STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE RIDER, a/k/a
BRIAN HAMPTON,

Defendant-Appellant.

UNPUBLISHED
May 30, 1997

No. 182854
Recorder's Court
LC No. 92-006627

Before: Smolenski, P.J., and Michael J. Kelly and Gribbs, JJ.

PER CURIAM.

Defendant, appeals as of right from his bench trial conviction for attempted arson, MCL 750.92; MSA 28.287; MCL 750.73; MSA 28.268. Defendant was originally charged with eight counts of arson, MCL 750.73; MSA 28.268, and one count of attempted arson, MCL 750.92; MSA 750.73; MCL 750.73; MSA 28.268. Defendant was sentenced to one to five years' imprisonment. We affirm.

Defendant first argues that he was denied his right to a speedy trial under the state and federal constitutions. Const 1963, art 1, § 20; US Const. Am VI. We disagree.

We review defendant's claim de novo. *People v Connor*, 209 Mich App 419, 423; 531 NW2d 734 (1995). While there is no federal constitutional basis for holding that the speedy trial right can be quantified into a specific time period, the United States Supreme Court has stated that the states were free to prescribe a reasonable time period consistent with constitutional standards. See *Barker v Wingo*, 407 US 514, 523; 92 S Ct 2182; 33 L Ed 2d 101 (1972). The Michigan Legislature prescribed such a period in enacting the 180-day rule, MCL 780.131; MSA 28.969(1).

In determining whether a defendant was denied a speedy trial, under either Michigan or federal standards, four factors must be considered. (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of the right to a speedy trial, and (4) the prejudice to the defendant. *Wingo*, *supra* at 530; *People v Metzler*, 193 Mich App 541, 546; 484 NW2d 695 (1992). A delay of more that eighteen months is presumed to be prejudicial and the burden is on the prosecution to prove lack of prejudice to the defendant. *People v Wickham*, 200 Mich App 106, 109; 503 NW2d 701 (1993).

Here, the record indicates that defendant remained at large for one year and eight months on these charges. The record also indicates that defendant was apprehended and arraigned on the instant charges on May 15, 1992, and that his trial commenced on June 7, 1993. Therefore, because the delay in adjudicating defendant was less than eighteen months (approximately a thirteen month delay), the burden was on defendant to prove that he was prejudiced by the delay. *Wickham, supra* at 109. Defendant failed to meet his burden. The record indicates that, on November 12, 1992, defendant requested an adjournment of his trial so that his new attorney could familiarize himself with defendant's case; that on December 18, 1992, the final pretrial conference was held where defendant agreed to his trial commencing on June 7, 1993; and that defendant's trial commenced accordingly. Therefore, we find that the delay in adjudication was not caused by the prosecution. *Wingo, supra* at 530; *Metzler, supra* at 545-546. In addition, because defendant failed to assert his right to a speedy trial below, this factor weighs against him. *Metzler, supra* at 546. Finally, because the delay did not prejudice defendant, particularly where he was found not guilty of eight counts of arson, we hold that defendant was not denied his state or federal right to a speedy trial. *Wingo, supra* at 530; *Metzler supra* at 545-546.

Defendant next argues that there was insufficient evidence to convict him of attempted arson, particularly where the trial court found him not guilty of eight counts of arson. We disagree.

To prove the crime of attempt, the prosecution must establish the specific intent to commit a crime and an overt act going beyond mere preparation toward committing the crime. *People v Jones,* 193 Mich App 551, 552; 484 NW2d 688 (1992), rev'd on other grounds 443 Mich 88; 504 NW2d 158 (1993). To prove the crime of burning real property, the prosecution must establish the burning of the building charged, done willfully or maliciously, and that the property must have been a building or the contents thereof. MCL 750.73; MSA 26.268; CJI 2d 31.3.

Here, the testimony established that defendant paid someone to burn a building, that the person was apprehended in the process of setting the building on fire, that defendant's telephone numbers were programmed into the beeper the person was carrying, and that defendant threatened to have the person killed for testifying against defendant at his preliminary examination. Therefore, in viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe,* 440 Mich 508, 515; 489 NW2d 748 (1992).

Finally, defendant argues that the sentencing court erred in ordering that the sentence imposed for the instant conviction run consecutive to sentences he was serving when he absconded from parole. Defendant abandoned this issue for appellate review by failing to file the transcript from his motion for resentencing with this Court. MCR 7.210(B)(1)(a); *People v Wilson,* 196 Mich App 604, 615; 493 NW2d 471 (1992).

Affirmed.

/s/ Michael R. Smolenski
/s/ Michael J. Kelly
/s/ Roman S. Gribbs