

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER HARTLEY, III,

Defendant-Appellant.

UNPUBLISHED

May 24, 1996

No. 179098

LC No. 93-001200-FC

Before: Taylor, P.J., and Murphy and E. J. Grant,* JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with a dangerous weapon, MCL 750.82; MSA 28.277, reckless discharge of a firearm, MCL 752.a863; MSA 28.436(24), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). For those respective convictions, he was sentenced to one to four years' imprisonment, ninety days' imprisonment, and two years' consecutive imprisonment. He appeals as of right. We affirm.

Defendant argues that the district court erred when it bound him over to the circuit court on charges other than those originally filed. A defendant may not raise on appeal errors or irregularities relating to the preliminary examination unless the issue was timely *raised* before or at trial. *People v Peters*, 95 Mich App 589, 593; 291 NW2d 133 (1980); *People v Sparks*, 53 Mich App 452, 454; 220 NW2d 153, lv den 393 Mich 135 (1974). Defendant failed to raise this issue before the district court or the trial court and so appellate review is precluded. In any event, defendant's claim of error lacks merit. Contrary to defendant's assertion, the district judge had the authority to add counts not originally charged in the absence of unfair surprise to defendant. Cf. *People v Gonzalez*, 214 Mich App 513, 515-517; ___ NW2d ___ (1995).

Defendant next argues that he was deprived of his right to a speedy trial. US Const, Am VI; Const 1963, art 1, § 20; MCL 768.1; MSA 28.1024. We disagree. The length of delay in this case was less than four months, as measured from the date of the withdrawal of defendant's *nolo contendere* pleas to the date of trial. A delay of this length is insufficient to trigger an investigation into

* Circuit judge, sitting on the Court of Appeals by assignment.

defendant's speedy trial claim. *People v O'Quinn*, 185 Mich App 40, 47; 460 NW2d 264 (1990). Further, defendant can point to no prejudice occasioned by the delay. Accordingly, this claim is without merit.

Defendant also argues that the trial court erroneously denied his request in *propria persona* that defense counsel be awarded "extraordinary" attorney fees. Defendant lacks standing to raise this issue. We also note that defense counsel was awarded the amount defense counsel requested on September 15, 1994. The additional compensation contemplated is not explained nor has a rationale been tendered as to why the court's decision was erroneous. The inadequate briefing precludes appellate review. *People v Kent*, 194 Mich App 206, 210; 486 NW2d 110 (1992).

Defendant argues that his first appointed counsel rendered ineffective assistance. We decline appellate review of this issue because the record contains insufficient detail to support the claim, *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995), and because the issue has been rendered moot, *People v Greenberg*, 176 Mich App 296, 302; 439 NW2d 336 (1989). Any deficiencies in the performance of defendant's first appointed counsel were cured by the withdrawal of defendant's pleas, the appointment of new counsel, and the conducting of a preliminary examination and trial.

Likewise, defendant's claim that the trial court erroneously denied his motions to quash is without merit. These claims were in relation to the effort to set aside the pleas. As the plea was set aside, the issues have been rendered moot. *Greenburg, supra*.

Our review of defendant's challenge to the jury array is precluded by defendant's failure to raise the challenge in a timely manner before the trial court and create an evidentiary record. *People v Stephen*, 31 Mich App 604, 606; 188 NW2d 105 (1971); *People v McCrea*, 303 Mich 213, 278; 6 NW2d 489 (1942).

We decline to consider defendant's objection to the failure to use a blind draw to select the trial court. This claimed error was not included in or necessarily suggested by the statement of questions presented in defendant's brief. *People v Yarbrough*, 183 Mich App 163, 165; 454 NW2d 419 (1990); MCR 7.212(C)(5).

We also decline to consider defendant's claim that the trial court erroneously denied defendant's request for a bill of particulars. Our review of the record reveals that defendant abandoned this request below. Accordingly, this claim is without merit.

Finally, we decline consideration of defendant's remaining claims of error. Defendant has abandoned those claims on appeal by failing to adequately brief the issues. *Kent, supra* at 210; *People v Sowders*, 164 Mich App 36, 49; 417 NW2d 78 (1987).

Affirmed.

/s/ Clifford W. Taylor
/s/ William B. Murphy

Judge Edward J. Grant not participating.