

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HENRY A. SHAMILY, JR.,

Defendant-Appellant.

UNPUBLISHED
October 29, 1996

No. 182982
LC No. 94-70142-FH

Before: Gribbs, P.J., and Markey and T. G. Kavanagh,* JJ.

PER CURIAM.

Defendant appeals by right from his convictions for possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401; MSA 14.15(7401), possession with intent to deliver marijuana, MCL 333.740; MSA 14.15(7401), possession of marijuana, MCL 333.7403; MSA 14.15(7403), and his plea of guilty to habitual offender second offense, MCL 769.10; MSA 28.1082. Defendant was sentenced to sixty to 360 months on the cocaine convictions, thirty-six to seventy-two months on the marijuana with intent to deliver conviction and twelve months on the possession of marijuana conviction. We affirm.

Defendant first argues that his right to a speedy trial was violated due to the delay between the time of his initial arrest on outstanding warrants and the trial on these drug charges. Defendant failed to preserve this issue. *People v Connor*, 209 Mich App 419, 422; 531 NW2d 734 (1995). Even if he had, we would find no merit to his argument. Defendant was incarcerated during the delay based on a parole violation but during this time, defendant had not yet been arrested or charged on the current offenses. Thus, his right to a speedy trial was not even implicated at the time of the delay. *People v Wickham*, 200 Mich App 106, 111; 503 NW2d 701 (1993). On a related issue, because defendant was being held on a parole detainer, the sentencing court did not err in failing to give defendant credit for time served. MCL 791.238; MSA 28.2308; *People v Stewart*, 203 Mich App 432, 433; 513 NW2d 147 (1994).

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

Defendant next argues that the prosecutor made an improper remark regarding the seizure of some of the evidence in his opening statement. Again, defendant failed to preserve this issue below. The comment was not improper. In any case, any possible prejudice could have been cured by an appropriate instruction. *People v Paquette*, 214 Mich App 336, 341-342 (1995). Therefore we will not reverse on this basis.

Defendant also claims that the trial court abused its discretion in qualifying Trooper Palmer as an expert on the common indicators of drug trafficking. The trooper testified to extensive specialized training and significant professional experience in drug interdiction. This included special coursework, participation in special programs and involvement in three hundred pertinent cases. He could therefore aid the jury in evaluating the evidence concerning the quantity and condition of drugs and associated paraphernalia. Specifically, he could render an opinion regarding whether this evidence was demonstrative of an intent to traffic versus possession for personal use. Because this is not the type of information within the common knowledge of a layman, expert testimony was appropriate. *People v Ray*, 191 Mich App 706, 708; 479 NW2d 1 (1991).

Finally, we reject defendant's argument that the absence of "moral certainty" language in the trial court's instruction on reasonable doubt violated his right to due process. This Court has already addressed this issue in *People v Sammons*, 191 Mich App 351, 372; 478 NW2d 901 (1991), and we find no reason to disagree with that decision.

Affirmed.

/s/ Roman S. Gibbs

/s/ Jane E. Markey

/s/ Thomas Giles Kavanagh