

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HARLON KYSLE WATSON,

Defendant-Appellant.

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UNPUBLISHED

June 20, 1997

No. 195469

Macomb Circuit Court

LC No. 93-627 FH

Before: Gage, P.J., and Reilly and Hoekstra, JJ.

MEMORANDUM.

On this appeal of right, defendant claims that his constitutional right to speedy trial under U.S. Const, Amend VI and Const 1963, art 1, §20 as well as under the Interstate Agreement on Detainers, MCL 780.601; MSA 4.147 to be tried within 180 days of waiving extradition on any untried information after having a detainer lodged against him in another State have been violated. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The simple answer to all defendant's contentions is that his plea of guilty, being unconditional, waived his right to appellate relief on a constitutional claim of violation of his right to speedy trial, *People v Smith*, 438 Mich 715, 719 (per Boyle, Riley and Griffin, JJ.), 736 to 739 (per Brickley, J., and Cavanagh, C.J.); 475 NW2d 333 (1991), and likewise any rights he might otherwise have had under the IAD. *People v Wanty*, 189 Mich App 291; 471 NW2d 922 (1991), *lv den* 439 Mich 890; 478 NW2d 177.

Even if the merits of the issue were before this Court, defendant's rights were not violated. With respect to the constitutional right to speedy trial, with the exception of three adjournments due to the trial judge being involved in another trial, all other adjournments, and there were many, must be laid at the defendant's doorstep. The few and minimal delays attributable to the trial court being involved in other trials are, for purposes of the constitutional right to speedy trial, considered a neutral factor to be assigned minimal weight. *People v Wickham*, 200 Mich App 106, 111; 503 NW2d 701 (1993). There is no delay whatsoever that can be attributed to the prosecution in this case. As the delay attributable to the State is less than 18 months in total, there is no presumption of prejudice and the

burden is on defendant to prove prejudice. However, defendant does not even claim any prejudice to his defense. Meanwhile, in light of the issuance of a bench warrant when defendant fled the jurisdiction, it is obvious that defendant was free on bond for this offense, so he suffered no oppressive pretrial incarceration. The record fails to establish any violation of defendant's constitutional right to speedy trial. *People v Simpson*, 207 Mich App 560, 563-564; 526 NW2d 33 (1994).

With respect to the Interstate Agreement on Detainers, defendant did waive extradition, but there is no evidence that defendant made a formal, written request, which was served upon the prosecutor on an identifiable date, sufficient to invoke his 180-day rights under the IAD. *Fex v Michigan*, 507 US 43; 113 S Ct 1085; 122 L Ed 2d 406 (1993). Additionally, defendant was incarcerated in Louisiana, a State which is not a party to the IAD, and therefore by the terms of the IAD itself defendant had no rights to exercise thereunder. Assuming *arguendo* that the 120-day provision of the IAD would apply once defendant was returned to Michigan, the record reveals that, but for adjournments requested by defendant, his trial commenced within 120 days of his return to Michigan on November 12, 1995. Therefore, defendant's speedy trial rights under the federal and state Constitutions and the IAD have not been violated.

Affirmed.

/s/ Hilda R. Gage  
/s/ Maureen Pulte Reilly  
/s/ Joel P. Hoekstra