[Cite as *State v. Mavroudis*, 2003-Ohio-3289.]

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,	)	
	)	CASE NO. 02 CO 44
PLAINTIFF-APPELLEE,	)	
	)	
- VS -	)	O P I N I O N
	)	
DANIEL MAVROUDIS,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from Common Pleas Court, Case No. 01CR46.
JUDGMENT:	Affirmed.

APPEARANCES:

For Plaintiff-Appellee:	Attorney Robert Herron Prosecuting Attorney Attorney John Gamble Assistant Prosecuting Attorney 105 South Market Street Lisbon, Ohio 44432
For Defendant-Appellant:	Attorney Marian Davidson 420 Market Street East Liverpool, Ohio 43920

JUDGES:

Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: June 16, 2003

VUKOVICH, J.

{¶1} Defendant-appellant Daniel Mavroudis appeals the decision of the Columbiana County Court of Common Pleas which granted summary judgment to the state on his petition for post-conviction relief. Mavroudis argues that the court improperly denied his request for a hearing on his petition, that his right to a speedy trial was violated, and that his right to effective assistance of counsel was violated. For the following reasons, the judgment of the trial court is affirmed.

STATEMENT OF THE CASE

{¶2} On March 28, 2001, Mavroudis was secretly indicted by the Columbiana County Grand Jury on one count of burglary in violation of R.C. 2911.12(A)(1), and one count of forgery in violation of R.C. 2913.31(A)(3). A warrant was issued for Mavroudis to the sheriff on March 29, 2001, along with a copy of the indictment. However, Mavroudis was incarcerated in Mahoning County on unrelated charges.

{¶3} On December 20, 2001, Mavroudis was served with the indictment at the Lorain Correctional Facility. The notice to serve the indictment and the notice to arrest on indictment were returned the next day. Mavroudis was arraigned on December 27, 2001. On February 1, 2002, Mavroudis pled guilty to burglary; the forgery charged was dismissed. Thereafter, he was sentenced to three years incarceration, to be served concurrently with the sentence from Mahoning County Common Pleas Court.

{¶4} Mavroudis' brief fails to comply with App.R. 16(A)(3) and (7) by failing to designate assignments of error and arguing each assignment of error separately. Instead, Mavroudis provides a page entitled "ISSUE PRESEDENTED" (sic), wherein he submits the question, "Whether the lower court erred in denying the Appellant's post-conviction Motion without a hearing." That phrase is again repeated at the top of the page entitled "LAW AND ARGUMENT." However, the argument portion of Mavroudis' brief appears to raise three distinct arguments: (1) that the court improperly denied Mavroudis' request for a hearing that was submitted in conjunction with his motion for post-conviction relief; (2) that Mavroudis' constitutional right to a speedy trial was violated; and (3) that Mavroudis received ineffective assistance of counsel. Each issue will be addressed separately.

ISSUE NUMBER ONE

{¶5} The first issue addressed by Mavroudis is: "Whether the lower court erred in denying the Mavroudis' post-conviction motion without a hearing." The standard of review for the denial of a motion for post-conviction relief without a hearing is an abuse of discretion. *State ex rel. Richard v. Seidner*, 76 Ohio St.3d 149, 1996-Ohio-349. Abuse of discretion connotes more than an error made in judgment or law, but rather it implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶6} The post-conviction relief process, provided for by R.C. 2953.21, is designed to address alleged constitutional violations in criminal proceedings which would otherwise be unreachable due to the lack of supporting evidence on the record. However, post-conviction relief is not a forum in which the petitioner can relitigate his conviction. *State v. Murphy* (Dec. 26, 2000), 10th Dist. No. 00AP-233, citing *State v. Jackson* (1980), 64 Ohio St.2d 107.

{¶7} R.C. 2953.21 does not require a hearing on every petition presented to the court. Rather, the statutory provisions for post-conviction relief direct that, "Unless the petition and the files and records of the case show the petitioner is not entitled to relief, the court shall proceed to a prompt hearing on the issues * * *." R.C. 2953.21(E). The negative inference of the statute is that the court will not grant a hearing unless the petitioner first shows that he is entitled to relief.

