

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDREW L. PARHAM,

Defendant-Appellant.

UNPUBLISHED

May 10, 1996

No. 177592

LC No. 93-010736

Before: Doctoroff, C.J., and Hood and Gribbs, JJ.

PER CURIAM.

In a bench trial, the trial court convicted defendant of felonious assault. MCL 750.82; MSA 28.277. Because this conviction placed him in violation of his parole, defendant received a sentence of two to four years of imprisonment to be served after the completion of his prior sentence. Defendant appeals as of right. We affirm.

First, defendant argues that, because the prosecution failed to bring this case to trial within the 180 day limit, the charges filed against him should have been dismissed. Whenever the department of corrections receives notice that an indictment is pending against an inmate of a correctional facility for which a prison sentence might be imposed, the inmate shall be brought to trial within 180 days. MCL 780.131(1); MSA 28.969(1).

Defendant was on parole at the time he was arrested for felonious assault. Defendant was held at the Western Wayne Correctional Facility for seven months waiting for his trial. However, the 180-day rule does not apply when a defendant is not an inmate of a penal institution during the period in question. When a defendant is on parole, being detained in a local holding facility, and a parole hold has been filed against him, the 180-day rule does not apply. Until the revocation of parole, the accused is not being detained in a local facility to await incarceration in a state prison. *People v Gambrell*, 157 Mich App 253, 257-258; 403 NW2d 535 (1987). Because defendant was being detained locally and his parole was not revoked, the 180-day rule did not apply.

Next, defendant maintains that he was denied his right to a speedy trial. In determining whether a defendant was denied a speedy trial, this Court considers the length of the delay, the reason for the delay, defendant's assertion of the right to a speedy trial, and any prejudice to defendant. *People v Daniel*, 207 Mich App 47, 51; 523 NW2d 830 (1994). Because the trial was delayed for less than eighteen months, no presumption of prejudice arises. *People v Gravedoni*, 172 Mich App 195, 199; 431 NW2d 221 (1988). Although defendant alleges that this delay caused one witness to forget details about an alleged phone call by complainant to drop the charges in exchange for money, these details have nothing to do with the actual assault. Because defendant has not shown that his defense to the felonious assault charge was hindered by the delay, we find that defendant was not denied his right to a speedy trial.

Third, defendant argues that insufficient evidence existed to support his conviction for felonious assault. To determine whether sufficient evidence has been presented to convict a defendant of a crime, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v McMillan*, 213 Mich App 134, 139; 539 NW2d 553 (1995). The elements of felonious assault are: (1) an assault, (2) with a dangerous weapon; (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995).

The complainant testified that defendant punched her in the face and then beat her on the head, neck, and shoulders with a wooden coat hanger. Several witnesses who saw the complainant after the assault testified that she had injuries which indicated she had been severely beaten. This evidence, viewed in a light most favorable to the prosecution, could show that defendant assaulted the complainant with the intent to injure her.

Defendant argues that a coat hanger does not qualify as a dangerous weapon pursuant to the felonious assault statute. Items which are not designed as dangerous weapons may still become dangerous weapons if they are used against another in furtherance of an assault. *People v McCadney*, 111 Mich App 545, 549; 315 NW2d 175 (1981). This Court has found that an aerosol cans, broomsticks, and chairs can be dangerous weapons. *People v Bender*, 124 Mich App 571; 335 NW2d 85 (1983); *People v Sanders*, 58 Mich App 512; 228 NW2d 439 (1975); *People v Ragland*, 14 Mich App 425; 165 NW2d 639 (1968). Because defendant used the wooden coat hanger in furtherance of a battery, we find that the trial court properly considered the coat hanger to be a dangerous weapon in this instance. Viewing the evidence in a light most favorable to the prosecution, sufficient evidence existed to convict defendant of felonious assault.

Fourth, defendant claims that he had ineffective assistance of counsel. Effective assistance of counsel is presumed and defendant bears a heavy burden of proving otherwise. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms and that there is a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different.

People v Effinger, 212 Mich App 67, 69; 536 NW2d 809 (1995). Because the errors alleged by defendant neither fell below an objective standard of reasonableness nor caused any prejudice to defendant, we find that defendant was not denied effective assistance of counsel.

Finally, defendant maintains that the trial court violated the principle of proportionality when it sentenced defendant. The trial court sentenced defendant to two to four years of imprisonment. This sentence is within the minimum range recommended by the Michigan Sentencing Guidelines. A sentence within the recommended range is presumptively proportionate. *People v Price*, 214 Mich App 538, 548; ___ NW2d ___ (1995). Because we find that defendant did not provide sufficient evidence to overcome the presumption of proportionality, his sentence was proportionate to the offense and the offender.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Roman S. Gibbs