

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RICHARD TYSON,

Defendant-Appellee.

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UNPUBLISHED

October 4, 1996

No. 180516

LC No. 94-008281

Before: Cavanagh, P.J., and Murphy and C.W. Simon, Jr.,\* JJ.

PER CURIAM.

Defendant was arraigned on an underlying felony charge but absconded prior to his preliminary examination. The trial court issued a warrant for his arrest. Defendant was later incarcerated on a parole violation and informed the Michigan Department of Corrections that the underlying charge was pending. After his release from incarceration, defendant was arrested on that charge. The trial court found that defendant had been denied a speedy trial, US Const, Am VI; Const 1963, art 1, § 20; MCL 768.1; MSA 28.1024, and that the prosecutor failed to bring defendant to trial within 180 days as required by MCL 780.131(1); MSA 28.969(1)(1). The trial court dismissed the charge against defendant. Plaintiff appeals as of right. We reverse and remand.

The proper method for demanding a speedy trial is by motion in open court. *People v Nawrocki*, 6 Mich App 46, 60; 148 NW2d 211 (1967). Defendant's conduct in this case was inconsistent with, and evidenced the insincerity of, his claim for a speedy trial. See *People v Rosengren*, 159 Mich App 492, 508; 407 NW2d 391 (1987). Defendant's conduct, despite his knowledge of the underlying charge, weighs heavily against his claimed denial of right to speedy trial. *Doggett v United States*, 505 US 647; 112 S Ct 2686; 120 L Ed 2d 520 (1992). Furthermore, after a review of the record and a balancing of the factors of the length and reason for the delay and the prejudice to defendant, we are convinced that the trial court erred in dismissing the felony charge. See *People v O'Quinn*, 185 Mich App 40, 47-48; 460 NW2d 264 (1990).

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

The trial court correctly found, though, that the 180-day rule had been violated. However, the court ordered the wrong remedy. Defendant is entitled to sentence credit for the period of delay. MCR 6.004(D)(2); *People v Taylor*, 199 Mich App 549; 502 NW2d 348 (1993).

Reversed and remanded to the trial court for reinstatement of the underlying felony charge against defendant. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ William B. Murphy

/s/ Charles W. Simon, Jr.