{¶8} The petitioner bears the initial burden to submit to the court evidentiary documents containing operative facts sufficient to support his position that he is entitled to relief. *Jackson*, 64 Ohio St.2d at 111. The evidence must show that there was a violation of the petitioner's rights and that the violation renders his conviction void or voidable under the Ohio and/or United States Constitution(s). R.C. 2953.21

(A)(1). If the petitioner fails to support his allegations with sufficient evidence, he is not entitled to a hearing. *Jackson*, 64 Ohio St.2d at 111.

{¶9} In the case at hand, Mavroudis' petition for post-conviction relief initially consisted solely of a four-page, unsworn statement contending that his rights to a speedy trial and to effective assistance of counsel were violated. Mavroudis subsequently attempted to amend his petition in order to include "documentary evidence just recently acquired by this humble Defendant, which was previously unavailable to this Defendant through no fault of his own." The court denied the motion to amend.

{¶10} The evidence referred to is a copy of his docket sheet. Mavroudis provides no explanation as to why this was "previously unavailable." He does explain his intended use for the sheet in his petition. Mavroudis asserts that the docket sheet illustrates that he was served with his indictment on March 29, 2001. However, the docket does not reflect this. The only two entries for March 29, 2001, read as follows:

{¶11} "3/29/01 NOTICE TO SHERIFF TO SERVE COPY OF INDICTMENT-PG."

{¶12} "3/29/01 WARRANT TO ARREST ON INDICTMENT ISSUED TO SHERIFF WITH COPY OF INDICTMENT-PG."

{¶13} After Mavroudis' motion to amend his petition was denied, the court granted appellee's motion for summary judgment. After filing the instant appeal, Mavroudis also sought to add to his petition a transcript of a pre-trial status conference. However, we are unable to review such a transcript since it was never ordered by Mavroudis.

{¶14} Mavroudis failed to meet his initial burden of presenting evidentiary documents to support his allegations. When a petitioner fails to meet the burden of

production and is therefore resting on bare allegations, the court does not err in denying the petitioner a hearing. *State v. Kapper* (1983), 5 Ohio St.3d 36, 39. Here, Mavroudis submitted no documents or other evidence with his original petition. Because Mavroudis rested on bare allegations, the trial court correctly denied an evidentiary hearing. See Id.

{¶15} Even if the court considers the docket sheet that Mavroudis attempted to supplement his petition with, the result would be the same. When properly read, the docket sheet presents no evidence of a constitutional violation. It is apparent that Mavroudis is misreading the docket sheet. His error cannot mean that the trial court abused its discretion in denying him an evidentiary hearing. Accordingly, Mavroudis' first issue is without merit and is overruled.

ISSUE NUMBER TWO

{¶16} In his second argument, Mavroudis contends that the court violated his right to a speedy trial. As was concluded in the first issue raised, the court properly dismissed Mavroudis' petition due to lack of supporting documents. Therefore, we are not obligated to review the merits of Mavroudis' petition for post-conviction relief. However, in the interest of thoroughness, we will address the arguments supporting Mavroudis' motion for post-conviction relief.

{¶17} Mavroudis asserts that his right to a speedy trial was violated by raising two arguments. First, he argues that he was not properly advised as to the effect of his plea. Next, he argues that the lower court did not review the issue properly.

{¶18} The right to a speedy trial is guaranteed to all criminal defendants by the United States Constitution, the Ohio Constitution, and R.C. 2945.71 et seq. However,

that right can be waived in certain circumstances, one of which is entering a guilty plea. *Village of Montpelier v. Greeno* (1986), 25 Ohio St.3d 170.

{¶19} First, we note that the argument at hand could be viewed by this court as res judicata. The Ohio Supreme Court has held that:

{¶20} "Under the doctrine of res judicata, a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment of conviction, or on an appeal from that judgment." *State v. Reynolds,* 79 Ohio St.3d 158, 161, 1997-Ohio-304, quoting *State v. Perry* (1967), 10 Ohio St.2d 175 at paragraph nine of the syllabus.

{¶21} Mavroudis did not directly appeal the judgment in this case, nor did he file a motion to withdraw his guilty plea pursuant Crim.R. 32.1. If the alleged constitutional violation complained of was based on evidence de hors the record, or outside of the record, then the petitioner would not be barred by res judicata for not raising the issue on direct appeal. See *State v. Cole* (1982), 2 Ohio St.3d 112. However, the error complained of appears on the face of the record.

