

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellant,

UNPUBLISHED  
November 27, 2018

v

RAYMOND EDWARD-LEE POLZIN,  
  
Defendant-Appellee.

No. 341324  
Muskegon Circuit Court  
LC No. 17-003402-FH

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Before: BOONSTRA, P.J., and O’CONNELL and TUKEL, JJ.

PER CURIAM.

The prosecution appeals by right the trial court’s order dismissing the charges of second-degree criminal sexual conduct, MCL 750.520c, as a second-offense habitual offender, MCL 769.10, brought against defendant, Raymond Polzin. We reverse and remand.

The prosecution initially charged Polzin with second-degree criminal sexual conduct, MCL 750.520c, as a second-offense habitual offender, MCL 769.10, in April 2005. He was arrested on the same day that he was charged. In August 2005, an order of *nolle prosequi* was entered, and the trial court dismissed the charges, noting that they would be reissued. The prosecution refiled the charges three weeks later, in September 2005. Around the same time, Polzin moved to Nevada. Nearly 12 years later, in April 2017, Polzin was arrested in Nevada and extradited back to Michigan. Polzin moved to dismiss the charges, arguing that his right to a speedy trial was violated. The trial court agreed. The prosecution now appeals, arguing that the trial court erred by finding a speedy trial violation and dismissing the charges. We agree.

“Whether a defendant was denied his constitutional right to a speedy trial involves a mixed question of fact and law.” *People v Gilmore*, 222 Mich App 442, 459; 564 NW2d 158 (1997). We review constitutional questions de novo and the trial court’s findings of fact for clear error. *Id.* A finding is clearly erroneous when we are left with a definite and firm conviction that a mistake has been made. *People v Dillon*, 296 Mich App 506, 508; 822 NW2d 611 (2012).

The United States Constitution and the Michigan Constitution both guarantee a criminal defendant the right to a speedy trial. US Const, Am VI; Const 1963, art 1, § 20. Violation of this right requires “dismissal of the charge with prejudice.” MCR 6.004(A). To determine whether a defendant has been denied the right to a speedy trial, this Court applies the four-part balancing test announced in *Barker v Wingo*, 407 US 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972): “(1) the length of delay, (2) the reason for delay, (3) the defendant’s assertion of the

right, and (4) the prejudice to the defendant.” *People v Williams*, 475 Mich 245, 261-262; 716 NW2d 208 (2006). Generally, “[t]he time for judging whether the right to a speedy trial has been violated runs from the date of the defendant’s arrest.” *Id.* at 261, citing *United States v Marion*, 404 US 307, 312; 92 S Ct 455; 30 L Ed 2d 468 (1971).<sup>1</sup> If the delay is less than 18 months, the defendant must demonstrate prejudice. *People v Cain*, 238 Mich App 95, 112; 605 NW2d 28 (1999). If the delay is more than 18 months, prejudice is presumed, and the prosecution bears the burden of rebutting that presumption. *Id.*

In this case, the parties dispute whether the right to a speedy trial attached when Polzin was first arrested in April 2005 on the charges that were dismissed or when Polzin was arrested in 2017 after the refile of the same charges. The resolution of this dispute turns on the *nolle prosequi* procedure in Michigan. The trial court relied on *Klopfer v North Carolina*, 386 US 213; 87 S Ct 988; 18 L Ed 2d 1 (1967), to find that the relevant time period began with the April 2005 arrest. The trial court misapplied *Klopfer*, however, because North Carolina’s *nolle prosequi* procedure discussed in *Klopfer* is legally distinct from the procedure in Michigan. North Carolina allowed the prosecution to suspend charges indefinitely without discharging the indictment, which tolled the statute of limitations and permitted the prosecution to reinstate the charges at any time. *Klopfer*, 386 US at 214. Accordingly, the reinstatement of the charges was simply a continuation of the initial proceeding. *Id.* In Michigan, however, an indefinite adjournment violates a defendant’s right to a speedy trial. *Hicks v Judge of Recorder’s Court of Detroit*, 236 Mich 689, 691; 211 NW2d 35 (1926). In Michigan, after an order of *nolle prosequi* has been entered, the prosecution must “obtain a new indictment and begin proceedings anew if [it] wished to reinstate the original charge.” *People v Curtis*, 389 Mich 698, 706; 209 NW2d 243 (1973). Once an order of *nolle prosequi* has been entered, the prosecution “may not merely seek to reinstate a previous indictment or conviction.” *People v Ostafin*, 112 Mich App 712, 716; 317 NW2d 235 (1982). This procedural distinction shows that this case is more similar to *United States v MacDonald*, 456 US 1; 102 S Ct 1497; 71 L Ed 2d 696 (1982). In *MacDonald*, 456 US at 6-10, the time between the dismissal of the charges in a military proceeding and a subsequent indictment on those same charges in a civilian court did not constitute a delay implicating the defendant’s right to a speedy trial. In this case, the trial court incorrectly concluded that the reissued charges were a continuation of the initial charges that were dismissed. As a result, Polzin’s right to a speedy trial attached when he was arrested in 2017 for the refiled charges.

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<sup>1</sup> The United States Supreme Court in *Marion* more fully explained that the right to a speedy trial attaches at “either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge,” whichever occurs first. *Marion*, 404 US at 320, 325. But in Michigan, because an arrest will precede a preliminary examination, which in turn almost invariably precedes the filing of an information, see MCL 767.42(1); MCR 6.112(B) (providing that a preliminary examination must precede the filing of an information “unless the defendant is a fugitive from justice”), the triggering event for speedy trial purposes almost always will be a defendant’s arrest. Here, Polzin’s April 2017 arrest preceded the July 2017 preliminary examination and the filing of the information, so the arrest is the triggering event.

Polzin was arrested for the charged offenses in April 2017. He moved to dismiss the charges in September 2017, approximately five months later. “A delay of six months is necessary to trigger further investigation when a defendant raises a speedy trial issue.” *People v Daniel*, 207 Mich App 47, 51; 523 NW2d 830 (1994). Accordingly, we need not inquire further into whether Polzin demonstrated prejudice.

We hold that Polzin’s right to a speedy trial was not violated. Accordingly, we reverse the trial court’s decision dismissing the charges against Polzin, and we remand this case for further proceedings. We do not retain jurisdiction.

/s/ Mark T. Boonstra  
/s/ Peter D. O’Connell  
/s/ Jonathan Tukel