

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE BURGESS,

Defendant-Appellant.

UNPUBLISHED

May 13, 1997

No. 192447

St. Clair Circuit Court

LC No. 88-834

Before: Corrigan, C.J., and Young and M.J. Talbot*, JJ.

MEMORANDUM.

By leave granted, defendant challenges denial of his motion to dismiss probation violation charges, which the record shows the prosecution pursued dilatorily, causing a delay of 29 months between issuance of the bench warrant authorizing defendant's arrest for probation violation and effectuation of the arrest. At the hearing on this the motion in the circuit court, the prosecutor expressly disclaimed any intent to seek to incarcerate defendant as a probation violator; the prosecutor proclaims an intent only to enforce the restitutionary conditions of the order of probation. This case is being decided without oral argument pursuant to MCR 7.214(E).

While it is true that probation violation charges which could expose the defendant to the statutorily authorized punishment for the underlying offense must be pursued with due diligence, which was admittedly not exercised here, failing which such violation charges must be considered waived, *People v Ortman*, 209 Mich App 251, 254; 530 NW2d 161 (1995) and cases there cited, such principles have no application to restitutionary conditions, which, while they may provide grounds for finding a violation of probation, also represent civil obligations which may be enforced by civil means. RJA §5809(2); MCL 769.1a(16); MSA 28.1073(16). A writ of *scire facias* is one means of enforcing such obligations. *McGraw v Parsons*, 142 Mich App 22; 369 NW2d 251 (1985). As a writ of *scire facias* is properly to be styled "in the name of the People of the State of Michigan," which is consistent with the manner in which the present probation violation charges were instituted and pursued by the prosecutor, any error in using a bench warrant rather than a writ of *scire facias* is one of

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

form only which does not warrant appellate relief because the actual proceedings are consistent with substantial justice. *Johnson v Provincial Ins Co of Toronto*, 12 Mich 216, 86 Am Dec 49 (1864).

Affirmed.

/s/ Maura D. Corrigan

/s/ Robert P. Young, Jr.

/s/ Michael J. Talbot