

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DANIEL DEAN CHIAPELLI,

Defendant-Appellee.

UNPUBLISHED
November 1, 1996

No. 176555
LC No. 93-129749

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

PER CURIAM.

Defendant was charged with knowingly or intentionally possessing less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and was subject to sentence enhancement under MCL 333.7413(2); MSA 14.15(7413)(2). Defendant was on parole when he allegedly committed his crime. At the subsequent parole violation hearing, the hearing officer found insufficient evidence to conclude that defendant knowingly possessed cocaine such that he had violated parole. Thereafter, the trial court dismissed the criminal charge against defendant on the basis that the finding by the Department of Corrections precluded criminal prosecution under the doctrine of collateral estoppel. The prosecution appeals and we reverse.

The prosecutor argues that the doctrine of collateral estoppel should not be used here. While plaintiff concedes that the basic requirements of collateral estoppel have been met, plaintiff contends that it would be inappropriate to apply issue preclusion in this case. We agree.

Although criminal prosecutions may be precluded based on a decision rendered in administrative proceedings, in general, administrative determinations will not collaterally estop a criminal case. *People v Watt*, 115 Mich App 172, 181; 320 NW2d 333 (1982). For example, where the two proceedings are fundamentally different, collateral estoppel will not be applied if to do so would contravene public policy. *People v Gates*, 434 Mich 146, 161; 452 NW2d 627, cert den 497 US 1004, 110 S Ct 3238, 111 L Ed2d 749 (1990); *Thangavelu v Dep't of Licensing & Regulation*, 149 Mich App 546, 555; 386 NW2d 584 (1986).

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

Using collateral estoppel based on the parole board's finding of insufficiency of the evidence would contravene public policy. *People v Johnson*, 191 Mich App 222, 226; 477 NW2d 426 (1991). Parole is only a conditional release. *People v Raihala*, 199 Mich App 577, 579; 502 NW2d 755 (1993). A paroled prisoner technically remains in the custody of the Department of Corrections, which is executing the sentence imposed by the court. *Id.* The focus of a parole violation hearing is on whether a defendant, who has already been convicted of a crime, violated a condition of parole, and whether parole should be revoked. *Washington v Dupard*, 93 Wash2d 268, 276; 609 P2d 961, 965 (1980). If the hearing officer finds that the parolee violated parole by committing a new offense, the parolee "is neither burdened with a new conviction nor exposed to punishment other than that to which he was already" serving. *People v Johnson*, 191 Mich App 222, 226; 477 NW2d 426 (1991). However, the "determination whether one committed an offense for the purpose of a new conviction should be made in a criminal trial which is the intended forum for such a determination." *Id.*

Furthermore, because of the limited nature and scope of a probation violation hearing, as a practical matter, the prosecutor may not present all the evidence bearing on the commission of the alleged offense. *Johnson*, 191 Mich App at 226. The determination whether one committed the offense for the purpose of a new conviction should be made in a criminal trial, which is the intended forum for such a determination, and not in an informal, summary proceeding. *Id.* Therefore, because the purposes of the two proceedings differ, it would be contrary to public policy to apply collateral estoppel to this case. Accordingly, the trial court erred in dismissing the charges against defendant.

Defendant argues on appeal that if the charges against him are reinstated, his right to a speedy trial will be violated. This issue was not raised by defendant by way of a cross appeal and, accordingly, has not been properly presented for review. *People v Langley*, 187 Mich App 147, 151; 466 NW2d 724 (1991). Also, the period between the dismissal of a charge and the reinstatement of a charge is not attributable to either side because there was no charge pending against the defendant during that period. *People v Wickham*, 200 Mich App 106, 111; 503 NW2d 701 (1993).

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ Henry William Saad

/s/ William J. Giovan