

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD CHARLES GRAHAM,

Defendant-Appellant.

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UNPUBLISHED

November 18, 1997

No. 195288

Calhoun Circuit Court

LC No. 95-001937-FH

Before: Griffin, P.J. and Wahls and Gribbs, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of cocaine, less than 25 grams, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), possession of a weapon by a felon, MCL 750.224(f); 28.421(6), and possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). The trial court sentenced defendant to consecutive sentences of 18 to 48 months' imprisonment for the possession of cocaine conviction and two years' imprisonment for the felony-firearm conviction. Defendant was also sentenced to concurrent terms of 30 to 180 months' imprisonment for the felon in possession of a weapon conviction and twelve months in jail for the possession of marijuana conviction. Further, each of defendant's terms of incarceration was consecutive to a sentence defendant was presently serving, and defendant was given 497 days' credit for time served. Defendant appeals from his convictions as of right. We affirm.

This case arises out of an incident where defendant's parole officer and the police executed an administrative search without a warrant of defendant's residence and discovered a firearm, cocaine, and marijuana in defendant's possession.

Defendant first argues that the lower courts erred in refusing to suppress the evidence seized from his residence because the evidence was obtained pursuant to a search without a warrant in violation of the Fourth and Fourteenth Amendments to the United States Constitution. We disagree. We review de novo the determination of reasonable suspicion or probable cause to support a search

and seizure without a warrant. *Ornelas v United States*, 517 US \_\_; 116 S Ct 1657, 1663; 134 L Ed 2d 911, 920 (1996).

In *People v Woods*, 211 Mich App 314, 316-319; 535 NW2d 259 (1995), this Court held that administrative searches conducted pursuant to regulations of the Department of Corrections fall within the “special needs” or regulatory exception to the requirement that searches be conducted pursuant to warrants based on probable cause. Defendant contends, however, that *Woods* is inapplicable to the instant case because *Woods* involved a search of the residence of a prisoner who was serving his time in his own home, monitored on an electronic tether, as part of the Community Residential Program. While the facts of *Woods* may be dissimilar to the facts of the instant case, the underpinnings of *Woods* are directly on point.

The panel in *Woods* relied on *Griffin v Wisconsin*, 483 US 868, 873; 107 S Ct 3164; 97 L Ed 2d 709 (1987), where the majority stated that although a search must usually be undertaken only pursuant to a warrant, the Supreme Court has permitted exceptions when special needs make the general warrant and probable cause requirement impracticable. The Court reasoned that “a State’s operation of a probation system . . . presents ‘special needs’ beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements.” *Id.* at 483 US 873-874. The policy underlying this special need exception is that a “warrant requirement would interfere to an appreciable degree with the probation system” in that it would bestow upon a magistrate rather than the probation officer the responsibility for determining how closely a probationer must be supervised. *Id.* at 876. Further, the delay involved in having to first obtain a warrant before executing a search of a probationer would impede a probation officer’s ability to respond quickly to evidence of misconduct. *Id.*

Here, defendant’s parole agent searched defendant’s residence pursuant to Department of Corrections regulation 1988 AACS R 791.335(2), which is materially similar to the Wisconsin regulation approved by the Supreme Court in *Griffin*. *Griffin, supra* at 483 US 870-871. Specifically, 1988 AACS R 791.335(2) permits a parole agent to search a parolee’s person or property without a warrant upon “reasonable grounds that a violation of parole exists.”

In the case at bar, defendant’s parole agent testified that defendant’s landlord informed him that she had received complaints from neighbors that defendant was keeping a firearm in his apartment and that she believed that defendant was under the influence of some drugs. Because both allegations consisted of violations of conditions of defendant’s parole, the information established the reasonable grounds necessary for defendant’s parole agent to execute a search without a warrant of defendant’s residence.

Defendant next argues that because he was previously prosecuted in a parole revocation action by the state, the instant trial violated the Double Jeopardy Clause of the state and federal Constitutions. There is no merit to this claim. A subsequent trial for the same conduct involved in a parole revocation hearing does not violate a defendant’s right against double jeopardy. *People v Marrow*, 210 Mich App 455, 465; 534 NW2d 153 (1995).