{¶22} Looking beyond the res judicata argument, the Ohio Supreme Court has repeatedly held that when an accused enters a guilty plea, he waives the right to argue a violation of his speedy trial rights on appeal. *Greeno*, 25 Ohio St.3d 170. In his brief, Mavroudis admits that the court informed him that, by entering a plea of guilty, he was waiving any issues regarding his speedy trial rights. After being informed of this, Mavroudis did not attempt to withdraw or change his plea.

{¶23} However, Mavroudis complains that he did not make a knowing, voluntary, and intelligent waiver of this right because his right was not properly

explained to him by the court. Despite affirmatively stating in his brief that before accepting his guilty plea the court informed him that the plea would waive his right to a speedy trial, Mavroudis argues that the court's failure to additionally inform him that a no contest plea would preserve the issue renders his plea unknowing, involuntary, and unintelligent.

{¶24} In *State v. Ballard* (1981), 66 Ohio St.2d 473, the Supreme Court held that a guilty plea is constitutionally infirm when the plea was made in absence of the defendant being informed of his right to a jury trial, right to confront accusers, privilege against self-incrimination, and right to obtain witnesses in his behalf. Id. at 478. See also Crim.R. 11. In addition to the above constitutional rights, Crim.R. 11(C)(2) requires the trial court to determine whether the defendant understands the nature of the charges against him and of the maximum penalty involved, including any possible ineligibility of probation. Furthermore, the trial court must inform the defendant and determine that he understands the effect of his guilty plea or no contest plea, and that upon acceptance of that plea, the court may proceed with judgment and sentence. Crim.R. 11(C)(2)(b).

{¶25} Once the court substantially advises the defendant of these rights, the court may accept a guilty plea. The court is not obligated to inform the defendant of anything beyond what is required by Crim.R. 11 before accepting a guilty plea, including that a guilty plea will prejudice a later speedy trial claim. *State v. Railing* (Oct. 20, 1994), 8th Dist. No. 67137 (voluntariness of guilty plea upheld where trial counsel incorrectly informed defendant that a guilty plea would not prejudice a later speedy trial claim). Claims of voluntariness are repeatedly rejected where the only alleged deficiency is that the defendant was not informed of a right or waiver not specified in Crim.R. 11. Id. See, also, *State v. Reynolds* (1988), 40 Ohio St.3d 334;

State v. Spates, 64 Ohio St.3d 269, 1992-Ohio-130. Since there is no requirement that the trial court inform Mavroudis that a no contest plea may preserve the speedy trial issue for appeal, the trial court was not required to instruct as such.

{¶26} Mavroudis was informed of his rights. He thereafter chose to waive them and plead guilty. It necessarily follows that Mavroudis' plea was knowing, voluntary, and intelligent. Therefore, the trial court did not err in accepting the plea and viewing the rights as waived, including the right to allege speedy trial violations.

{¶27} Furthermore, no speedy trial time violation occurred. When a defendant is incarcerated on other charges, as is Mavroudis in this case, R.C. 2941.401, the Intrastate Detainer Act, prevails over the general speedy trial statutes of R.C. 2945.71 et seq. *State v. Cox*, 4th Dist. No. 01CA10, 2002-Ohio-2382, citing *State v. Davis* (June 4, 1997), 4th Dist. No. 96CA2181. The Intrastate Detainer Act mandates that when a person is imprisoned in a correctional institute in this state, and when during the term of his imprisonment there is an untried indictment against the prisoner, he must be brought to trial within 180 days after he causes to be delivered to the prosecuting attorney and the appropriate court written notice of the place of his imprisonment and a request for a final disposition of the matter. Under R.C. 2941.401, the speedy trial time does not begin to run until the incarcerated defendant sends a request to the prosecuting attorney and the trial court requesting disposition of the untried indictment. *State v. Logan* (1991), 71 Ohio App.3d 292, 296, citing *State v. Turner* (1982), 4 Ohio App.3d 305. Here, the record is devoid of any motion containing the mandated requirements of the Intrastate Detainer Act. As such, speedy trial time limits did not begin to run and no violation resulted. Accordingly, Mavroudis' second issue is without merit and is overruled.

