

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 179110

LC No. 94-131341-FC

MICHAEL SPRAGGINS,

Defendant-Appellant.

Before: Markman, P.J., and Marilyn Kelly and L.V. Bucci,* JJ.

MARILYN KELLY, J. (concurring).

I concur in the result reached by the majority. However, I would hold, without reservation, that the issue concerning the alleged violation of the 180 day rule has been properly preserved for appeal.

MCR 6.301(C)(2) states that a conditional plea may be not be entered without the consent of the prosecutor. Here, defendant raised the issue of a conditional plea and the trial judge indicated that defendant's plea was being tendered conditional upon preservation of the 180-day rule issue. The prosecution did not object; it remained silent. I believe, that the prosecutor's silence constituted tacit adoption of the judge's decision. See *People v Gonzalez*, 214 Mich App 513, 516; 543 NW2d 354 (1995). Therefore, the issue has been properly preserved for appeal.

/s/ Marilyn Kelly

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