

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
HARRISON COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

KETURAH K. KRANKOVICH,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case Nos. 20 HA 0002, 20 HA 0004

Criminal Appeal from the
Harrison County Court, Harrison County, Ohio
Case Nos. TCR 17-217, CRB 17-28

BEFORE:

David A. D'Apolito, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:

Reversed, Vacated, and Dismissed with Prejudice.

Atty. Lauren E. Knight, Harrison County Prosecutor, *Atty. Jack Felgenhauer*, Assistant Prosecuting Attorney, 111 W. Warren Street, P.O. Box 248, Cadiz, Ohio 43907, for Plaintiff-Appellee and

Atty. James Gentile and *Atty. Edward Czopur*, DeGenova & Yarwood, Ltd., 42 North Phelps Street, Youngstown, Ohio, 44503, for Defendant-Appellant.

Dated: June 24, 2021

D'APOLITO, J.

{¶1} Appellant, Keturah K. Krankovich, appeals from the February 13, 2020 judgment of the Harrison County Court sentencing her for OVI, resisting arrest, and disorderly conduct following a jury trial. Because the trial commenced in violation of Appellant's statutory speedy trial rights, the trial court's judgment is reversed, vacated, and dismissed with prejudice.

FACTS AND PROCEDURAL HISTORY

{¶2} On January 27, 2017, in Case No. TRC 17-217, Appellant was cited for OVI, a second offense with refusal, a misdemeanor of the first degree, in violation of R.C. 4511.19.¹ Three days later, in Case No. CRB 17-28, a criminal complaint stemming from the OVI arrest was filed against Appellant charging her with resisting arrest, a misdemeanor of the second degree, in violation of R.C. 2921.33, and disorderly conduct, a misdemeanor of the fourth degree, in violation of R.C. 2917.11. Appellant appeared pro se at her initial appearance and pleaded not guilty to all charges.

{¶3} On February 21, 2017, Appellant filed a pro se request for a jury trial. One week later, Appellant filed a pro se motion to suppress. Appellee, the State of Ohio, filed a response. Appellant later retained counsel.² A suppression hearing was held on August 29, 2017.

{¶4} On February 5, 2018, Appellant filed a motion to dismiss on speedy trial grounds. The State filed an opposition. On June 29, 2018, Appellant filed a motion to discharge on speedy trial grounds. The State filed an opposition.

{¶5} On October 11, 2018, the trial court overruled Appellant's motion to suppress. On November 29, 2018, Appellant filed another demand for a jury trial. A pre-trial conference was held on January 23, 2019.

{¶6} Because the trial court failed to follow the designated time standard, on

¹ The complaint was later amended to include the correct sections of R.C. 4511.19(A)(1)(a) and (2).

² Appellant was represented by different attorneys throughout this matter, commencing on July 6, 2017.

March 1, 2019, Policy Counsel from the Supreme Court of Ohio, Case Management Section, sent a letter to the trial judge, stating the following:

Per our conversation on February 27, 2019, it was reported to the Case Management Section of the Supreme Court of Ohio that [Defendant] was arraigned on January 31, 2017 and, to date, has not been terminated by the court, nor has a trial date been set.

Pursuant to the reporting standards promulgated by the Ohio Supreme Court, all O.V.I. cases filed in Municipal and County courts shall be disposed of within six months of arraignment. The above referenced case is pending without resolution well beyond the designated time standard.

It was additionally reported, and verified through review of the case docket, that motions filed on February 5, 2018 (Defendant's Motion to Dismiss), February 14, 2018 (State's Responses to the Motion to Dismiss), June 29, 2018 (Defendant's Motion to Discharge), and July 3, 2018 (Prosecutor Office Response to Defendant's Motion to Discharge) are still pending and have yet to be ruled upon by the court.

Pursuant to Superintendence Rule 40, all motions shall be ruled upon within 120 days from the date the motion was filed. The pending motions are awaiting a ruling well outside of the designated time period.

Please provide a date upon which these motions will be ruled upon and/or a next event date. Once docketed, please provide a copy of the ruling for each of the above listed pending motions. I can be reached [via email or phone]. Please send copies of the entries via fax to the Case Management Section * * *.

