STATE OF MICHIGAN
IN THE SUPREME COURT

THE PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellant,

v

Supreme Court
No. 146872

THOMAS CLIFFORD WHITE,
Defendant-Appellee.

Third Circuit Court No. 03-11966
Court of Appeals No. 308275

146872

PLAINTIFF-APPELLANT'S ANSWER OPPOSING DEFENDANT-APPELLEE'S APPLICATION FOR LEAVE TO APPEAL

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The People of the State of Michigan, through Kym L. Worthy, Prosecuting Attorney, County of Wayne, Timothy A. Baughman, Chief of Research, Training, and Appeals, and Madonna Georges Blanchard, Assistant Prosecuting Attorney, ask this Court to deny defendant's application for leave to appeal.

1. Defendant's application relies on the same arguments he made in the Court of Appeals.

2. The People's brief on appeal in the Court of Appeals adequately addresses these issues, and is incorporated in this answer. See Attachment A.

3. The Court of Appeals did not clearly err in rejecting defendant's arguments. MCR 7.302(B)(5).

4. Defendant's application does not demonstrate any of the other grounds for granting leave to appeal. MCR 7.302(B)(1)-(3).

5. To the extent defendant raises issues in his application that he did not raise in the Court of Appeals, review is foreclosed since there is no "decision by the Court of Appeals" to review. MCR 7.301(A)(2); MCR 7.302(B)(5). See also this Court's order denying leave in *People v Holloway*, 35 Mich App 420; lv den 387 Mich 772 (1972): "[A]n appellant may not raise in this Court an issue not presented to the Court of Appeals."

6. Contrary to defendant's assertions in his Application on page 6, the People emphasize the fact that the People did not withhold information from defendant. As the People noted in the Brief on Appeal, the People did not have the letter sent from MDOC on April 12, 2005, when defendant pled guilty. The People obtained the April 12, 2005, letter after submitting a request to the MDOC, after defendant filed his motion to withdraw his guilty plea . This was done by the People although defendant had the burden to establish such proof. See *People v Holt*, 478 Mich 851, 851; 731 NW2d 93 (2007). A defendant has the burden to establish that the "Department of Corrections caused to be delivered by certified mail to the prosecuting attorney the written notice, request, and statement as required by MCL 780.131(1)."

7. In sum, defendant's application raises no issues worthy of this Court's review.

Relief

WHEREFORE, Defendant's application for leave to appeal should be denied.

Respectfully submitted,

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Dated: April 1, 2013

STATE OF MICHIGAN
IN THE SUPREME COURT

THE PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellant,

v

Supreme Court
No. 146872

THOMAS CLIFFORD WHITE,
Defendant-Appellee.

Third Circuit Court No. 03-11966
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ATTACHMENT A

STATE OF MICHIGAN
IN THE COURT OF APPEALS

THE PEOPLE OF STATE OF MICHIGAN,

Plaintiff-Appellant,

v

Court of Appeals No. 308275

THOMAS CLIFFORD WHITE

Defendant-Appellee.

Third Circuit Court No. 03-011966

PLAINTIFF-APPELLANT'S BRIEF ON APPEAL ORAL ARGUMENT REQUESTED

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Statement of Jurisdiction

The People appeal as of right from Honorable Linda V. Parker, Judge of the Third Circuit Court's order dated January 11, 2012, setting aside defendant's plea, vacating defendant's sentence, and dismissing the charges against defendant.[1] The Court of Appeals has jurisdiction over this appeal pursuant to MCR 7.203.

[1] Appendix B, Order.

Statement of Questions Presented

I.

Violation of the 180-day rule is a matter of personal jurisdiction and is waived when a defendant pleads guilty unconditionally. Defendant pleaded guilty unconditionally and was sentenced. Did the trial court abused its discretion when it vacated defendant's guilty plea?

The trial court answered: "No."

The People answer: "Yes."

Defendant will answer: "No."

II.

To trigger the 180-day rule the notice must strictly comply with the statutory requirements. The notice sent by the MDOC was not delivered by certified mail and did not properly identify defendant. Did the trial court abuse its discretion when it found that the invalid notice triggered the 180 day-rule?

The trial court answered: "No."

The People answer: "Yes."

Defendant will answer: "No."