Defendant argues that the trial court lost jurisdiction over the case because the prosecutor failed to commence the case against defendant within the 180-day period specified by MCL 780.131; MSA 28.969(1). We disagree. The purpose of the 180-day rule is to dispose of untried charges against prison inmates so that sentences may run concurrently; the purpose does not apply

in a case where a mandatory consecutive sentence is required upon conviction. *People v Connor*, 209 Mich App 419, 429; 531 NW2d 734 (1995); *People v McCullum*, 201 Mich App 463, 465; 507 NW2d 3 (1993). In this case, where MCL 768.7a(2); MSA 28.1030(1)(2), required the trial court to sentence defendant to serve terms of imprisonment consecutive to the sentence for which he was on parole at the time of the instant offenses, the 180-day rule was inapplicable.

Defendant also argues that the trial court erred in not severing the charge of felon in possession of a weapon from the other charges because the underlying felony was another drug offense, thereby prejudicing defendant's ability to get a fair trial with respect to the instant drug offenses. We disagree. The prosecution charged defendant with four possessory offenses arising out of the discovery of a firearm, cocaine, and marijuana in defendant's possession at the time of defendant's arrest. Because the charges against defendant arose out of his simultaneous possession of these items, the four offenses were part of the "same conduct". MCR 6.120(B)(1). Therefore, defendant did not have an absolute right to sever the offense of felon in possession of a weapon from the other offenses.

Nor did the trial court abuse its discretion. This discretionary component of a severance analysis permits a trial court to grant a severance "whenever . . . it is deemed appropriate to promote a fair determination of the defendant's guilt or innocence of each offense." *People v Tobey*, 401 Mich 141, 153; 257 NW2d 537 (1977).; MCR 6.120(C). Relevant factors for considering whether a motion to sever should be granted include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties' readiness for trial. MCR 6.120(C).

Here defendant raised his motion to sever on the day of trial. The trial court properly addressed the potential for prejudice by instructing the prosecutor not to disclose to the jury the nature of the previous felony. In light of the timing of the motion and the trial court's response to the concerns of prejudice, it cannot be said that there was no justification or excuse for its denial of defendant's motion to sever. We find no abuse of discretion.

Defendant next argues that the trial court should have granted a mistrial when a prosecution witness referred to other presentence reports she had prepared on defendant's behalf. A mistrial should be granted only when the incident is so egregious that the prejudicial effect can be removed in no other way. *People v Coles*, 417 Mich 523, 554-555; 339 NW2d 440 (1983), overruled in part on other grounds *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). The witness' limited testimony here did not justify the granting of a mistrial because, although it was slightly irregular, it did not deny defendant a fair and impartial trial. *People v Lumsden*, 168 Mich App 286, 298; 423 NW2d 645 (1988).

Defendant also argues that the trial court abused its discretion in not granting a mistrial following the trial court's instructions to the jury. We disagree. The trial court issued the following instruction respecting the elements of the offense of felon in possession of a weapon: "Second, that the Defendant was convicted of a prior felony, *that being possession and/or delivery of cocaine.*" (Emphasis added.) Defendant contends that following this instruction, the trial court should have granted a mistrial

on the ground that the emphasized portion of the instruction was contrary to an earlier ruling of the trial court.

Even assuming arguendo that the trial court erred in naming the felony in this case, any error was harmless. *People v Wright*, 408 Mich 1, 30; 289 NW2d 1 (1980). The evidence against defendant was overwhelming as to the charges of possession of cocaine and marijuana. The parole agents and police officers involved in defendant's arrest testified that they discovered cocaine and marijuana in defendant's apartment. Defendant was not prejudiced by the trial court's decision to identify for the jury the nature of defendant's previous conviction, and any error was harmless.

Finally, defendant argues that the trial court erred in not directing a verdict in his favor as to the charge of felon in possession of a weapon following the jury verdict. Defendant contends that because the trial court chose to name the previous felony, possession and/or delivery of cocaine, when instructing the jury, the prosecution did not sustain its burden of establishing, beyond a reasonable doubt, that defendant was previously convicted of the named felony because no evidence was admitted at trial regarding a previous "cocaine" conviction. Rather, defendant argues that the prosecution established only that defendant had been convicted of a felony. We disagree.

In order to convict defendant of felon in possession of a weapon, the prosecution must establish that defendant had been convicted of a felony, within certain time restrictions, at the time he was found in possession of a firearm. MCL 750.224f(1); MSA 28.421(6)(1). The statute does not require that the prosecution prove that defendant was convicted of any specific felony. During trial, a probation officer testified that defendant was sentenced to 96 to 240 months' imprisonment in 1991 for a felony conviction. The prosecution satisfied its burden when the prosecutor presented evidence that, following his earlier conviction, defendant was in possession of a weapon.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Myron H. Wahls  
/s/ Roman S. Gribbs