

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK ANDREW EDWARDS,

Defendant-Appellant.

UNPUBLISHED

September 13, 1996

No. 187744

LC No. 95052230 FH

Before: Cavanagh, P.J., and Marilyn Kelly and J.R. Johnson,* JJ.

PER CURIAM.

Defendant pleaded guilty to operating a motor vehicle under the influence of liquor, third offense (OUIL3d). MCL 257.625; MSA 9.2325. The trial judge sentenced him to five years' probation. The first 180 days were to be served in the county jail. Defendant was given a credit of 58 days for time served. He appeals as of right, arguing that the charge should be dismissed because of a two year delay between the date of the offense and the date of his arrest. In the alternative, he asserts that he is entitled to additional sentence credit. We affirm.

A criminal defendant may appeal from an unconditional guilty plea only when the claim implicates the very authority of the state to bring him or her to trial. *People v Allen*, 192 Mich App 592, 598; 481 NW2d 800 (1992). This Court has held that an unconditional guilty plea waives a defendant's speedy trial claim under the federal and Michigan constitutions and a claim under the 180-day rule. *People v Bordash*, 208 Mich App 1, 2; 527 NW2d 17 (1994); *People v Depifanio*, 192 Mich App 257; 480 NW2d 616 (1991); *People v Irwin*, 192 Mich App 216; 480 NW2d 611 (1991). Therefore, even if we accept defendant's argument that excessive prearrest delay is similar to a claim under the 180 day rule, we find that defendant waived the issue by unconditionally pleading guilty.

Next, defendant argues that, because of an excessive delay in arresting and charging him for the OUIL3d offense, he lost the opportunity for concurrent sentencing. He was arrested in 1993 for unrelated offenses and was sentenced to 120 days in jail.¹ We agree with defendant that, if a delay

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

occurs whereby a defendant is deprived of the opportunity for concurrent sentencing, the remedy is to give the defendant credit for time served against the second offense based upon time spent incarcerated on the first offense. *People v Gleason*, 139 Mich App 445, 447; 363 NW2d 3 (1984), overruled in part on other grounds 428 Mich 356; 408 NW2d 795 (1987); *People v Coyle*, 104 Mich App 636; 305 NW2d 275 (1981); *People v Parshay*, 104 Mich App 411; 304 NW2d 593 (1981).

However, in the instant case, we cannot provide defendant with the remedy he seeks. Even if this case comes within the purview *Gleason*, *Coyle* and *Parshay*, the remedy would be to give defendant credit for time served against the OUIL3d sentence based upon time incarcerated on the 1993 offense.

Here, the record indicates that defendant served time in jail for the OUIL3d offense and was released on probation. At that point, the issue became moot. *People v Greenberg*, 176 Mich App 296 302; 439 NW2d 336 (1989). We acknowledge that defendant is currently serving a two and a half to five year sentence for a probation violation. However, that sentence would not have run concurrent with the 1993 sentence. Therefore, defendant is not entitled to additional credit for time served to be applied to his current sentence. See *People v Ervin*, 163 Mich App 518, 520-521; 415 NW2d 10 (1987).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Marilyn Kelly

/s/ J. Richardson Johnson

¹ Defendant served 57 days in jail.