Statement of Facts

On February 9, 2011, defendant, Thomas Clifford White, pleaded guilty[2] to felony-firearm.[3] In exchange, the People agreed to dismiss the charges of carrying a concealed weapon[4] and felon in possession of a firearm,[5] withdraw the notice to enhance defendant as a fourth habitual offender, and agreed to enter into a sentencing agreement, which would give defendant credit for seven years.[6] Previously, on September 5, 2003, defendant was arraigned on the charges of felon in possession,[7] felony-firearm,[8] and carrying a concealed weapon.[9] December 8, 2004, was the date scheduled for defendant's jury trial, defendant failed to appear, and defendant's bond was forfeited.[10]

The trial court addressed the issue of the 180-day rule on January 28, 2011, before defendant pleaded guilty. The trial court held that the People would have "needed to have received a certified letter from the Michigan Department of Corrections."[11] The trial court went on to state that "that's

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[2] Transcripts are cited throughout this Brief in the following form: Month/date of proceeding, page number. 2/9, 5-9.

[3] MCL 750.227f.

[4] MCL 750.227.

[5] MCL 750.224f.

[6] 2/9, 3-4.

[7] MCL 750.224f.

[8] MCL 750.227f.

[9] MCL 750.227.

[10] Appendix A, Register of Actions.

[11] 1/28/11, 6.

a requirement that is created under the law pursuant to the Michigan statute and then we've got case law. There was an actual case where that requirement was interpreted and that was under People versus Williams, 475 Mich. 245, which is a 2006 case."[12] The trial court also stated that "the bottom line is the MDOC is the one that's suppose to send a certified letter to the Prosecutor's Office."[13] The trial court sentenced defendant on April 14, 2011, in accordance with the plea agreement, for his guilty plea to felony-firearm, to a mandatory ten year sentence, with credit for seven years for the time defendant spent during his previous incarceration in Oakland County.

Defendant filed a motion to withdraw his guilty plea and claimed that the 180-day rule was violated, but failed to provide any proof of any correspondence sent to the Prosecutor's Office with his motion.[14] Defendant argued that the Michigan Department of Corrections (MDOC) acted with a lack of due diligence for their alleged failure to "call this outstanding case to the People's attention."[15] On December 6, 2011, the People consulted with the People's extradition unit to determine what correspondence was received from the MDOC in relationship to defendant. There was only one letter on file, which was dated January 19, 2011.[16] Subsequently, the People contacted MDOC and requested all correspondence, in relationship to defendant that was sent to the Prosecutor's Office since defendant failed to appear on December 8, 2004. MDOC returned two

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[12] 1/28/11, 6.

[13] 1/28/11, 10.

[14] Appendix K, Defendant's Motion to Dismiss.

[15] Appendix K, Defendant's Motion to Dismiss, 2.

[16] Appendix E, January 19, 2011, MDOC Correspondence.

letters sent to the Prosecutor's office, one dated April 12, 2005,[17] apparently *not* sent by certified mail and one dated January 19, 2011, apparently sent by certified mail.[18]

Defendant is listed as Thomas Clifford White, date of birth January 9, 1959,[19] in the Register of Actions and the CRIM system.[20] The letters sent by MDOC referred to inmate Thomas White, date of birth January 9, 1957.[21] Upon receipt of the April 12, 2005, letter the Prosecutor's Office responded and stated that there are no pending matters against the inmate, with that name and that date of birth.[22] Upon receipt of the January 19, 2011, letter the Prosecutor's Office responded and stated that there are "no pending cases against an individual with [the] name of Thomas White and the birth date of 01/09/1957, which you have provided."[23]

On January 4, 2012, the date defendant's motion was heard, the People noted that while the burden rests on defendant, the People inquired into all correspondence between MDOC and the People in relationship to defendant.[24] The People argued that the 180-day rule was not violated because the April 12, 2005, letter from MDOC did not conform to the statute and did not place the

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[17] Appendix C, April 12, 2005, MDOC Correspondence.

[18] Appendix E, January 19, 2011, MDOC Correspondence.

[19] Appendix A, Register of Actions. Appendix L, CRIM Case Status.

[20] Computerized Docket System used prior to Odyssey.

[21] See Appendix E, January 19, 2011, MDOC Correspondence; Appendix C, April 12, 2005, MDOC Correspondence.

[22] Appendix D, May 17, 2005, Letter to MDOC from Prosecutor's Office.

[23] Appendix F, February 3, 2011, Letter to MDOC from Prosecutor's Office.

[24] 1/4, 11.

