STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALLEN JONES-BEY,

Defendant-Appellant.

UNPUBLISHED
July 25, 1997

No. 192110
St. Clair Circuit Court
LC No. 94-002830-FH

Before: Doctoroff, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by jury of larceny from a person, MCL 750.357; MSA 28.589, and conspiracy to commit unarmed robbery, MCL 750.529; MSA 28.798. The trial court, having determined that defendant was a third-felony offender under MCL 769.11; MSA 28.1083, sentenced defendant to two to twenty years in prison on the larceny conviction and two to thirty years in prison on the conspiracy conviction. The court ordered the sentences to run concurrently. We affirm.

Defendant first argues that his conviction should be overturned because his right to a speedy trial was violated. We disagree. The question as to whether a defendant was denied a speedy trial is a mixed question of law and fact. This Court reviews the factual findings for clear error, while the constitutional issue is reviewed de novo. *People v Gilmore*, 222 Mich App 442; ___ NW2d ___ (1997). When, as here, a delay is under eighteen months, the defendant has the burden of establishing prejudice. *People v Daniel*, 207 Mich App 47, 51; 523 NW2d 830 (1994). Here, however, defendant has failed to identify how the delay had a prejudicial effect on his right to a fair trial. Rather, defendant merely argues that some of the delays in bringing his case to trial were not his fault, namely, that the trial court was preoccupied with a murder trial and that some of the delay was attributable to his codefendant. This is an insufficient showing under *Daniel, supra*, p 51.

Next, defendant argues that his conviction should be reversed because his trial was conducted in violation of MCL 780.131(1); MSA 28.969(1), the 180-day rule, which provides:

> Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint.

The 180-day rule commences when either (1) the prosecutor has actual knowledge that the person is incarcerated in a state prison; or (2) the Department of Corrections knows or has reason to know that a criminal charge is pending against a defendant incarcerated in a state prison. MCR 6.004(D). "The 180-day rule does not require trial to be commenced within 180 days, but obliges the prosecution to take good-faith action during the 180-day period and thereafter to proceed to ready the case against the prison inmate for trial." *People v Bell*, 209 Mich App 273, 278; 530 NW2d 167 (1995).

Preliminarily, we note that, contrary to defendant's argument, defendant need not show prejudice to establish a violation of the statute. See *Bell, supra*, p 278. However, defendant's claim that the delay in this case was "entirely attributable to others involved" is incorrect. On April 17, 1994, defendant first asserted a 180-day rule violation. The trial court handled this motion by releasing defendant from custody on a personal recognizance bond pursuant to MCR 6.004(C)(4), which allows a "reasonable period of delay when the defendant is joined for trial with a co-defendant as to whom the time before trial has not run . . . ." Fifteen days after defendant was released on bond, he was reincarcerated for violating his parole and sentenced to serve a twelve-month sentence. The prosecution made a good-faith effort to proceed with this case well within the 180-day deadline; it was prepared to begin trial on August 21, 1995. However, on August 21, 1995, defendant moved for recusal of the trial judge. This resulted in a postponement that exceeded 180 days and accordingly, the delay was attributable to defendant, not others.

Finally, defendant argues that the trial court abused its discretion when it denied his motion to sever because there were a number of prejudicial elements to the case against his codefendant that were not applicable to him. Generally, a defendant does not have a right to a separate trial. *People v Hoffman*, 205 Mich App 1, 19; 518 NW2d 817 (1994). Moreover, "strong policy favors joint trials in the interest of judicial economy." *Id.* As noted by the Supreme Court:

> Severance is mandated under MCR 6.121(C) only when a defendant provides the court with a supporting affidavit, or makes an offer of proof, that clearly, affirmatively, and fully demonstrates that his substantial rights will be prejudiced and that severance is the necessary means of rectifying the potential prejudice. The failure to make this showing in the trial court, absent any significant indication on appeal that the requisite prejudice in fact occurred at trial, will preclude reversal of a joinder decision. [*People v Hana*, 447 Mich 325, 346; 524 NW2d 682 (1994).]

We review a decision as to whether codefendants in a criminal case should be tried separately for an abuse of discretion. *Id.* at 331.

First, defendant argues that he was entitled to severance due to the delays in bringing his case to trial that were attributable to his codefendant. However, as previously noted, these delays did not result in prejudice to any of defendant's substantial rights. Neither the 180-day rule nor defendant's right to a speedy trial were violated in this case.

Second, defendant contends that one witness' statements would have been inadmissible with respect to him. Reversal is not warranted, however, because defendant failed to make an offer of proof before trial that clearly, affirmatively, and fully demonstrated that his substantial rights would be prejudiced by not severing the trial. *Hana, supra,* at 346. Moreover, the witness' statement about what the codefendant told her would have been admissible on alternative grounds under MRE 801(d)(2)(E) as a statement of a coconspirator.

Third, we disagree with defendant's claim that the additional crimes charged against his codefendant, including sexual assault, had a prejudicial effect on defendant's right to a fair trial. We also disagree with the contention that the evidence introduced as to the assault and robbery were irrelevant and confusing as to defendant. Accordingly, these were not grounds for severance. Defendant has cited no authority for the proposition that evidence of a codefendant's additional crimes prejudices a defendant's right to a fair trial. See *People v Sowders,* 164 Mich App 36, 49; 417 NW2d 78 (1987). Moreover, although there was testimony regarding the codefendant's sexual assault of the complainant, there was no evidence presented at trial to suggest that defendant participated in the sexual assault. In this regard, the trial court instructed the jury:

> Allen Jones-Bey and [his codefendant] Eric Bruce Dinkins are both on trial in this case. The fact that they are on trial together is not evidence that they were associated with each other or that either one is guilty.
>
> You should consider each defendant separately. Each is entitled to have his case decided on the evidence and the law that applies to him.
>
> If any evidence is limited to Eric Dinkins, you should not consider it as to Allen Jones-Bey or vice versa.

Fourth, we find no merit in defendant's claim that his right to a fair trial was violated because his codefendant was wearing prison clothes. We note that defendant has effectively abandoned this issue by failing to support his argument with proper citation. *Sowders, supra,* p 49. Moreover, when the trial court addressed this issue below, it noted that it "wasn't sure that [Dinkins] was [wearing] jail clothes." We find no abuse of discretion. *Hana, supra,* p 331.

Finally, in light of the fact that none of defendant's individual arguments are persuasive, his argument that the cumulative effect of all these factors prejudiced his right to a fair trial is also unsound.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin