statutory interpretation. *People v Lown*, 488 Mich 242, 254; 794 NW2d 9 (2011). This Court's goal when interpreting any statute is to "ascertain and give effect to the intent of the Legislature as manifested in the plain language of the statute." *Id*. (Quotation marks and citation omitted).

The 180-day rule requires dismissal of charges against an inmate in a correctional facility if the prosecutor fails to commence action on the pending charges within 180 days after the Michigan Department of Corrections (MDOC) delivers notice of the inmate's imprisonment. *Id*. at 246. "The object of this rule is to dispose of new criminal charges against inmates in Michigan correctional facilities." *Id*. MCL 780.131(1) provides:

> 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 request shall be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of

> the prisoner, and any decisions of the parole board relating to the prisoner. The written notice and statement shall be delivered by certified mail.

If the prosecution fails to comply with MCL 780.131(1), the courts lose jurisdiction, and the trial court must dismiss the charges with prejudice. MCL 780.133 provides:

> In the event that, within the time limitation set forth in [MCL 780.131], action is not commenced on the matter for which request for disposition was made, no court of this state shall any longer have jurisdiction thereof, nor shall the untried warrant, indictment, information or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

In *Lown*, our Supreme Court explained that the 180-day rule does not require that the defendant's trial commence within the 180-day period; rather, the rule requires the prosecutor to "proceed promptly within 180 days to move the case to the point of readiness for trial." *Lown*, 488 Mich at 272. If the prosecutor proceeds promptly to move the case to a point of readiness for trial, dismissal of the charges under the rule is precluded unless an initial prompt step is followed by "inexcusable delay" beyond the 180-day period and accompanied by an "evident intent not to bring the case to trial promptly." *Id*. at 272. The Court stated:

> The rule does not deprive the court of its power to hear the case simply because the *trial* has not commenced within [the 180-day] period, let alone because the trial has not been completed. Rather, as this Court has held for more than 50 years, the rule requires the prosecutor to proceed promptly within 180 days to move the case to the point of readiness for trial. As long as the prosecutor does so, dismissal is not required under MCL 780.133 unless, after some preliminary step in the case occurs, that initial action is followed by inexcusable delay beyond the 180-day period and an evident intent not to bring the case to trial promptly. Under such circumstances, the court may conclude that action was not in fact meaningfully or genuinely commenced as required by MCL 780.133; put otherwise, the court may conclude that action was not commenced in good faith. But good-faith action should not be viewed as an *exception* to the rule; in this context, the requirement that a prosecutor proceed in "good faith" means simply that he must in fact commence action and cannot satisfy the rule by taking preliminary steps without an ongoing, genuine intent to promptly proceed to trial, as might be evident from subsequent inexcusable delays. [*Id*. at 272-273.]

In this case, the facts are not disputed. The parties agree that the prosecution received the MDOC notice of defendant's imprisonment on May 4, 2020, and that the 180-day period ended Monday, November 2, 2020. During this period, our state government's response to the COVID-19 pandemic had resulted in the near total shutdown of private businesses and public offices in Michigan; trial courts across the state were not holding jury trials under orders of our Supreme Court and the MDOC had adopted restrictions on the movement of prisoners. Despite the shutdown, from April 28, 2020, through June 24, 2020, the prosecutor's office repeatedly contacted the district court, the MDOC, and the sheriff's office seeking to proceed with defendant's arraignment despite the strictures of the response to COVID-19. In late September 2020, the prosecution again inquired whether the district court would schedule proceedings in this

case. Thereafter, within the 180-day period, the district court scheduled defendant's arraignment via video conference.

As discussed, the prosecutor's responsibility is "to proceed promptly within 180 days to move the case to the point of readiness for trial." *Lown*, 488 Mich at 272. There is no requirement, however, that trial begin during that period or even that the trial be poised to begin at the close of the period; rather, the prosecutor complies with the directive of the 180-day rule if, within 180 days, the prosecutor promptly takes steps with the objective of moving the case to the point of readiness for trial. Here, during the 180-day period, the prosecutor promptly took steps with the objective of moving the case to the point of readiness for trial. The 180-day rule thus was satisfied. See *Lown*, 488 Mich at 247.

Defendant contends, however, that after the prosecutor initially took steps in May and June 2020 to schedule defendant's arraignment and transport, the prosecutor did not take further steps to move the case to trial until September 2020. Defendant argues that this falls within the prohibition of *Lown* against, after initial action, "inexcusable delay beyond the 180-day period and an evident intent not to bring the case to trial promptly." *Lown*, 488 Mich at 272. Again, we disagree. There is no indication in this case that the period of inactivity in mid-2020 in the efforts to move the case to trial was the result of inexcusable delay. Rather, all the circumstances presented demonstrate that the delay was excusable because it was the direct result of the restrictions imposed during the COVID-19 crisis, none of which are attributable to either party. Similarly, no evidence demonstrates an intent by the prosecutor not to proceed to trial promptly.[1] In fact, the prosecutor's repeated outreach to the MDOC and the district court demonstrates the opposite intent. We therefore conclude that the trial court did not err in determining that the prosecution, within 180 days of receiving notice from the MDOC of defendant's incarceration, proceeded promptly to move the case to the point of readiness for trial;[2] any delay thereafter was excusable and there was no evident intent by the prosecution to not bring the case to trial promptly. The circuit court therefore did not abuse its discretion by denying defendant's motion to dismiss the charges.

Affirmed.

/s/ Michael F. Gadola
/s/ Brock A. Swartzle
/s/ Thomas C. Cameron

[1] In its June 7, 2021 order denying defendant's motion to dismiss, the circuit court in this case observed that as of that date "[t]he 17th Circuit has not conducted a jury trial since March 2020, resulting in previously unimaginable waits for trial dates, let alone actual trials."

[2] Any fault that may exist in the scheduling of defendant's arraignment would be, on the limited record before us, attributable to district court personnel and the MDOC, and not the prosecutor's office, which made repeated attempts to schedule the arraignment. It can hardly be said that the prosecutor demonstrated an intent not to bring this matter to trial.