People on notice that defendant was in custody. Defendant did not introduce any information that would indicate that the April 12, 2005, letter was delivered by certified mail.[25]

On January 11, 2012, the trial court held that there was a violation of the 180-day rule and had she [Judge Parker] known that the rule had been "violated" she would not have accepted defendant's guilty plea.[26] The trial court stated that "an inmate is required to be brought to trial 180 days after the Michigan Department of Corrections delivers notice to the prosecuting attorney that charges against an inmate that appears to be pending."[27] Moreover, the trial court stated that "[t]his was, in fact, done by a letter dated April 12th, 2005. Inquiry was sent to the prosecuting attorneys office from the Michigan Department of Corrections."[28] The trial court determined that "the requirement that the notification provided by MDOC be certified was effectively waived by the People and it was waived when they answered the letter."[29] The trial court also stated that "the Court believes that a search of the name of defendant would have yielded discovery of an individual by that name but with a birth date that was incorrect- - well, the birth year that was incorrect. This Court finds that the effort on the part of the People really was not comprehensive enough, it was not responsive enough."[30]

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[25] 1/4, 3-18.

[26] 1/11, 6.

[27] 1/11, 3.

[28] 1/11, 3.

[29] 1/11, 4.

[30] 1/11, 5.

The People disagree, and this appeal ensues to challenge the trial court's decision to set aside defendant's plea, vacate defendant's sentence, and to dismiss all charges.

Argument

I.

Violation of the 180-day rule is a matter of personal jurisdiction and is waived when a defendant pleads guilty unconditionally. Defendant pleaded guilty unconditionally and was sentenced. The trial court abused its discretion when it vacated defendant's guilty plea.

Standard of Review

This case involves the interpretation of MCL 780.131, the 180-day rule. This Court reviews issues of statutory interpretation de novo.[31] Moreover, this Court reviews a trial court's factual findings for clear error.[32] The decision to grant a defendant's motion to withdraw a unconditional guilty plea rests within the discretion of the trial court.[33] This Court reviews a trial court's decision to grant a defendant's motion to withdraw his guilty plea for an abuse of discretion.[34]

Discussion

On February 9, 2011, defendant pled guilty knowingly, voluntarily, and understandingly.[35] Defendant entered into a valid unconditional guilty plea and therefore waived any claims of error

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[31] *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006) (citing *People v Stewart*, 472 Mich 624, 631; 698 NW2d 340 (2005)).

[32] *Williams, supra* at 250 (citing MCR 2.613(c); *People v Knight*, 473 Mich 324, 338; 701 NW2d 715 (2005)).

[33] *People v Haynes,* 221 Mich App 551, 558; 562 NW2d 241 (1997) (citing *People v Eloby (After Remand)*, 215 Mich App 472, 475; 547 NW2d 48 (1996)).

[34] *People v Boatman*, 273 Mich App 405, 406; 730 NW2d 251 (2006).

[35] See Appendix K, Defendant's Motion to Dismiss. Defendant's motion did not contest the validity of his guilty plea.

relating to the 180-day rule. The trial court abused its discretion when it granted defendant's motion to withdraw his guilty plea.

By entering into an unconditional guilty plea a defendant waives all claims that concern factual guilt and the prosecution's ability to prove its case, including any possible defenses.[36] Excluded from this general rule are the defenses that would preclude the state from obtaining a valid conviction against a defendant.[37] "Where the defense or right asserted by [a] defendant relates solely to the capacity of the state to prove [a] defendant's factual guilt, it is subsumed by [a] defendant's guilty plea."[38] All non subject matter jurisdictional defects are waived by a unconditional guilty plea.[39] However, "rights and defenses which reach beyond the factual determination of [a] defendant's guilt and implicate the very authority of the state to bring a defendant to trial are preserved."[40] Subject matter jurisdictional defects and cases where the state has no legitimate interest in securing a conviction are preserved.[41]

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[36] *People v Lannom,* 441 Mich 490, 493; 490 NW2d 396 (1992). See *People v Crall,* 444 Mich 463; 510 NW2d 182 (1993).

[37] *Lannom, supra* at 493.

[38] *Lannom, supra* at 493 (citing *People v New*, 427 Mich 482, 491; 398 NW2d 358 (1986)).

[39] *People v Lown,* 488 Mich 242, 268; 794 NW2d 9 (2011). See *New, supra* at 488 (citation omitted).

[40] *New, supra* at 492 (citation omitted).

[41] *New, supra* at 489.

A violation of the 180-day rule is a personal jurisdiction defect, waived by an unconditional guilty plea.[42] The 180-day rule under MCL 780.131states the following:

> (1) Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint. The request shall be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. The written notice and statement shall be delivered by certified mail.[43]

The remedy for a violation of the 180-day rule is set forth in, MCL 780.133, and states the following:

> In the event that, within the time limitation set forth in section 1 of this act, action is not commenced on the matter for which request for disposition was made, no court of this state shall any longer have jurisdiction thereof, nor shall the untried warrant, indictment, information or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.[44]

The Michigan Supreme Court recently held in *People v Lown*[45] that a party may waive violation of the 180-day rule. In *Lown* the defendant argued that violation of the 180-day rule deprived the courts of subject matter jurisdiction. The Court held that subject matter jurisdiction

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[42] See *People v Bulger*, 462 Mich 495, 517 n 7; 614 NW2d 103 (2000), rev'd on other grounds in *Halbert v Michigan*, 545 US 605; 125 S Ct 2582; 162 L Ed 2d 552 (2005). (By pleading guilty or nolo contendere a defendant waives claims of violation of the statutory 180-day rule).

