

STATE OF MICHIGAN  
IN THE SUPREME COURT

ON APPEAL FROM THE COURT OF APPEALS

Christopher M. Murray, P.J., and Kurtis T. Wilder and Cynthia Diane Stephens, JJ.

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

v

No: 147187

RYAN CHRISTOPHER SMITH,  
Defendant-Appellee.

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Third Circuit Court No: 11-001972 - 01 FH  
Court of Appeals No: 312242

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PEOPLE-APPELLANT'S BRIEF ON APPEAL

\*\*\*ORAL ARGUMENT REQUESTED

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## JUDGMENT APPEALED FROM AND RELIEF SOUGHT

Defendant was charged with carrying a concealed weapon.<sup>1</sup> On May 12, 2011, Defendant tendered a guilty plea, before Judge Vera Massey Jones of the Wayne County Circuit Court, to attempt carrying a concealed weapon.<sup>2</sup> On June 3, 2011 and June 17, 2011, Defendant requested that his sentence be delayed pursuant to MCL 771.1.<sup>3</sup> Over the prosecutor's objection, Judge Jones placed Defendant on a delayed sentence for one year.<sup>4</sup> Judge Jones stated that Defendant's sentence would be held on June 15, 2012, but the court's docket entries show it was scheduled for June 18, 2012.<sup>5</sup> On June 18, 2012, Judge Jones held that she had lost jurisdiction over the case and, over the prosecutor's objection, entered an order dismissing the case.<sup>6</sup>

The People appealed by delayed application for leave to appeal. On May 7, 2013, the Court of Appeals denied the application for lack of merit in the grounds presented.<sup>7</sup> Judge Murray dissented, stating that, in lieu of granting leave to appeal, he would reverse the June 18, 2012 order of dismissal and reinstate Defendant's conviction. He wrote:

The trial court could not enter an order of dismissal over the prosecution's objection, even though over one year had passed since the court delayed sentence pursuant to MCL 771.1 (2). See *People v Boynton*, 185 Mich App 669, 671; 463 NW2d 174 (1990); *People Leonard*, 144 Mich App 492, 495-496; 375 NW2d 745 (1985);

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<sup>1</sup>MCL 750.227.

<sup>2</sup>1a, 8a-14a.

<sup>3</sup>20a-21a, 27a-31a.

<sup>4</sup>20a,

<sup>5</sup>32a, 2a-3a.

<sup>6</sup>37a-38a.

<sup>7</sup>5a

*People v Monday*, 70 Mich App 518, 521-522; 245 NW2d 811 (1976). However, this Court also cannot remand for sentencing, as requested by the prosecution. *Boynton*, supra. See also *People v Turner*, 92 Mich App 485, 489-490; 285 NW2d 340 (1979). I would allow the parties to address the appropriate remedy on remand.

The decision of the trial court was a misapplication of law and will cause manifest injustice by overturning a valid conviction. For no other reason than she disagreed with the prosecutor's charging decision in this case, Judge Jones delayed Defendant's sentence, over the prosecutor's objection, scheduled the sentencing for a date that exceeded the one-year mark and, under the pretense that she had lost jurisdiction over the case, dismissed the felony charge against Defendant. Since Judge Jones interfered with the prosecutor's executive discretion and violated the doctrine of separation of powers, she clearly exceeded her authority and her order of dismissal must be set aside.

The People filed an application for leave to appeal with this Court. On September 18, 2013, this Court granted the People's application for leave to appeal and directed the parties to file supplemental briefs discussing the following issues:

(1) whether a trial court loses jurisdiction, for purposes of sentencing or otherwise, by failure to sentence a defendant within one year after delaying sentence under MCL 771.1;

(2) whether a defendant waives a claim of error related to a delay in sentencing where he requests a delayed sentence under the statute; and

(3) what remedy should apply to a failure to sentence a defendant within a year of conviction.

For the reasons stated in this brief, the People request this Court overturn *People v Boynton*, 185 Mich App 669 (1990), set aside the trial court's order, reinstate Defendant's conviction, and remand for resentencing.

## STATEMENT OF QUESTION PRESENTED

### I.

MCL 771.1 allows the trial court to delay sentence to give the defendant an opportunity to prove his eligibility for probation or other leniency: it does not vest any substantive right in the defendant to avoid conviction and sentence. Over the objection of the People, because of her disagreement with the People's decision to prosecute this case, the trial judge delayed defendant's sentencing, on the request of the defendant, under MCL 771.1, set his sentence for a date that exceeded the one-year period by one day, and then not only did not sentence the defendant, but dismissed the case over the prosecutor's objection, ruling that it had lost jurisdiction over the case. Does MCL 771.1 or any other provision of law justify the failure to sentence and the dismissal?

