

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

January 24, 2013

Plaintiff-Appellant,

v

No. 308275

Wayne Circuit Court

THOMAS CLIFFORD WHITE,

LC No. 03-011966-FH

Defendant-Appellee.

Before: TALBOT, P.J., and JANSEN and METER, JJ.

PER CURIAM.

The People of the State of Michigan appeal as of right the trial court's order vacating Thomas Clifford White's sentence, setting aside his guilty plea, and dismissing the case with

prejudice based on a violation of the 180-day rule. We vacate the order and remand for reinstatement of White's guilty-plea conviction and sentence.

Before he pleaded guilty, White expressed his concern about his right to a speedy trial and a possible violation of the 180-day rule.¹ White, however, was unable to establish that the Department of Corrections had served the prosecutor written notice by certified mail. After discussion, the trial court found that the requirements of the statute had not been met. Subsequently, White accepted the plea agreement and placed his unconditional guilty plea on the record on February 9, 2011. White was sentenced pursuant to the plea agreement, and the judgment of sentence was signed and entered into the record on April 14, 2011.

At a post-conviction hearing held on January 4, 2012, White's motion to set aside the plea, vacate the sentence, and dismiss the case based on violation of the 180-day rule² was heard before the trial court. Based on newly discovered evidence, White argued that, while he was previously incarcerated, the Department of Corrections sent a letter to the prosecutor on April 12, 2005, notifying the prosecutor of the pending charges against White. The letter contained White's date of birth, his social security number, his inmate number, his FBI number, and his SID number. White further argued that the prosecutor responded to the letter on May 17, 2005, stating that there were no pending matters against White in their database. No further action was taken. Therefore, argued White, the 180-day rule had been violated.

The prosecutor responded, in reliance on *People v Lown*,³ that White's unconditional guilty plea waived any claims under the 180-day rule. The prosecutor next contended that the letter, which was recently located by the prosecutor, was not sent by certified mail as required by the statute and, therefore, the 180-day rule was never triggered. Finally, the prosecutor contended that the year of birth in the letter did not match the year of birth of a "Thomas White" in their database or in the court's record. With regard to the last argument, White countered that his birth year was correct in the letter from the Department of Corrections, and incorrect in the database and the court's records, and that the letter contained sufficient additional identifying information to enable the prosecutor to locate him.

The court took the matter under advisement and, on January 11, 2012, the court placed its opinion on the record. The court found, in pertinent part, that the requirement under the statute, that the letter shall be sent by certified mail, was "effectively waived" by the prosecution when it

¹ MCL 780.131; MCL 780.133.

² *Id.*; MCL 780.131.

³ *People v Lown*, 488 Mich 242; 794 NW2d 9 (2011).

answered the letter, and that the prosecution’s effort “was not comprehensive enough, it was not responsive enough.” The court concluded that if it had received this information at the time it accepted White’s guilty plea, it would not have taken the plea, but would have found that the 180-day rule had been violated and dismissed the charges. Accordingly, the trial court dismissed the charges and vacated White’s guilty plea.

The prosecutor argues that the trial court abused its discretion when it vacated White’s guilty plea based on a violation of the 180-day rule because White’s unconditional guilty plea waived any violation of the 180-day rule. We agree. Appellate review of the “interpretations and applications of statutes and court rules” is de novo.⁴ The trial court’s factual findings are reviewed by this Court for clear error,⁵ and the court’s ruling on a motion to withdraw a plea is reviewed for an abuse of discretion.⁶ A trial court “abuses its discretion when it makes an error of law[.]”⁷

“[A] defendant, after pleading guilty, may raise on appeal only those defenses and rights which would preclude the state from obtaining a valid conviction against the defendant.”⁸ In *People v Smith*, Justice Boyle wrote a separate concurring opinion to express her view that a defendant’s unconditional guilty plea waives any claim of error based on a violation of the 180-day rule and that the word “jurisdiction” as used in MCL 780.133 does not refer to subject-matter jurisdiction.⁹ “Violation of the statute is therefore a ‘nonjurisdictional’ defect, and a claim of error based on noncompliance with the statute does not survive an unconditional guilty plea.”¹⁰ In *People v Irwin*, this Court agreed with Justice Boyle’s view in *Smith*, and held that “by entering an unconditional plea of nolo contendere, defendant waived review of a claim that the 180-day rule was violated.”¹¹ This Court reiterated that holding in *People v Bordash*.¹² In

⁴ *People v Lee*, 489 Mich 289, 295; 803 NW2d 165 (2011).

⁵ *People v Johnson*, 293 Mich App 79, 90; 808 NW2d 815 (2011).

⁶ *People v Brown*, 492 Mich 684, 688; 822 NW2d 208 (2012).

⁷ *People v Giovannini*, 271 Mich App 409, 417; 722 NW2d 237 (2006) (citation and quotations omitted).

⁸ *People v New*, 427 Mich 482, 491; 398 NW2d 358 (1986).

⁹ *People v Smith*, 438 Mich 715, 725; 475 NW2d 333 (1991), overruled in part on other grounds by *People v Williams*, 475 Mich 245; 716 NW2d 208 (2006).

¹⁰ *Smith*, 438 Mich at 725.

¹¹ *People v Irwin*, 192 Mich App 216, 218; 480 NW2d 611 (1991).

¹² *People v Bordash*, 208 Mich App 1, 2; 527 NW2d 17 (1994).

Lown, our Supreme Court adopted Justice Boyle’s “well-reasoned analysis in her concurring opinion” in *Smith*,¹³ wherein “she concluded that a violation of the 180-day rule is waived by an unconditional guilty plea.”¹⁴

Accordingly, we find that, under the law in Michigan, White waived any errors based on a violation of the 180-day rule when he rendered his unconditional guilty plea. Therefore, the trial court did not have the discretion to consider his motion. Upon de novo review, we hold that the trial court clearly erred as a matter of law and abused its discretion when it reversed its earlier decision and found a violation of the 180-day rule.¹⁵

Because White waived any errors based on a violation of the 180-day rule with his unconditional guilty plea, we need not address the prosecution’s contention that the trial court abused its discretion when it found that by responding to the invalid letter, the prosecution waived the Department of Corrections’ statutory duty to comply with the certified letter requirement.¹⁶ We note, however, that the notice sent by the Department of Corrections must strictly comply with the relevant statute¹⁷ to trigger the 180-day rule, which includes the requirement that notice be provided to the prosecution by certified mail.¹⁸

¹³ *Smith*, 438 Mich at 719-729.

¹⁴ *Lown*, 488 Mich at 268-270.

¹⁵ *Lee*, 489 Mich at 295; *Johnson*, 293 Mich App at 90; *Giovannini*, 271 Mich App at 417.

¹⁶ MCL 780.131(1).

¹⁷ MCL 780.131.

¹⁸ *Williams*, 475 Mich at 255-256.

We vacate the trial court's January 11, 2012 order, and remand for reinstatement of White's guilty-plea conviction and sentence. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ Kathleen Jansen

/s/ Patrick M. Meter