(3/1/2019 Supreme Court of Ohio, Case Management Section, Letter)

{¶7} Thereafter, the trial court filed a March 4, 2019 judgment and a March 13, 2019 nunc pro tunc judgment overruling Appellant's motions to dismiss and to discharge

on speedy trial grounds.³ Following the granting of continuances, the court set the pre-trial for April 25, 2019 and the jury trial for June 6, 2019.

{¶8} On April 24, 2019, Appellant filed a motion for change of venue and did not attend the scheduled pre-trial. A bench warrant was issued for her arrest. On April 26, 2019, Appellant filed a motion to vacate capias. The trial court filed an initial bail order and re-scheduled the pre-trial for May 30, 2019. The parties appeared before the court on that date. The next day, Appellant filed another motion to discharge on speedy trial grounds. On June 5, 2019, the court once again continued the jury trial.

{¶9} In the interim, Appellant's last attorney withdrew from the case in October 2019. Because she was now without representation, on November 7, 2019, Appellant filed a pro se motion to continue the jury trial, now scheduled for November 13, 2019. The court once again continued the trial.

{¶10} On February 7, 2020, Appellant filed another pro se motion to dismiss on speedy trial grounds. The trial court did not grant that motion. Instead, the court proceeded to a jury trial which commenced on February 12, 2020, over three years after Appellant's arrest.⁴ Unable to hire new counsel, Appellant proceeded pro se. The jury returned guilty verdicts on all charges.

{¶11} On February 13, 2020, the trial court concurrently sentenced Appellant to 180 days in jail for OVI, 90 days for resisting arrest, and 30 days for disorderly conduct. The court further imposed a maximum fine for each offense and five years of probation.⁵

{¶12} Appellant appealed and raises three assignments of error.⁶

3. The March 4, 2019 judgment listed only Case No. TRC 17-217. The March 13, 2019 nunc pro tunc judgment added Case No. CRB 17-28. Appellant filed a pro se notice of appeal, Case No. 19 HA 0004. However, on June 14, 2019, this court dismissed that appeal for lack of a final appealable order.

4. Appellant challenges her conviction and sentence on procedural grounds that have no bearing on the facts that lead to the charges or the testimony at trial. Thus, no recitation of the facts or testimony is necessary here.

5. Appellant's sentence was stayed pending appeal.

6. Appellant filed a timely appeal, Case No. 20 HA 0002, but only included one underlying trial court Case No. TRC 17-217. As a result, Appellant also subsequently filed a motion for delayed appeal, Case No. 20 HA 0004, due to the clerical error in failing to include the other underlying trial court Case No. CRB 17-28. This court granted the delayed appeal and consolidated Case Nos. 20 HA 0002 and 20 HA 0004 for purposes of oral argument and judicial review.

ASSIGNMENT OF ERROR NO. 1

APPELLANT WAS DENIED HER RIGHT TO A SPEEDY TRIAL PURSUANT TO THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTIONS, ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION, AND R.C. 2945.71.

{¶13} “An appellate court’s review of a speedy trial claim is a mixed question of law and fact; a reviewing court gives due deference to the trial court’s factual findings that are supported by competent, credible evidence and independently reviews whether the correct law was applied to the facts of the case.” *State v. Baker*, 7th Dist. Mahoning No. 19 MA 0080, 2020-Ohio-7023, ¶ 98.

The right to a speedy trial is a fundamental right of a criminal defendant guaranteed by the United States and Ohio Constitutions. (Sixth Amendment to the U.S. Constitution; Ohio Constitution, Article I, Section 10.) States have the authority to prescribe reasonable periods in which a trial must be held, consistent with constitutional requirements. *Barker v. Wingo*, 407 U.S. 514, 523, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). “In response to this authority, Ohio enacted R.C. 2945.71, which designates specific time requirements for the state to bring an accused to trial.” *State v. Hughes*, 86 Ohio St.3d 424, 425, 715 N.E.2d 540 (1999). The statutory speedy trial provisions, R.C. 2945.71 *et seq.*, were enacted to enforce the constitutional right to a public speedy trial of an accused charged with the commission of a felony or a misdemeanor and are to be strictly enforced. *State v. Pachay*, 64 Ohio St.2d 218, 416 N.E.2d 589 (1980). The prosecution and the trial court both have a mandatory duty to try an accused within the time frame provided by the statute. *State v. Singer*, 50 Ohio St.2d 103, 105, 362 N.E.2d 1216 (1977); see also *State v. Cutcher*, 56 Ohio St.2d 383, 384, 384 N.E.2d 275 (1978).