**Court of Appeals answered: YES**

**The People answer: NO**

**Defendant answers: YES**



## STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Defendant was charged with carrying a concealed weapon.<sup>8</sup> On May 12, 2011, Defendant tendered a guilty plea, before Judge Vera Massey Jones of the Wayne County Circuit Court, to attempt carrying a concealed weapon.<sup>9</sup> On June 3, 2011, sentencing day, Judge Jones noted that the pre-sentence report recommended a delayed sentence. Defense counsel requested a one-year delay in sentencing so that he could re-submit a request to the Prosecutor's gun committee to either dismiss the case or reduce it to a misdemeanor.<sup>10</sup> The prosecutor objected to a delayed sentence.<sup>11</sup> Judge Jones adjourned the sentencing to give the attorneys an opportunity to file briefs on the issue of whether the court could delay Defendant's sentence. Judge Jones stated that she would consider "the delayed sentence with one day over a year; then I would have lost jurisdiction."<sup>12</sup> On June 17, 2011, defense counsel again requested a delayed sentence.<sup>13</sup> Judge Jones stated that she was "disturbed" with the People's sentencing memorandum in which the People continued to object to Defendant's request for a delayed sentence.<sup>14</sup> Judge Jones voiced her disapproval:

But what disturbs me about the People's memorandum. . . is that I've been here thirty years, and I've seen the People of the State of Michigan in a number of very special cases allow the delayed sentence where the person actually reports to the probation department for one solid year. If they stay out of trouble for a year, and the People are

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<sup>8</sup>MCL 750.227.

<sup>9</sup>9a-14a.

<sup>10</sup>20a-21a.

<sup>11</sup>20a.

<sup>12</sup>22a.

<sup>13</sup>27a-28a.

<sup>14</sup>30a.

willing to allow me to let it go a day over 365 days, which means I lose jurisdiction, and the person ends up with no record. I've seen that done. Not a whole lot of times in my thirty years on the bench, but I'm saying every single prosecutor has allowed it to happen before. And suddenly they're saying, well, we're going to make you do this within the year, and then you've got to sentence him or we want him to have a felony.<sup>15</sup>

Over the prosecutor's continued objection, Judge Jones placed Defendant on a delayed sentence for one year, pursuant to MCL 771.1. On the record, Judge Jones stated that Defendant's sentencing would take place on June 15, 2012, but the court docket does not show that that date was ever scheduled.<sup>16</sup> Instead the court docket shows that the sentencing was set for June 18, 2012. On June 18, 2012, defense counsel requested a dismissal of Defendant's case. Without making any findings, Judge Jones simply stated, "Well, you know what? It looks like to me my clerk tells me that this is past a year, so I've lost jurisdiction. . . Which means the case is. . . dismissed."<sup>17</sup> The prosecutor objected to the dismissal.<sup>18</sup> Judge Jones entered an order of dismissal.<sup>19</sup>

The People appealed by delayed application for leave to appeal. On May 7, 2013, the Court of Appeals denied the application for lack of merit in the grounds presented.<sup>20</sup> Judge Murray dissented, stating that, in lieu of granting leave to appeal, he would reverse the June 18, 2012 order of dismissal and reinstate Defendant's conviction. He wrote: "the trial court could not enter an order of dismissal over the prosecution's objection, even though over one year had passed since the court

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<sup>15</sup>30a.

<sup>16</sup>32a, 4a.

<sup>17</sup>37a-38a.

<sup>18</sup>38a.

<sup>19</sup>4a.

<sup>20</sup>5a.

delayed sentence pursuant to MCL 771.1 (2). [citation omitted] However, this Court also cannot remand for sentencing, as requested by the prosecution. [citation omitted]. I would allow the parties to address the appropriate remedy on remand.”<sup>21</sup>

The People filed an application for leave to appeal in this Court. On September 18, 2013, this Court granted the People’s application.<sup>22</sup>

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<sup>21</sup>Id.

<sup>22</sup>*People v Smith*, 836 NW2d 497 (2013).

