

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EDWARD MASON,

Defendant-Appellant.

UNPUBLISHED

July 22, 1997

No. 187079

Macomb Circuit Court

LC No. 92-1647 FH

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

Defendant was placed on probation following his guilty plea to uttering and publishing, MCL 750.249; MSA 18.446. He was subsequently adjudged in violation of his probation based on new offenses and was sentenced to 1 1/2 to 14 years' imprisonment. He now appeals by right. We affirm.

As a threshold matter, at the May 23, 1995, probation violation hearing, defendant admitted being arrested on new charges. Although this is not of itself a violation of probation, *People v Hunter*, 106 Mich App 821; 308 NW2d 694 (1981), defendant's request for credit for time served manifested that defendant was indeed convicted of new offenses. Any new offense is a violation of a statutorily specified condition of probation. MCL 771.4; MSA 28.1134.

Further, defendant's unconditional plea of guilty waived his right to claim a violation of the right to speedy trial, because the rationale for this right is defendant's ability to marshal evidence in his defense; here, defendant's plea of guilty obviates any contention that pertinent facts are in dispute. See *People v Smith*, 438 Mich 715, 719 (per Boyle, Riley, and Griffin, JJ.) 736-739 (per Brickley, J. and Cavanagh, C.J.); 475 NW2d 333 (1991).

In any event, the less than 12-month delay between issuance of the bench warrant and defendant's arraignment on the probation violation charges is not claimed nor shown on this record to have in any way prejudiced his defense. Indeed, the record of convictions of new offenses would be sufficient without more to conclusively establish the charged violation. *Shadbolt v Michigan Dept of Corrections*, 386 Mich 232, 236; 191 NW2d 344 (1971). However, to establish a due process violation defendant must not only show that his defense has been prejudiced, *People v Reddish*, 181

Mich App 625, 627; 450 NW2d 16 (1989), but also deliberate delay by the prosecution in effecting the warrant for the purpose of gaining unfair advantage, tantamount to bad faith conduct. *People v Betancourt*, 120 Mich App 58, 62-63; 327 NW2d 390 (1982). The record here does not even establish negligent conduct by the prosecution.¹

To the extent defendant argues that failure to credit him with time served on the present offense (based on his incarceration for new offenses) deprives him of the benefits of concurrent sentencing, these issues are now moot because defendant has already served the full minimum sentence imposed by the trial court and been within the jurisdiction of the Parole Board prior to release of this opinion. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Affirmed.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Gary R. McDonald

¹ This case does not involve the kind of extraordinary delay which may require application of due process principles without proof of prejudice. See *Doggett v United States*, 506 US 647; 112 S Ct 2686; 120 L Ed 2d 520 (8-1/2 years); *People v Souter*, 450 Mich 1025; 546 NW2d 253 (1996) (12-1/2 years).