[43] MCL 780.131.

[44] MCL 780.133.

[45] *Lown, supra,* 488 Mich 242.

"'concerns a court's abstract power to try a case of the kind or character of the one pending, and is not dependent on the particular facts of the case,'" and is not subject to waiver.[46] However, a party may stipulate to, waive or implicitly consent to the court's jurisdiction over a particular person, which is personal jurisdiction.[47] The Court held that "the jurisdictional aspect of the 180-day rule, MCL 780.133, requires dismissal of a particular defendant in a particular case when the rule is violated, however, the rule governs personal jurisdiction and thus is waivable."[48] The Court stated that "Justice Boyle reached this very result following a well-reasoned analysis in her concurring opinion in *People v Smith,*[49] when she concluded that a violation of the 180-day rule is waived by an unconditional guilty plea."[50]

In *People v Irwin*, the Court of Appeals held that the defendant's unconditional plea of guilty waived review of any claim that constitutional or statutory speedy trial rights were denied, including whether the 180-day speedy trial rule was violated.[51] Similarly in *People v Regains*, Justice Corrigan in a concurring opinion stated that under current law "speedy trial issues no longer implicate the state's authority to bring a defendant to trial," thereby waiving the issue upon entering an unconditional guilty plea.[52]

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[46] *Lown, supra* at 268 (citation omitted).

[47] *Lown, supra* at 268 (citation omitted).

[48] *Lown, supra* at 268-269.

[49] *People v Smith*, 438 Mich 715; 475 NW2d 333 (1990).

[50] *Lown, supra* at 269 (citation omitted).

[51] *People v Irwin,* 192 Mich App 216, 217; 480 NW2d 611 (1991).

[52] *People v Regains,* 477 Mich 1038, 1039; 728 NW2d 68 (2007) (Corrigan Concurring).

Similarly, the Court of Appeals has held that the statute of limitations defense in a criminal case is a nonjurisdictional waivable affirmative defense.[53] The Michigan Courts have held that the purpose of the statute of limitations "relates to determining a defendant's factual guilt."[54] The Court of Appeals compared the statute of limitations to the defendant's right to a speedy trial, stating that both are clearly related to determining the factual guilt of a defendant.[55]

Defendant undisputedly entered into a valid unconditional guilty plea. Defendant claimed that there was a violation of the 180-day rule. Defendant waived all claims of error in relationship to any alleged violation of the 180-day rule when he pled guilty unconditionally.[56] As found in *Lown, Irwin,* and *Smith*, a violation of the 180-day rule only affects personal jurisdiction and therefore is waivable. Likewise, defendant's claim of error of the 180-day rule affects only the trial court's personal jurisdiction, and not the state's ability to obtain a valid conviction. Accordingly, the trial court abused its discretion when it held that it was "divested of jurisdiction of this matter,"[57] as the trial court still had subject-matter jurisdiction over defendant and defendant waived any claims regarding personal jurisdiction. Furthermore, the trial court abused its discretion when it held that "had I had the information at the time I accepted Mr. White's plea I would have never taken the

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[53] *People v Burns,* 250 Mich App 436, 439-440; 647 NW2d 515 (2002).

[54] *Burns, supra* at 440 (citation omitted).

[55] *People v Allen*, 192 Mich App 592, 602; 481 NW2d 800 (1992).

[56] This is true even though defendant raised the issue in a motion before he entered his guilty plea. See *New, supra* at 485 (The defendant could not raise as error on appeal the denial of a motion to suppress evidence or the denial of a motion to quash the information, because by pleading guilty the defendant waived the right to raise the issues on appeal.)

[57] 1/11, 6.

plea,"[58] as defendant had the burden to provide the trial court with the information it sought and failed to do so.[59] Moreover, the trial court did have an opportunity to address the 180-day rule prior to accepting defendant's guilty plea. On January 28, 2011, the trial court held that the requirements of the statute were not met, finding that the People did not receive a "certified letter from the Michigan Department of Corrections giving notice of the place of your [defendant's] imprisonment and requesting final disposition of the pending warrant."[60] Therefore, the trial court abused its discretion when it vacated defendant's unconditional guilty plea.