## ARGUMENT

### I.

**MCL 771.1 allows the trial court to delay sentence to give the defendant an opportunity to prove his eligibility for probation or other leniency: it does not vest any substantive right in the defendant to avoid conviction and sentence. Over the objection of the People, because of her disagreement with the People's decision to prosecute this case, the trial judge delayed defendant's sentencing, on the request of the defendant, under MCL 771.1, set his sentence for a date that exceeded the one-year period by one day, and then not only did not sentence the defendant, but dismissed the case over the prosecutor's objection, ruling that it had lost jurisdiction over the case. Neither MCL 771.1 nor any other provision of law justify the failure to sentence and the dismissal.**

#### **Appellate Standard of review**

The lower court determined it had the legal authority to dismiss a case under MCL 771.1. The trial court's interpretation of the law and its decision to dismiss a charge on legal grounds are questions of law and are reviewed de novo.<sup>23</sup> Under review de novo, a reviewing court gives no deference to the trial court and reviews the case with fresh eyes.<sup>24</sup>

#### **Discussion**

**A DISMISSAL OF CRIMINAL CHARGES OVER THE PROSECUTOR'S OBJECTION, ABSENT INSUFFICIENT EVIDENCE OR A PERMISSIVE STATUTE, VIOLATES THE SEPARATION OF POWERS DOCTRINE.**

The decision by the majority of the Court of Appeals panel to deny leave here is inexplicable, given that under unchallenged precedent a trial judge has no authority to dismiss a case under MCL

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<sup>23</sup>*People v Phillips*, 469 Mich 390, 394 (2003); *People v Tierney*, 266 Mich App 687, 712 (2005).

<sup>24</sup>See *Dep't of Civil Rights ex rel. Johnson v Silver Dollar Cafe*, 441 Mich 110, 115-116 (1992).

771.1. That statute does not give the trial court the legal authority to dismiss a criminal case over the prosecutor's objection, but allows only a delay in sentence so as to determine whether a defendant is worthy of probation or other leniency. Here, based on her disagreement with the People's decision to proceed with this prosecution, the trial court granted Defendant's request for a delayed sentence over the prosecutor's objection, then scheduled the sentence to a date that exceeded one year. Under the pretense that she had lost jurisdiction over the case, the trial court dismissed the felony charge against Defendant, again ignoring the prosecutor's objection. Since the judge clearly exceeded her authority, her order of dismissal must be set aside.

The limitation upon the trial judge's power to control the exercise of prosecutorial discretion is founded upon the doctrine of separation of powers.<sup>25</sup> The principle of separation of powers restricts the trial court from interfering with the prosecutor's exercise of executive discretion.<sup>26</sup> While Michigan allows a judge to veto the prosecutor's decision to nolle prosequi, it does not give a judge the power to dismiss a case over the prosecutor's objection.<sup>27</sup> It is well established, therefore, that dismissal is in the prosecutor's sole discretion and a trial court dismissal over the prosecutor's objection, absent insufficient evidence or a permissive statute, is precluded.<sup>28</sup>

MCL 771.1 does not permit such a dismissal. A deferred sentence under MCL 771.1 allows the trial court to delay sentence "to give the defendant an opportunity to prove to the court his or her

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<sup>25</sup>*Genesee Prosecutor v Genesee Circuit Judge*, 386 Mich 672, 684 (1972); MCLA Const.1963 Art. 3, § 2.

<sup>26</sup>*People v Herrick*, 216 Mich App 594 (1996).

<sup>27</sup>*People v Nelson*, 66 Mich App 60 (1975); *People v Morrow*, 214 Mich App 158 (1995).

<sup>28</sup>*People v Monday*, 70 Mich App 518, 521 (1976); see *People v Leonard*, 144 Mich App 492, 495 (1985).

eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation. . . .” But *leniency* does not mean that the case may be dismissed sua sponte by the judge. It does not give the trial court the authority to order “total forgiveness.”<sup>29</sup> “[L]eniency” presupposes some penalty, however slight, but allows the trial court to make the penalty token only. If the Legislature had intended anything more we believe that the Legislature would have specifically said so.”<sup>30</sup>

The record shows that Judge Jones had used the delayed-sentence procedure in the past to dismiss cases—but always with the prosecution’s consent. In this case, however, the prosecution would not give its consent and, other than allowing Defendant to plea to a reduced charge, refused to dismiss the case against him. Judge Jones voiced her disapproval:

But what disturbs me about the People’s memorandum. . . is that I’ve been here thirty years, and I’ve seen the People of the State of Michigan in a number of very special cases allow the delayed sentence where the person actually reports to the probation department for one solid year. If they stay out of trouble for a year, and the People are willing to allow me to let it go a day over 365 days, which means I lose jurisdiction, and the person ends up with no record. I’ve seen that done. Not a whole lot of times in my thirty years on the bench, but I’m saying every single prosecutor has allowed it to happen before. And suddenly they’re saying, well, we’re going to make you do this within the year, and then you’ve got to sentence him or we want him to have a felony.<sup>31</sup>

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<sup>29</sup>*Monday, supra*, 70 Mich App at 522.