Because the general assembly recognized that some degree of flexibility is necessary, it allowed for extensions of the time limits for bringing an

accused to trial in certain circumstances. *State v. Lee*, 48 Ohio St.2d 208, 209, 357 N.E.2d 1095 (1976). Accordingly, R.C. 2945.72 contains an exhaustive list of events and circumstances that extend the time within which a defendant must be brought to trial. “In addition to meticulously delineating the tolling events, the General Assembly jealously guarded its judgment as to the reasonableness of delay by providing that time in which to bring an accused to trial ‘may be extended only by’ the events enumerated in R.C. 2945.72(A) through (I).” *State v. Ramey*, 132 Ohio St.3d 309, 313, 2012–Ohio–2904, 971 N.E.2d 937, 942, ¶ 24. These extensions are to be strictly construed, and not liberalized in favor of the state. *Id.*

State v. Torres, 7th Dist. Jefferson Nos. 12 JE 30 and 12 JE 31, 2014-Ohio-3683, ¶ 11-12.

{¶14} R.C. 2945.71, “Time within which hearing or trial must be held,” states in part:

(B) Subject to division (D) of this section, a person against whom a charge of misdemeanor, other than a minor misdemeanor, is pending in a court of record, shall be brought to trial as follows:

* * *

(2) Within ninety days after the person’s arrest or the service of summons, if the offense charged is a misdemeanor of the first or second degree, or other misdemeanor for which the maximum penalty is imprisonment for more than sixty days.

R.C. 2945.71(B)(2)

{¶15} The greatest charge against Appellant involves a first-degree misdemeanor. As such, Appellant was required to be brought to trial within 90 days of her January 27, 2017 arrest. R.C. 2945.71(B)(2). Although R.C. 2945.71 requires that trial commence within 90 days after a defendant’s arrest or the service of a summons for

a first-degree misdemeanor, the trial timeline may be extended by tolling events, as indicated by R.C. 2945.72, "Extension of time for hearing or trial," which provides:

The time within which an accused must be brought to trial * * * may be extended only by the following:

(A) Any period during which the accused is unavailable for hearing or trial, by reason of other criminal proceedings against him, within or outside the state, by reason of his confinement in another state, or by reason of the pendency of extradition proceedings, provided that the prosecution exercises reasonable diligence to secure his availability;

(B) Any period during which the accused is mentally incompetent to stand trial or during which his mental competence to stand trial is being determined, or any period during which the accused is physically incapable of standing trial;

(C) Any period of delay necessitated by the accused's lack of counsel, provided that such delay is not occasioned by any lack of diligence in providing counsel to an indigent accused upon his request as required by law;

(D) Any period of delay occasioned by the neglect or improper act of the accused;

(E) Any period of delay necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused;

(F) Any period of delay necessitated by a removal or change of venue pursuant to law;

(G) Any period during which trial is stayed pursuant to an express statutory requirement, or pursuant to an order of another court competent to issue such order;

(H) The period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion;

(I) Any period during which an appeal filed pursuant to section 2945.67 of the Revised Code is pending.

R.C. 2945.72(A)-(I)

{¶16} The statute is clear that “[u]pon motion made at or prior to the commencement of trial, a person charged with an offense shall be discharged if he is not brought to trial within the time required by sections 2945.71 and 2945.72 of the Revised Code.” R.C. 2945.73(B). The time may be tolled by certain events, including continuances and motions. R.C. 2945.72(C), (E), and (H). Compliance with these speedy trial statutes is mandatory and the provisions are strictly construed against the state. *State v. Kozic*, 7th Dist. Mahoning No. 11 MA 160, 2014-Ohio-3788, ¶ 85.