ISSUE NUMBER THREE

{¶28} The third issue raised by Mavroudis deals with his allegations of ineffective assistance of counsel. When making a claim for ineffective assistance of counsel, a petitioner must show that counsel's errors were so grave as to render the results of the trial unreliable, and thus deprived petitioner of a fair trial. *Strickland v. Washington* (1984), 466 U.S. 668; *State v. Smith* (1985), 17 Ohio St.3d 98. Where the question of the effectiveness of counsel is raised in a petition for post-conviction relief, the Supreme Court has held that "the petitioner bears the initial burden to submit evidentiary documents containing sufficient operative facts to demonstrate the lack of competent counsel and that the defense was prejudiced by counsel's ineffectiveness." *Jackson*, 64 Ohio St.2d 107 at the syllabus. Mere broad conclusory statements do not merit a hearing. *State v. Pankey* (1981), 68 Ohio St.2d 58, 59.

{¶29} In Mavroudis' brief, he contends trial counsel failed to direct the attention of the court to the alleged violation of the Constitutional right to a speedy trial. Mavroudis initially presented no evidentiary documents to support his claim; he later attempted to add the docket sheet to his petition, an attempt that was denied by the court. As explained under Issue Number one, even if the docket sheet were added to the petition, there would still be a lack of evidence containing sufficient operative facts to demonstrate a lack of competent counsel. As such, the trial court did not abuse its discretion by denying the evidentiary hearing.

{¶30} Furthermore, the docket sheet supports trial counsel's decision not to raise a speedy trial violation. As previously discussed, Mavroudis' claim is based on an improper reading of the docket sheet. As was stated in Issue Number One, Mavroudis claims that he was served with an indictment on March 29, 2001, however the only activity in Mavroudis' case reflected on the record for March 29, 2001, is that the notice to indict and notice to arrest upon indictment were issued to the sheriff. In

actuality, Mavroudis was served with the indictment on December 20, 2001, while he was in jail on another charge. (See Issue No. Two). Therefore, Mavroudis' reading of the record is erroneous and his rights were not violated.

{¶31} Pursuant to this erroneous reading, Mavroudis moved to dismiss trial counsel due to counsel's refusal to make a motion to dismiss the case for violation of his speedy trial rights. In response to the motion, a status conference was held wherein trial counsel cites Mavroudis' misreading of the record as the reason she is not pursuing the argument. At that conference, counsel further elaborated on the subject, disclosing that she spoke to Mavroudis' attorney in Mahoning County, to the Sheriff's Departments of both Mahoning and Columbiana County, sought advice of other attorneys, and reexamined the record from the case. After all of this, trial counsel concluded that she lacked a good faith reason to make a motion to dismiss. The Sixth Amendment to the United States Constitution does not require counsel to file a meritless motion simply to avoid an allegation of ineffective assistance of counsel. *State v. Proctor* (May 14, 2001), 12th Dist. Nos. CA2000-06-059, CA2000-08-068, and CA2000-08-078, citing *State v. Robinson* (1996), 108 Ohio App.3d 428, 433. In light of the foregoing, trial counsel was acting within the bounds of effectiveness.

{¶32} Mavroudis also attempts to support his argument of deficient counsel by alleging that trial counsel failed to advise the defendant that he could preserve the speedy trial issues for appeal by entering a no contest plea. However, Mavroudis submits no evidentiary documents or support to otherwise prove his contention. Again, broad conclusory statements are insufficient to merit a hearing for post-conviction relief. *Pankey*, 68 Ohio St.2d at 59.

{¶33} To successfully demonstrate ineffective assistance of counsel, Mavroudis was required to show that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for the inadequate representation of counsel, the result of the proceeding would have been different. *State v. Miller* (Jan. 22, 1998), 7th Dist. No. 93CA272, citing *Strickland*, 466 U.S. 668. Here, neither factor was present. As such, Mavroudis' third issue is without merit and is overruled.

{¶34} For the foregoing reasons, the judgment of the trial court is hereby affirmed.

Judgment affirmed.

Donofrio and DeGenaro, JJ., concur.