<sup>30</sup>*Id.*

Even *People v Dubis*, 158 Mich App 504, 507 (1987) and *People v Turner*, 92 Mich App 485, 489-490 (1979), in which the courts held that a trial court lost jurisdiction to sentence a defendant after a year, pursuant to MCL 771.1, held that the trial court only lost jurisdiction to impose sentence. The convictions remained intact. Also see *People v Boynton*, 185 Mich App 669, 671 (1990).

<sup>31</sup>30a.

Over the prosecutor's continued objection, Judge Jones placed Defendant on a delayed sentence for one year, pursuant to MCL 771.1. Even though Judge Jones set Defendant's sentence for June 15, 2012, on the record,<sup>32</sup> Defendant's case was not called until June 18, 2012. Then, without making any findings, Judge Jones dismissed the case, feigning surprise:

Well, you know what? It looks like to me my clerk tells me that this is past a year, so I've lost jurisdiction. . . Which means the case is. . . dismissed.<sup>33</sup>

Over the prosecutor objection, Judge Jones entered an order of dismissal.<sup>34</sup>

Judge Jones dismissed the case against Defendant—not for any legal reason—but simply because she did not agree with the People's decision to go forward with this prosecution, and took upon herself the role of prosecuting attorney. Not having the prosecutor's consent, she intentionally put this case over for a sentencing date that exceeded the one-year mark mentioned in MCL 711.1, believing that she could dismiss the case under the pretense that she had lost jurisdiction. This facile maneuver cannot be allowed to stand. Not only was this a misapplication of the statute because the court's jurisdiction does not expire after a year, Judge Jones exceeded her authority by interfering with the prosecutor's exercise of executive discretion.<sup>35</sup>

Since unchallenged precedent has very clearly determined that the statute does not convey the authority to dismiss a case over objection, Judge Jones's order of dismissal must be set aside.<sup>36</sup>

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<sup>32</sup>32a.

<sup>33</sup>37a-38a.

<sup>34</sup>38a, 4a.

<sup>35</sup>*Herrick, supra*, 216 Mich App 594.

<sup>36</sup>*Leonard, supra*, 144 Mich App at 495; *Monday, supra*, 70 Mich App at 522.

MCL 771.1 (2) states: “In an action in which the court may place the defendant on probation, the court may delay sentencing the defendant for not more than 1 year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation. . . . When sentencing is delayed, the court shall enter an order stating the reason for the delay upon the court's records. The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay.”

A delayed “sentence” is not, in fact, a sentence, although the court may impose probation-like conditions upon defendant for that year.<sup>37</sup> The purpose of MCL 771.1 is to delay sentencing the defendant to give that defendant a one-year window of opportunity “to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant’s rehabilitation.”<sup>38</sup> In other words, the one-year mark is for the benefit of the defendant to satisfy the court that he or she can fairly be placed on probation, rather than sentenced to prison.<sup>39</sup> At the end of the one-year delay, the trial court would move to impose whatever sentence, as prescribed by law, the court found appropriate. As stated, the court would determine if leniency was appropriate, but “total forgiveness”— dismissal— is not an option.<sup>40</sup>

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<sup>37</sup>*Leonard, supra*, 144 Mich App at 495.

<sup>38</sup>MCL 771.1(2).

<sup>39</sup>*People v Saenz*, 173 Mich App 405, 409 (1988); *People v Cannon*, 145 Mich App 100, 103 (1985).

<sup>40</sup>*Monday, supra*, 70 Mich App at 522.



