STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARIUS VERNACE BARNES,

Defendant-Appellant.

UNPUBLISHED
June 25, 1996

No. 164226
LC No. 92 4204

Before: Corrigan, P.J., and Hoekstra, and P.E. Deegan,* JJ.

PER CURIAM.

Following a bench trial, defendant appeals of right his conviction of larceny from a motor vehicle, MCL 750.356a; MSA 28.588(1), and habitual offender, fourth offense, MCL 769.12; MSA 28.1084. Defendant's lone argument on appeal is that the delay between his arraignment and his trial violated the 180-day rule, MCL 780.131(1); MSA 28.969(1). We affirm.

In March and April, 1992, defendant was arraigned, bound over for trial, and taken into custody by the Michigan Department of Corrections (MDOC) on a parole hold. In May and June, 1992, the court was forced to adjourn three final pretrial conferences because defendant had not been transported to court from the Western Wayne Correctional Facility, where he was held. On November 19, 1992, the date set for trial, the court adjourned trial because no courtroom was available. The parties rescheduled trial for January 7, 1993, at which time defense counsel moved to dismiss under the 180-day rule; the court denied the motion. Defense counsel then requested an adjournment. On February 8, 1993, defendant's trial commenced. Defendant later moved for a peremptory reversal because of the prosecution's failure to comply with the 180-day rule.

Whether the 180-day rule applies in this case is a question of law, which we review de novo. See *People v Nance*, 214 Mich App 257, 258; 542 NW2d 358 (1995). The 180-day rule does not require that trial begin within 180 days. Rather, the rule requires that the prosecutor make a good faith

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

effort in the 180-day period and thereafter ready the case against the defendant for trial. *People v Bell*, 209 Mich App 273, 278; 530 NW2d 167 (1995).

On November 29, 1993, this Court remanded this case to the trial court for it to determine whether the prosecutor made a good faith effort within the 180-day period. On remand, the trial court noted that the delays from April through September, 1992, were attributable to the MDOC. The court stated that the November 19, 1992, trial date had to be changed because of inadequate courtroom space. The court found "[t]hat at all the aforementioned adjourned dates, the Prosecutor was ready to proceed, but for this confusion." The court determined that the prosecutor had made a good faith effort because the prosecutor was not the party responsible for the failure to bring defendant to trial within 180 days. Defendant appeals.

The 180-day rule provides:

> (1) 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. . . . [MCL 780.131(1); MSA 28.969(1).]

The court rules reference the 180-day rule as follows:

> (D) Untried Charges Against State Prisoner.
>
> (1) The 180-Day Rule. Except for crimes exempted by MCL 780.131(2); MSA 28.969(1)(2), the prosecutor must make a good faith effort to bring a criminal charge to trial within 180 days of either of the following:
>
> (a) the time from which the prosecutor knows that the person charged with the offense is incarcerated in a state prison or is detained in a local facility awaiting incarceration in a state prison, or
>
> (b) the time from which the Department of Corrections knows or has reason to know that a criminal charge is pending against a defendant incarcerated in a state prison or detained in a local facility awaiting incarceration in a state prison.

> For purposes of this subrule, a person is charged with a criminal offense if a warrant, complaint, or indictment has been issued against the person. [MCR 6.004(D).]

The 180-day rule does not apply here for two reasons. First, defendant in this case was detained on a parole hold. The 180-day rule applies only to defendants who are inmates of a penal institution during the period in question. A defendant who is paroled and being detained locally, and against whom a parole hold has been filed, is not an inmate to whom the 180-day rule applies. *People v Metzler*, 193 Mich App 541, 545; 484 NW2d 695 (1992); *People v Gambrell*, 157 Mich App 253, 257; 403 NW2d 535 (1987). Until the revocation of parole, the accused is not being detained in a local facility to await incarceration in a state prison. *Id.* at 258. Therefore, the 180-day rule does not apply to defendant in this case because he was on a parole hold.

Second, the 180-day rule aims to dispose of charges against prison inmates so that their sentences may run concurrently. *People v Bell*, *supra*, at 279. The 180-day statute does not apply where a mandatory consecutive sentence is required upon conviction. *People v Connor*, 209 Mich App 419, 429; 531 NW2d 734 (1995); *People v McCullum*, 201 Mich App 463, 465; 507 NW2d 3 (1993). The purpose of the rule is not served where a mandatory consecutive sentence is required upon conviction. *People v Rosie Smith*, 438 Mich 715, 718; 475 NW2d 333 (1991). Defendant committed the larceny from a motor vehicle while he was on parole. Defendant's term of imprisonment for the larceny from a motor vehicle conviction must run consecutively to the remaining term for his previous offense. MCL 768.7a(2); MSA 28.1030(1)(2), *People v Young*, ___ Mich ___; ___ NW2d ___ (Docket Nos. 10105, 101387, 101388, 101389, issued May 29, 1996). Because defendant was subject to consecutive sentencing, the purpose of the 180-day rule was not served; thus, the rule does not apply in this case.

Although we affirm defendant's conviction, we are compelled to observe that the prosecution of this case was lax. This case was shuffled among a plenitude of prosecutors. Indeed, the sixth prosecutor to handle the case stated: "[T]his is a typical case where . . . 15 different prosecutors . . . have been involved in the case." We cannot conscientiously characterize the prosecution's effort as a good faith attempt to bring defendant to trial in a timely manner. The failure to insure that defendant was brought from the Western Wayne Correctional Facility, not once but three times, is inexcusable. These delays must be attributed to the prosecutor. Had the 180-day rule applied, we would have been obliged to dismiss the charges against defendant.

The next delay occurred when the judge did not have an available courtroom. Under the 180-day rule, the burden to bring the case to trial rests as much on the court as on the prosecutor. *People v England*, 177 Mich App 279, 285; 411 NW2d 95 (1989). Moreover, the prosecution should not have agreed to a trial date that was beyond the 180-day period.

Affirmed.

/s/ Maura D. Corrigan
/s/ Joel P. Hoekstra

I concur in result only.

/s/ Peter E. Deegan