

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PHILIP JOHN TINSLEY,

Defendant-Appellant.

UNPUBLISHED

February 14, 1997

No. 192070

Ogemaw Circuit Court

LC No. 95-0853-FH

Before: O'Connell, P.J., and Markman and M. J. Talbot,* JJ.

PER CURIAM.

Defendant appeals by right his 1995 nolo contendere plea conviction of third-degree criminal sexual conduct, MCL 750.520d(1)(a); MSA 28.788(4)(1)(a). Defendant claims that the trial court erred in denying his motion to dismiss for violation of the "180-day rule" -- MCL 780.131; MSA 28.969(1) and MCR 6.004(D). We affirm.

The issue before this Court is whether defendant's plea of nolo contendere waived any violation of the 180-day rule. A nolo contendere plea has the same effect on a defendant's waiver of rights as a guilty plea. *People v New*, 427 Mich 482, 493; 398 NW2d 358 (1986). The *New* Court distinguished rights that survive a guilty plea from those that are waived by a plea at 489:

[A] defendant, after pleading guilty, may raise on appeal only those defenses and rights which would preclude the state from obtaining a valid conviction against the defendant. Such rights and defenses "reach beyond the factual determination of defendant's guilt and implicate the very authority of the state to bring a defendant to trial. . . ." In such cases, the state has no legitimate interest in securing a conviction. On the other hand, where the defense or right asserted by defendant relates solely to the capacity of the state to prove defendant's factual guilt, it is subsumed by defendant's guilty plea. [Citations omitted.]

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

The issue therefore becomes whether the 180-day rule is a right that “implicates the very authority of the state to bring a defendant to trial” or “relates solely to the capacity of the state to prove defendant’s factual guilt.” *New, supra* at 489. In his dissenting opinion in *People v Smith*, 183 Mich App 537, 549; 455 NW2d 719 (1990), rev’d 438 Mich 715; 475 NW2d 333 (1991), Judge Griffin stated that the purpose of both the constitutional and statutory speedy trial rights is “to assure that factual guilt is validly established.” He concluded that the reference to “jurisdiction” in MCL 780.133; MSA 28.969(3) is to personal jurisdiction, not subject matter jurisdiction. *Id.* at 548. He noted that the 180-day time limitation is analogous to the time limits for a civil summons and complaint and that untimely service of a civil complaint only divests the court of jurisdiction over the person, not of subject-matter jurisdiction and that such defects are waivable. *Id.* He concluded, at 549:

In my view, the policy considerations advanced by the Supreme Court in *People v New* are better served by holding that an unconditional plea of guilty relinquishes all personal jurisdiction defects including the constitutional and statutory guarantees to a speedy trial. In addition, the anomaly of relinquishment of constitutional but not statutory rights is avoided.

See also *People v Eaton*, 184 Mich App 649; 459 NW2d 86 (1990), aff’d on other grounds 439 Mich 919; 479 NW2d 639 (1992), which similarly concluded that an unconditional guilty plea waives personal jurisdiction defects including constitutional and statutory rights to a speedy trial.

In her separate plurality opinion in *People v Smith*, 438 Mich 715, 721; 475 NW2d 333 (1991),¹ Justice Boyle similarly analyzed whether a violation of the 180-day rule constituted a jurisdictional defect that would survive a guilty plea. She stated at 725:

The interpretation of the word "jurisdiction" as used in MCL 780.133; MSA 28.969(3) to mean subject-matter jurisdiction reads too much into the statute. The statute does not dictate the class or kind of cases a court can hear; it does not refer to subject-matter jurisdiction. Instead, the statute decrees that a court loses its power over a *particular* matter in specified circumstances. Violation of the statute is therefore a "nonjurisdictional" defect, and a claim of error based on noncompliance with the statute does not survive an unconditional guilty plea.

She concluded, at 729:

[I]t is my view that where the statutory 180-day rule is applicable, a defendant waives any error based on violation of the rule by unconditionally pleading guilty. To state otherwise is to ascribe to the Legislature an intent to preclude a counseled defendant from voluntarily relinquishing the protection of the statute, and would separate Michigan from the great weight of authority holding that an unconditional guilty plea waives noncompliance with statutory provisions for speedy trial.

In *People v Irwin*, 192 Mich App 216, 218; 480 NW2d 611 (1991), this Court stated that it agreed with Justice Boyle’s view in *Smith* and with *Eaton* and held that “by entering an unconditional

plea of nolo contendere, defendant waived review of a claim that the 180-day rule was violated.” This Court reiterated that holding in *People v Bordash*, 208 Mich App 1, 2; 527 NW2d 17 (1994).

In accordance with these authorities, defendant’s nolo contendere plea here waived any violations of the 180-day rule. Therefore, the trial court did not err in denying defendant’s motion to dismiss for violation of the 180-day rule.

Affirmed.

/s/ Peter D. O’Connell

/s/ Stephen J. Markman

/s/ Michael J. Talbot

¹ In *Smith*, five of the justices addressed the issue whether a guilty plea waives a violation of the 180-day rule; three of these five would have held that a plea waives a violation of the 180-day rule. *People v Lannom*, 441 Mich 490, 494 n 7; 490 NW2d 396 (1992).