**A. The failure of a trial court to sentence within one year after deferring sentence under MCL 771.1 does not vest any substantive right in the defendant to avoid the conviction and sentence or result in a loss of jurisdiction over the defendant to sentence on the conviction.**

MCL 771.1 does not indicate that jurisdiction is lost when sentencing is delayed beyond a year, nor that the expiration of the term somehow vests in a defendant a substantive right to avoid sentence; no statute imposes that consequence, and the Legislature knows how to provide for that consequence when it desires.<sup>41</sup> The fact that the statute states that the court *does not* lose jurisdiction to sentence a defendant during the one-year delay, does not mean that it *does* lose jurisdiction if for some reason, “particularly if the reason be sound or unavoidable, sentencing is postponed beyond the year deadline.”<sup>42</sup> “[I]t is only inferentially that one arrives at a conclusion that in every instance jurisdiction is lost. We also note that when carefully read the statute grants a one-year delay ‘for the purpose of giving the defendant an opportunity to prove to the court his eligibility for probation or such other leniency as may be compatible with the ends of justice.’”<sup>43</sup> The Court of Appeals has held that “[n]either logic nor precedent based upon analogous situations leads us to conclude that the Legislature intended that jurisdiction is irretrievably lost in every situation where the delay in sentencing exceeds one year.”<sup>44</sup>

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<sup>41</sup>See MCL 780.133.

<sup>42</sup>*People v Richards*, 205 Mich App 438, 441-442 (1994), citing *People v McLott*, 70 Mich App 524, 529 (1976).

<sup>43</sup>*Id.*

<sup>44</sup>*Id.*, at 528-529.

Even though Judge Jones was intent on dismissing Defendant's case, the statute does not strip the trial court of its authority to impose sentence after the one-year mark has lapsed, a canard this court should now lay to rest.

**B. Defendant waives a claim of error related to a delay in sentencing where he requests a delayed sentence under the statute.**

Further, a delayed sentence, either at the request of the defendant— as we have in this case— or with his acquiescence, is for the benefit of the defendant in his attempt to avoid a prison sentence. This adjournment waives or forfeits a defendant's claim that his sentence was untimely. The reference to the trial court's "jurisdiction to sentence the defendant," in MCL 771.1, refers to the court's personal jurisdiction over a particular defendant, as opposed to subject-matter jurisdiction. Personal jurisdiction is subject to waiver by the defendant.<sup>45</sup> The Court of Appeals has held that a defendant's consent to an indefinite delay in sentencing waived his right to assert that the delay resulted in a loss of jurisdiction.<sup>46</sup> What is more, there is no indication in the delayed-sentencing statute that the Legislature intended to preclude a defendant's waiver of the one-year requirement.<sup>47</sup>

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<sup>45</sup>Subject matter jurisdiction 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. *People v Lown*, 488 Mich 242, 268 (2011) "Michigan circuit courts are courts of general jurisdiction and unquestionably have [subject matter] jurisdiction over felony cases." *Id.* Because it concerns the court's power to hear a case, it is not subject to waiver. *People v Eaton*, 184 Mich App 649, 652-653 (1990). Personal jurisdiction deals with the authority of the court to bind the parties to the action and may be waived. *People v Goecke*, 457 Mich 442, 458 (1998).

<sup>46</sup>*Richards*, 205 Mich App at 442-443, quoting *In re Tinholt*, 223 Mich 483, 484 (1923). "By consenting, [Tinholt] has waived the right to complain of indefinite postponement. Assuming that, though the agreed postponement was indefinite, the delay thereunder should not be unreasonable, we find, under the circumstances, no unreasonable delay." *Id.*

<sup>47</sup>*Richard*, *supra*. The *Richard* Court rejected the holdings in *Dubis* and *Turner* that a defendant's consent to adjournments constituted a waiver of the claim of loss of jurisdiction as "inherently unsound." *Id.*

Even under a strict interpretation of the statute, the one-year period could be exceeded “in only the most limited circumstances.”<sup>48</sup> A defendant’s request to adjourn sentence to allow him to persuade the court that he is a good candidate for probation would certainly qualify as good cause for the delay.

In fact, the request for a delay in sentencing is a voluntary affirmative conduct that results in an intentional relinquishment or abandonment of a claim of error.<sup>49</sup> This Court distinguishes waiver from forfeiture: one who forfeits his rights by failing to assert them in a timely fashion does not lose the benefit of appellate review— there would be limited review under the “plain error standard of review – but a waiver extinguishes any error and therefore precludes any review. In other words, there is no “error” to correct.<sup>50</sup>

**C. Absent a showing that a delay in sentencing violated the defendant’s right to a speedy trial, the remedy for a failure to sentence a defendant within a year of conviction is to sentence him.**

*“Error in the course of a prosecution resulting in conviction calls for the correction of the error, not the release of the accused.”<sup>51</sup>*

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<sup>48</sup>*Dubis, supra; Turner, supra.*

<sup>49</sup>*Johnson v Zerbst*, 304 US 458, 464, 58 S Ct 1019, 1023, 82 L Ed 1461 (1938).