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[58] 1/11, 6.

[59] *People v Holt*, 478 Mich 851, 851; 731 NW2d 93 (2007). A defendant has the burden to establish that the "Department of Corrections caused to be delivered by certified mail to the prosecuting attorney the written notice, request, and statement as required by MCL 780.131(1)."

[60] 1/28/11, 6.

II.

To trigger the 180-day rule the notice must strictly comply with the statutory requirements. The notice sent by the MDOC was not delivered by certified mail and did not properly identify defendant. The trial court abused its discretion when it found that the invalid notice triggered the 180 day-rule.

Standard of Review

This case involves the interpretation of MCL 780.131. This Court reviews issues of statutory interpretation de novo.[61] The decision to grant a defendant's motion to withdraw a unconditional guilty plea rests within the discretion of the trial court.[62] This Court reviews a trial court's decision to grant a defendant's motion to withdraw his guilty plea for a abuse of discretion.[63]

Discussion

The trial court abused its discretion because it erroneously found error in its acceptance of defendant's unconditional guilty plea. There is no 180-day rule violation because the rule was not triggered by the MDOC's deficient notice. Under the plain language of the statute, the 180-day rule requires that the MDOC provide notice of the inmate being held and that such notice be delivered by certified mail.

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[61] *Williams, supra* at 250 (citing *Stewart, supra* at 631).

[62] *Haynes, supra* at 558 (citing *Eloby (After Remand), supra* at 475).

[63] *Boatman, supra* at 406.

A. Under MCL 780.131, the 180-day rule is triggered when the notice and statement sent by the MDOC complies with all of the requirements of the statute.

The trial court erroneously held that there was a violation of the 180-day rule although the notice and statement sent by MDOC did not comply with the statutory requirements. To trigger the 180-day rule the MDOC must send written notice and a request for final disposition to the prosecution in the exact manner provided for within the statute.[64] A defendant has the burden to establish that the "Department of Corrections caused to be delivered by certified mail to the prosecuting attorney the written notice, request, and statement as required by MCL 780.131(1)."[65]

When interpreting a statute this Court's goal is to give effect to the intent of the Legislature by reviewing the plain language of the statute.[66] "If the language is clear, no further construction is necessary or allowed to expand what the Legislature clearly intended to cover."[67] This Court presumes that "the Legislature intended the meaning clearly expressed," such that no further "construction is required or permitted, and the statute must be enforced as written."[68] A notice sent by the MDOC must comply with the requirements of MCL 780.131 to trigger the 180-day rule.[69]

The statute at issue, MCL 780.131, states the following:

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[64] *Williams, supra* at 254-255 (held not to extend the language of the statute beyond its literal meaning).

[65] *Holt, supra* at 851.

[66] *People v Perkins*, 473 Mich 626, 630; 703 NW2d 448 (2005) (citing *People v Koonce*, 466 Mich 515, 518; 648 NW2d 153 (2002)).

[67] *Koonce, supra* at 518 (citing *People v Morey,* 461 Mich 325, 329-330; 603 NW2d 250 (1999)).

[68] *Williams, supra* at 250 (citing *Morey, supra* at 330).

[69] *Williams, supra* at 255-256.

> (1) Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending *written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint. The request shall* be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. *The written notice and statement shall be delivered by certified mail.*[70]

The plain language of the statute is clear, the written notice *"shall"* be delivered by certified mail. The term "shall" in a statute generally indicates a mandatory, rather than permissive duty.[71] Therefore, a notice not delivered by certified mail violates the mandatory action required under the statute and is accordingly not sufficient notice under the statute. The statute expressly sets forth the content requirements of the written notice: 1) place of imprisonment of the inmate and 2) request for final disposition of the warrant, indictment, information, or complaint.[72] The statute also expressly sets forth the content requirements of the statement that *shall* accompany the notice: 1) term of commitment under which the prisoner is being held, 2) the time already served, 3) the time remaining to be served on the sentence, 4) the amount of good time or disciplinary credits earned, 5) the time of parole eligibly of the prisoner, and 6) any decisions of the parole board relating to the

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[70] MCL 780.131 (*emphasis added*).

[71] *People v Kern*, 288 Mich App 513, 519; 794 NW2d 362 (2010) (citing *People v Francisco,* 474 Mich 82, 87; 711 NW2d 44 (2006)). See *People v Grant*, 445 Mich 535, 542; 520 NW2d 123 (1994) (the use of the term "shall" rather than "may" indicates mandatory rather than discretionary action).

