

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDERICK FITZGERALD JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

May 4, 1999

No. 207496

Macomb Circuit Court

LC No. 97-001120 FH

Before: Kelly, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

On September 10, 1997, defendant pleaded no contest to larceny by false pretenses over \$100, MCL 750.218; MSA 28.415, while preserving his “180-day rule” violation claim for appeal.<sup>1</sup> The trial court then sentenced defendant to 3½ to 10 years’ imprisonment. Defendant appeals by right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was arrested on the Macomb County charge in this case on August 14, 1996. At that time, defendant was incarcerated in the Mecosta County Jail, awaiting sentencing on felony charges in that county to which defendant had pleaded guilty on that same date. There was also another preexisting charge pending against defendant in Oakland County at that time. On October 11, 1996, defendant was sentenced on the Mecosta County charges, and he was ultimately sentenced in the Oakland County case on December 26, 1996, having pleaded guilty in that case approximately three months earlier. For purposes of the 180-day rule, none of this time consumed by the disposition of defendant’s preexisting charges is counted against the 180-day period in this case. See *People v Hill*, 402 Mich 272, 282-283; 262 NW2d 641 (1978).<sup>2</sup>

According to the prosecution, the subsequent proceedings in this case in 39<sup>th</sup> District Court were adjourned on February 19, 1997, in order for defendant to obtain retained counsel, and again on March 5, 1997, while defendant next sought a court-appointed attorney. In response, defendant contends that he did not have counsel at that time because the district court arraignment did not occur until February 26, 1997. In any event, at least one two-week adjournment of the preliminary examination, between March 19 and April 2, 1997, is clearly chargeable to defendant, as are all trial

adjournments in circuit court on and after July 10, 1997. This leaves at most only 212 days of delay that may be charged to the prosecution.

The 180-day rule does not require that trial commence within 180 days, so long as the prosecution takes good faith action within that time to ready the case for trial. If a defendant's preliminary examination begins within the 180-day limitation period and there is no showing of lack of good faith on the part of the prosecution in proceeding promptly towards trial afterwards, reversal is not required. *People v Finely*, 177 Mich App 215, 219-220; 441 NW2d 774 (1989). Here, defendant's preliminary examination was scheduled and ultimately waived by defendant well within the 180-day limitation period running from October 11, 1996, when defendant was sentenced on the Mecosta County charges, and we find no indication from the record that the prosecution did not make a good faith effort to proceed promptly to trial.

Affirmed.

/s/ Michael J. Kelly

/s/ Janet T. Neff

/s/ Michael R. Smolenski

<sup>1</sup> Because the plea record indicates that defendant only preserved his "180-day rule" claim for appeal, we conclude that all other speedy trial right issues have been waived by defendant's no contest plea. See *People v Wynn*, 197 Mich App 509, 510; 496 NW2d 799 (1992).

<sup>2</sup> We reject defendant's contention that that the 180-day period began to run on August 14, 1996, when he pleaded guilty to the earlier charges in Mecosta County and was detained in the county jail awaiting sentencing on those charges, because defendant was not yet subject to any actual, existing prison sentence at that time. See, e.g., *People v Gambrell*, 157 Mich App 253, 258; 403 NW2d 535 (1987) (parole violator being detained in local facility is not "awaiting incarceration in a state prison" unless and until parole is actually revoked.)