

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JAMES WIGGINS,

Defendant-Appellee.

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UNPUBLISHED

March 30, 1999

No. 210157

Oakland Circuit Court

LC No. 96-143980 FH

Before: O’Connell, P.J., and Jansen and Collins, JJ.

PER CURIAM.

The people appeal as of right from the trial court’s order granting defendant’s motion to dismiss, on speedy trial grounds, charges of carrying a concealed weapon, MCL 750.227; MSA 28.424, operating a motor vehicle while driver’s license suspended or revoked, second offense, MCL 257.904(1)(c); MSA 9.2604(1)(c),<sup>1</sup> and furnishing false identification to a police officer, MCL 257.324; MSA 9.2024. We reverse and remand for reinstatement of the charges. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The analysis of whether an individual has been denied a speedy trial involves the weighing of four factors: (1) the length of the delay; (2) the reasons for the delay; (3) whether the defendant asserted the right to a speedy trial; and (4) the extent of any prejudice to the defendant resulting from the delay. *Barker v Wingo*, 407 US 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972); *People v Hill*, 402 Mich 272, 283; 262 NW2d 641 (1978); *People v Gilmore*, 222 Mich App 442, 459; 564 NW2d 158 (1997). The issue presents a mixed question of fact and law. On appeal, the trial court’s factual findings are reviewed for clear error, but the application of constitutional law is reviewed de novo. *Gilmore, supra*.

Here, we agree with the trial court that only fifteen months of the pretrial delay, running from the time the court was notified of defendant’s incarceration on an unrelated charge in Nevada, should be weighed against the prosecution. We also agree with the trial court that this delay, due in at least some measure to difficulties plaintiff encountered in attempting to regain custody of defendant for trial in Michigan, does not weigh heavily against the prosecution. The trial court correctly noted that defendant

asserted his speedy trial, but the court apparently failed to take into account the belatedness of that request, which was made more than fourteen months after defendant's arrest in this case and approximately seven months after his extradition to Nevada.

On the issue of resulting prejudice, the trial court clearly erred in finding that defendant is prejudiced because of the mere possibility that he might not receive credit against the sentence in this case for the time he served in Nevada. It is true that the availability of sentencing credit for time served out-of-state on an unrelated offense is left to the discretion of the sentencing court. See *People v Adkins*, 433 Mich 732, 751 n 10; 449 NW2d 400 (1989). However, it cannot be determined until actual sentencing whether defendant will receive such sentence credit or not. If defendant were in fact to receive a reduction of his minimum sentences in this case based upon the time he previously served in Nevada, there would be no resulting prejudice to defendant at all in this regard. See *People v Garvin*, 159 Mich App 38, 46-47; 406 NW2d 469 (1987). Accordingly, the trial court's finding of prejudice is premature.

Given the length of the pretrial delay attributable to the prosecution, the reasons for that delay, the defendant's belated assertion of his right to a speedy trial, and the absence of any actual, as opposed to merely potential, prejudice to defendant, defendant's motion should have been denied, without prejudice to defendant renewing his request for relief on speedy trial grounds at the conclusion of trial and sentencing.

Reversed and remanded for reinstatement of the charges against defendant. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins

<sup>1</sup> We note that this provision was redesignated MCL 257.904(1)(b); MSA 9.2604(1)(b), pursuant to 1994 PA 450.