[72] MCL 780.131.

prisoner.[73] The statute then expressly states that "the written notice and the statement *shall* be delivered by certified mail."[74]

In the unpublished opinion *People v Blanks*, this Court held in its final opinion on remand that "notice sent by the DOC must comply with the requirements of MCL 780.131(1) to trigger the 180-day rule."[75] The first opinion this Court issued in *Blanks* stated that the record reflected that the prosecution received notice and that there was not violation of the 180-day rule because the defendant's preliminary examination was conducted within 180 days of when the prosecution received notice of the defendant's incarceration.[76] Moreover, this Court in *Blanks* initially held that the rule only requires that "the prosecutor make a good faith effort to bring the case to trial within that period."[77]

The Michigan Supreme Court then issued an order which vacated the part of *Blanks'* judgement that "excused the 180-day-rule violation based on the prosecutor's good faith efforts to bring the defendant to trial within 180 days."[78] The Court then remanded the case for reconsideration

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[73] MCL 780.131.

[74] MCL 780.131. See *Williams, supra* at 256 (finding that delivery by certified mail is a requirement: "There is no dispute that this written notice complied with the other requirements of the statute that it be delivered by certified mail and accompanied by a statement setting forth the defendant's term of commitment, his time served, his time remaining to be served, the amount of sentence credits earned, the time of his parole eligibility, and any decisions of the parole board.").

[75] *People v Blanks*, unpublished per curiam opinion of the Michigan Court of Appeals, issued August 17, 2010 (Docket No. 255257) (citing *Williams, supra* at 255-256). Appendix G.

[76] *People v Blanks*, unpublished per curiam opinion of the Michigan Court of Appeals, issued September 15, 2005 (Docket No. 255257). Appendix H.

[77] *People v Blanks*, unpublished per curiam opinion of the Michigan Court of Appeals, issued April 22, 2008 (Docket No. 255257). Appendix I.

[78] *People v Blanks*, 480 Mich 914; 739 NW2d 872 (2007).

in light of *People v Williams.*[79] On remand, this Court in *Blanks* determined that from the plain language of the Supreme Court's remand order that application of the "'good-faith exception' constituted 'excusing' what otherwise under MCL 780.131 would have been a violation of the 180-day rule."[80] Moreover, this Court in *Blanks* determined that "it is a review of the compliance, or lack of compliance, with the notice requirements that we are directed to conduct on remand."[81] This Court then remanded the case to the trial court to make the requisite factual determination regarding whether the notice sent complied with MCL 780.131 and to apply those findings consistent with *People v Williams.*[82]

Upon return from remand to the trial court this Court in *Blanks* resolved the issue of whether there was a violation of the 180-day rule in relationship to the notice requirements.[83] The trial court had determined that notice was sent from MDOC to the People and that it had complied with all the requirements of MCL 780.131, except that there was no proof of whether the notice was sent by certified mail.[84] The parties presented a copy of the notice sent by the MDOC to the prosecuting attorney, but no proof was offered that the notice was sent by certified mail. *Blanks* held that the

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[79] *Blanks*, *supra* 480 Mich 914.

[80] *People v Blanks*, unpublished per curiam opinion of the Michigan Court of Appeals, issued April 22, 2008 (Docket No. 255257). Appendix I.

[81] *People v Blanks*, unpublished per curiam opinion of the Michigan Court of Appeals, issued April 22, 2008 (Docket No. 255257). Appendix I.

[82] *People v Blanks*, unpublished per curiam opinion of the Michigan Court of Appeals, issued April 22, 2008 (Docket No. 255257). Appendix I.

[83] *People v Blanks*, unpublished per curiam opinion of the Michigan Court of Appeals, issued August 17, 2010 (Docket No. 255257). Appendix G.

[84] *People v Blanks*, unpublished per curiam opinion of the Michigan Court of Appeals, issued August 17, 2010 (Docket No. 255257). Appendix G.

180-day rule was not triggered because the defendant failed to establish that the notice sent by the MDOC complied with all of the requirements of MCL 780.131; particularly whether the notice was sent by certified mail.[85]

Similar to *Blanks*, the MDOC sent a letter dated April 12, 2005,[86] and defendant failed to meet his burden by failing to provide any proof that the letter was delivered by certified mail.[87] Moreover, the notice failed to comply with several aspects of MCL 780.131.[88] The notice did not include any of the following: 1) the time already served by defendant 2) the time remaining to be served on the sentence, 3) the amount of good time or disciplinary credits earned, 4) the time of parole eligibility of the prisoner, 5) any decisions of the parole board relating to the prisoner, and 6) delivery by certified mail.[89]

Whether the 180-day rule is triggered depends on whether the notice complies with the statute; if the notice complies with the statute then the court is to determine whether there is a violation.[90] Defendant has failed to establish that the notice the MDOC sent to the People complied

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[85] *People v Blanks*, unpublished per curiam opinion of the Michigan Court of Appeals, issued August 17, 2010 (Docket No. 255257) (citing *Williams, supra* at 255-256). Appendix G. Subsequently, the Michigan Supreme Court denied application for leave to appeal from this Court's decisions citing that they were "not persuaded that the questions presented should be reviewed by this Court." *People v Blanks*, 489 Mich 971; 798 NW2d 771 (2011).

