STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER B. DANTZLER,

Defendant-Appellant.

UNPUBLISHED
September 13, 1996

No. 174714
LC No. 93-48638-FH

Before: Holbrook, P.J., and Saad and W. J. Giovan,* JJ

PER CURIAM.

The jury convicted defendant of prison escape, MCL 750.193; MSA 28.390, after he failed to return from a work release program. He then pled guilty to habitual offender, third offense, MCL 769.11; MSA 28.390. Defendant was sentenced to 18 to 120 months imprisonment to be served consecutively to the sentence that he was already serving at the time of the incident. He appeals; we affirm.

Defendant asserts that MCL 780.131(2); MSA 29.969(1)(2) violates the federal and state constitutional right to equal protection, because it excludes prisoners from the general protection of the 180-day rule, MCL 780.131(1); MSA 28.969(1), (i.e., for offenses allegedly committed while serving a prison sentence). However, this distinction, which does not involve a suspect class or a fundamental right, is rationally related to a legitimate governmental purpose. *People v Martinez*, 211 Mich App 147,150; 535 NW2d 236 (1995). The purpose of the 180-day rule is to give an inmate the opportunity of having his or her sentences run concurrently. *People v Connor*, 209 Mich App 419, 423 n 1, 425; 531 NW2d 734 (1995). However, a *consecutive* sentence is required by statute for a crime committed while a defendant is incarcerated in, or escaped from, a state penal or reformatory institution. MCL 768.7a(1); MSA 28.1030(1). Therefore, the rationale supporting the 180-day rule is inapplicable where a mandatory consecutive sentence is required on conviction. *People v McCallum*, 201 Mich App 463, 465; 509 NW2d 3 (1993). Accordingly, there is a rationale basis for excluding prisoners from the protection of the 180-day rule, and MCL 780.131(2); MSA 28.969(1)(2) complies with constitutional guarantees of equal protection. It is immaterial that the trial court apparently did not

rule on defendant's motion to dismiss on this ground, because as a matter of law, he was not entitled to the benefit of that rule.

Defendant has not cited authority in support of his related claim that he was denied the right to a speedy trial. Accordingly, it is abandoned. See *People v Piotrowski*, 211 Mich App 527, 530; 536 NW2d 293 (1995). Further, defendant has not alleged how the delay (of approximately 300 days between his instant arrest and trial) may have prejudiced his case.

Defendant's Fifth Amendment protection against double jeopardy was not violated as he contends. A subsequent trial for the same conduct underlying a parole revocation proceeding does not violate the right against double jeopardy because parole revocation is not part of a criminal prosecution. *People v Marrow*, 210 Mich App 455, 465; 534 NW2d 153 (1995).

Lastly, defendant has not established that he received ineffective assistance of counsel. Trial counsel's stipulation to telling the jury that defendant was under a sentence for possession of cocaine with intent to deliver at the time of the charged escape, was within the bounds of reasonable trial strategy -- counsel wanted the jury to know that defendant was not under sentence for a violent crime. See *People v Murph*, 185 Mich App 476, 479; 463 NW2d 156 (1990), amended on other grounds on reh, 190 Mich App 707; 476 NW2d 500 (1991). Further, to warrant reversal due to ineffective assistance, a defendant must show a reasonable probability that, but for unprofessional errors by counsel, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298, 314; 521 NW2d 797 (1994). In light of the compelling evidence of defendant's guilt, we do not find a reasonable probability that the verdict would have been different had the jury been unaware that defendant had been serving a sentence for a drug-related offense.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Henry William Saad
/s/ William J. Giovan