<sup>50</sup>*People v Carter*, 462 Mich 206 (2000); *United States v Griffin*, 84 F3d 912 (7th Cir.1996).

<sup>51</sup>*Pollard v United States*, 352 US 354, 362, 77 S Ct 481, 486, 1 L Ed2d 393 (1957), citing *Dowd v United States ex rel. Cook*, 340 US 206, 210, 71 S Ct 262, 264, 95 L Ed 215 (1951).

The *Pollard* Court “assume[d] arguendo that sentence is part of the trial for purposes of the Sixth Amendment.” *Id* at 361.

The Supreme Court has not yet decided whether the Sixth Amendment encompasses the sentencing phase of a criminal trial.<sup>52</sup> But to rise to the level of a speedy trial violation, the delay must be the “purposeful or oppressive” act of the government which the accused attempted to correct.<sup>53</sup> Whether the delay amounts to a deprivation of a defendant's right to a speedy trial under the Sixth Amendment or violates the due process clause of the Constitution depends upon the circumstances.<sup>54</sup>

Many courts have recognized that the imposition of a sentence is part of the trial for the purposes of the Sixth Amendment speedy trial guarantee.<sup>55</sup> The Michigan courts have as well and apply the four-part balancing speedy trial test established in *Barker v Wingo*.<sup>56</sup> Accordingly, the factors considered are: (1) length of delay; (2) reason for the delay; (3) defendant's assertion of his right; and (4) prejudice to the defendant.<sup>57</sup>

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<sup>52</sup>US Const. Am. VI: *United States v Martinez*, 837 F2d 861, 866 (9th Cir. 1988).

<sup>53</sup>*Pollard, supra*, 352 US at 361-362; *United States v Grabina*, 309 F2d 783, 786 (2d Cir. 1962).

<sup>54</sup> *Pollard, supra*, 352 US at 361; *Welsh v United States*, 348 F2d 885, 886-887 (6th Cir. 1965).

<sup>55</sup>*Pollard, supra*; See also *United States v. Campisi*, 583 F.2d 692 (3d Cir.1978); *United States v Reese*, 568 F2d 1246 (6th Cir.1977); *Juarez-Casares v United States*, 496 F2d 190 (5th Cir.1974); *Walsh v United States*, 423 F2d 687 (9th Cir.1970).

<sup>56</sup>Const.1963, art. 1, § 20; MCL 768.1; *Barker v Wingo*, 407 US 514, 530, 92 S Ct 2182, 33 L Ed.2d 101 (1972); *People v McIntosh*, 103 Mich App 11, 20 (1981); *People v Garvin*, 159 Mich App 38, 46 (1987).

<sup>57</sup>*Barker v Wingo, supra.*; *Garvin, supra*, 159 Mich App at 46.

In the absence of a speedy trial violation, the remedy for a failure to sentence a defendant within a year of conviction is to sentence him. *People v Boynton*,<sup>58</sup> was wrongly decided and should be set aside.

It is indisputable that the circumstances of this case did not violate Defendant's right to a speedy trial. The one-day delay in sentencing Defendant was created at Defendant's request, for Defendant's benefit, so his case would be dismissed entirely. In short, this deliberate manipulation of a statute that was meant to offer a defendant the opportunity to seek leniency resulted in the trial court usurping the People's discretion to charge and violated the separation of powers.

### **Conclusion**

Judge Jones's disagreement with the People's decision to proceed with this prosecution caused her to dismiss this case, over the prosecutor's objection—a clear violation of her authority. Accordingly, her order of dismissal must be set aside, *and* she should be directed to impose sentence. Further, in view of her demonstrated hostility to the prosecution of this case, the case should be remanded for sentencing in front of another judge.

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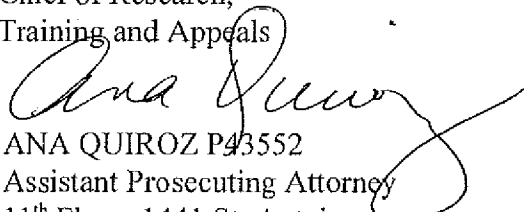
<sup>58</sup>*Boynton, supra.*

**RELIEF**

**WHEREFORE**, the People request that this Court set aside the trial court's order of dismissal, reinstate Defendant's conviction, and remand for sentencing.

Respectfully submitted,  
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Date: January 17, 2014.