[86] Proof of which was offered by the People.

[87] See Appendix C, April 12, 2005, MDOC Correspondence.

[88] Appendix C, April 12, 2005, MDOC Correspondence.

[89] Appendix C, April 12, 2005, MDOC Correspondence.

[90] MCL 780.131 states: the inmate shall be brought to trial within 180 days *after* the department of corrections *causes to be delivered. . .* written notice. See *People v Blanks*, unpublished per curiam opinion of the Michigan Court of Appeals, issued August 17, 2010 (Docket No. 255257).

with the mandatory provisions of the statute. The requirements of the statute must be met; the plain language of the statute does not provide for exceptions to the requirements or waiver provisions.[91] The trial court's finding that a requirement may be "waived" would expand the plain language of the statute.[92] Like in *Blanks* a provision of the statute cannot be waived although the Prosecution received a letter, because the notice was defective, accordingly the 180-day rule was not triggered. Therefore, the trial judge erroneously held that the People waived MDOC's duty to comply with the statute.

B. Alternatively, the letter sent by the MDOC did not provide the People with notice of defendant's incarceration.

The statute does *not* include an "inquiry" to be delivered by the MDOC, the statute specifically states "notice," to require otherwise expands what the Legislature clearly intended. The trial court stated that "[i]nquiry was sent to the People from the Michigan Department of Corrections on April 12, 2005 by letter requesting whether charges were pending against Mr. White."[93] Inquiry is not sufficient notice or statement under MCL 780.131.

The statute is void of the word "inquiry." Black's Law Dictionary defines "inquiry" as "fact-finding" or "a request for information, either procedural or substantive."[94] Merriam-Webster's

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[91] MCL 780.131.

[92] 1/11, 4. Moreover, the trial court initially held, prior to accepting defendant's guilty plea, that the MDOC was required to send the People a certified letter giving notice of defendant's place of imprisonment and requesting final disposition of the pending warrant as required by statute and *People v Williams*, and the MDOC failed to do so; therefore the 180-day rule was not violated. 1/28/11, 6.

[93] 1/11, 4.

[94] Black's Law Dictionary (9th ed).

Collegiate Dictionary defines "inquiry" as a "request for information."[95] While the statute does require MDOC to include a request "for final disposition,"[96] that is the extent of the burden placed on the People. The statute does not require that the People "should have known," of the inmate based on the information provided by MDOC.[97] Rather, the statute requires that the People be placed on notice that there is an inmate with a pending warrant, indictment, information, or complaint in their county.[98] If that notice does not include the proper identifying information possessed by the People then the People are not on notice.[99] Moreover, the statute does not state that the People should act as the "fact-finder" in determining whether the information provided by the MDOC is correct. Therefore, the trial court's opinion that "the effort on the part of the People was not comprehensive enough," is contrary to the plain language of the statute and is not a burden placed on the People within the statute.

Moreover, the People did not receive actual notice in the correspondence sent by MDOC. Actual notice is not listed as an alternative to the mandatory notice sent by certified mail. Accordingly, to allow "actual notice" to be an alternative to the mandatory notice to be delivered by

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[95] Merriam-Webster's Collegiate Dictionary, Eleventh Edition.

[96] MCL 780.131.

[97] *People v Davis,* 283 Mich App 737, 742; 769 NW2d 278 (2009) (rejected the argument that the 180-days begins when the Department of Corrections knew or had reason to know that a criminal charge was pending against the defendant, because the language did not appear in the statute and to require such would improperly expand the scope of the 180-day rule statute).

[98] MCL 780.131.

[99] See *People v Woodruff,* 105 Mich App 155, 160; 306 NW2d 432 (1981) (using the previous standard of "known or should have known" this Court held that the defendant's use of an alias would act as a defense to a violation of the 180-day rule because the People could not have possessed knowledge of the defendant's incarceration).

certified mail expressed in the statute would be to expand the language expressed in the statute by the Legislature.

