

Court of Appeals, State of Michigan

ORDER

People of MI v Charles William Mercer Jr

Docket No. 281006

LC No. 07-000118-FC

Stephen L. Borrello
Presiding Judge

Peter D. O'Connell

Bill Schuette
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The motion for peremptory reversal pursuant to MCR 7.211(C)(4) is GRANTED on the authority of *United States v Marion*, 404 US 307, 324; 92 S Ct 455; 30 L ED 2d 468 (1971) and *People v Creer*, 242 Mich App 158, 166; 618 NW2d 91 (2000). Before dismissal may be granted because of prearrest delay there must be actual and substantial prejudice to the defendant's right to a fair trial and an intent by the prosecution to gain a tactical advantage. Where there was no evidence that the prosecutor intentionally delayed these proceedings in order to gain a tactical advantage, the circuit court erred in granting the motion to dismiss. The cause is REMANDED for further proceedings consistent with this order. We do not retain jurisdiction. This order is given immediate effect pursuant to MCR 7.215(F)(2).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

DEC 18 2007

Date

Sandra Schultz Mengel
Chief Clerk