However, even if this Court finds that actual notice satisfies the requirements of the statute, the People did not receive actual notice. The phrase "actual notice" is not included in the statute and therefore, was not defined by the Legislature. "Actual" is defined as "existing in fact; real."[100] "Actual Notice" is defined as "notice given directly to, or received personally by, a party," and is also called "express notice."[101] Express notice is further defined as "actual knowledge or notice given to a party directly, not arising from any inference, duty, or inquiry."[102] Therefore, actual notice occurs when the People receive notice of an existing fact that does not arise from an inference, duty, or inquiry.[103]

The People received a letter dated April 12, 2005, which did not provide actual notice that defendant was in custody. First, the letter only included defendant's last and first name- White, Thomas.[104] Second, the year of birth listed on the letter does not match the year of birth listed within the court system. The date of birth listed in the court system is January 9, 1959,[105] while the date of birth provided by MDOC is January 9, 1957.[106] Third, defendant's SID number was not listed in the

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[100] Black's Law Dictionary (9th ed).

[101] Black's Law Dictionary (9th ed).

[102] Black's Law Dictionary (9th ed).

[103] The trial court stated that MDOC delivered "notice" to the prosecuting attorney but qualifies the letter sent by MDOC as an "inquiry." 1/11, 3-4.

[104] Appendix A, Register of Actions. (Defendant's full name is Thomas Clifford White).

[105] Appendix A, Register of Actions. Appendix L, CRIM Case Status.

[106] Appendix C, April 12, 2005, MDOC Correspondence.

court system, neither was his social security number, or FBI number.[107] Accordingly, the People did not receive actual notice, in that the notice provided did not inform the People that Thomas Clifford White, January 9, 1959, was in custody on April 12, 2005.[108] Because the letter in and of itself did not provide the People with actual notice that defendant was in custody without requiring the People to make an inference, have a duty, or make further inquiries, the People were not provided with actual notice.

The People responded on May 17, 2005, to the letter received from MDOC on April 12, 2005, and stated "We will not seek to have the inmate returned as he has no pending matters in our jurisdiction per our database."[109] The trial court stated that "the effort on the part of the People really was not comprehensive enough, it was not responsive enough."[110] The statute does not place a duty on the People to investigate, inquire, or make a comprehensive effort in response to letters sent by MDOC.[111] The statute requires MDOC to place the People on notice of an inmate incarcerated with

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[107] Appendix L, CRIM Case Status. (Using the system in place in 2005, screen shots of the information provided for Thomas Clifford White, based on the information known now). Appendix J, Defendant SID number search result. (Using the system in place in 2005, the defendant that appears when a search was conducted by defendant's SID number).

[108] At the time the People received the letter dated April 12, 2005, from MDOC the program used to look up defendants was CRIM. The writer of the brief used that system to look up defendant based on the information provided by MDOC. When doing so a number of Thomas White's appeared, none of which had the date of birth listed in the letter. Moreover, when conducting a search using defendant's SID number it did not retrieve Thomas White. See Appendix J, Defendant SID number search result.

[109] Appendix D, May 17, 2005, Letter to MDOC from Prosecutor's Office.

[110] 1/11, 5.

[111] See *People v Woodruff,* 414 Mich 130, 136-137; 323 NW2d 923 (1982) (citation omitted, rev'd by *Smith, supra* 438 Mich 715, rev'd by *Williams, supra* 475 Mich 245). The purposes of the statute are to assure the defendant's right to a speedy trial while an inmate, protecting concurrent sentences, minimizing obstructions to prison rehabilitation, aiding in

possible pending charges. The MDOC did not place the People on notice and therefore, did not comply with the statute. Accordingly, the trial court abused its discretion when it found a violation of the 180-day rule.

The trial court abused its discretion in granting defendant's motion to withdraw his guilty plea. The trial court disregarded the Legislature's clearly expressed notice requirements under the 180-day rule and found that regardless of the defectiveness of the notice delivered there was a violation of the 180-day. The trial court expanded the plain language of the statute beyond what was intended by the Legislature and accordingly abused its discretion.

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preventing untried charges from affecting early release, and clearing court dockets and prosecutor's offices of stale charges. None of the purposes of the statute are harmed under the circumstances of this case. First, defendant was scheduled to have a jury trial but failed to appear, subsequently defendant was incarcerated. As soon as the People were aware of defendant's whereabouts the proceedings against defendant reopened. Second, the untried charges did not affect defendant from early release because the People communicated to MDOC that there were no untried charges against defendant. Third, defendant's concurrent sentences were protected as defendant was given credit for the time served during his period of incarceration.

Relief

THEREFORE, the People respectfully request that this Court reverse the trial court's decision and reinstate defendant's guilty plea and sentence.

Respectfully submitted,

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