{¶17} The State posits that over 900 days should toll due to trial counsel's failure to respond to a discovery request. However, not every motion acts as a tolling event under R.C. 2945.72. “If a motion * * * does not cause an actual delay or divert the prosecution's attention, it will not toll the time.” See, e.g., *State v. Sanchez*, 162 Ohio App.3d 113, 2005-Ohio-2093, ¶ 15 (6th Dist.). A 30-day tolling for failure to respond to a State's reciprocal discovery demand is reasonable. See, e.g., *State v. Palmer*, 112 Ohio St.3d 457, 2007-Ohio-374; *State v. Sims*, 7th Dist. Mahoning No. 16-MA-0084, 2018-Ohio-2916, ¶ 24-26.

{¶18} As stated, this misdemeanor case began on January 27, 2017. The jury trial was not held until February 13, 2020. Thus, this matter took over three years to get to trial, well beyond the 90-day required timeframe for such first-degree misdemeanors. R.C. 2945.71(B)(2).

{¶19} The record reveals that Appellant never waived her right to a speedy trial. Regarding tolling events, a month after her arrest, Appellant filed a motion to suppress on February 28, 2017. A suppression hearing was held on August 29, 2017. At the time that motion was argued, there were no other pending motions.

{¶20} Nothing new was filed until February 5, 2018. On that date, Appellant filed

her first motion to dismiss on speedy trial grounds. The State responded. Nothing new was filed until June 29, 2018. On that date, Appellant filed a motion to discharge on speedy trial grounds. The State responded. Nothing new was filed until October 11, 2018. On that date, the trial court finally filed a judgment overruling Appellant's motion to suppress, some 14 months after the matter was heard.

{¶21} A pre-trial conference on Appellant's speedy trial motions was not held until January 23, 2019. The record reveals the trial judge clearly failed to timely rule on the pending motions to dismiss and to discharge. As a result of the trial judge's failure to follow the designated time standard, the Supreme Court of Ohio intervened on February 27, 2019. On March 1, 2019, Policy Counsel from the Supreme Court of Ohio, Case Management Section, sent a letter to the trial judge. Policy Counsel stressed that no trial date had been set and the OVI case was still pending without resolution well beyond the designated six-month time guideline pursuant to the reporting standards promulgated by the Supreme Court of Ohio. Policy Counsel further stressed that Appellant's motions to dismiss and to discharge were still pending well outside of the designated 120-day time period upon which trial courts are directed to rule upon all motions pursuant to Superintendence Rule 40. This guideline has also been generally accepted by courts of appeal, including this district. See *Powell v. Houser*, 7th Dist. Mahoning No. 07-MA-14, 2007-Ohio-2866, ¶ 22. The trial judge here clearly failed to follow the time guideline.

{¶22} After receiving the letter from the Supreme Court, the trial court overruled Appellant's motions to dismiss and to discharge on speedy trial grounds on March 4, 2019. All tolled, over 550 days had passed from the date of the suppression hearing, August 29, 2017, to the date that the trial court finally ruled on the motions to dismiss and to discharge, March 4, 2019.

{¶23} As the record establishes, Appellant ended up filing another motion to discharge on speedy trial grounds on May 31, 2019. On February 7, 2020, Appellant filed another motion to dismiss on speedy trial grounds. The trial court did not grant the motions. Rather, the court proceeded to a jury trial which commenced on February 12, 2020, over three years after Appellant's arrest. Thus, including the qualified tolling events, as addressed, due to the trial judge's failure to follow the designated time standard, it is clear that Appellant's speedy trial rights were violated.

{¶24} Appellant’s first assignment of error has merit.

ASSIGNMENT OF ERROR NO. 2

APPELLANT WAS DENIED HER RIGHT TO COUNSEL AND RIGHT TO A FAIR TRIAL PURSUANT TO THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION WHEN THE TRIAL COURT FAILED TO OBTAIN A KNOWING, INTELLIGENT AND VOLUNTARY WAIVER OF COUNSEL PRIOR TO TRIAL.

ASSIGNMENT OF ERROR NO. 3

THE SENTENCE IMPOSED WAS CONTRARY TO LAW AS THE TRIAL COURT WAS WITHOUT AUTHORITY TO IMPOSE MAXIMUM SENTENCES AND PROBATION.

{¶25} Based on this court’s disposition in Appellant’s first assignment of error, we find Appellant’s second and third assignments moot. See App.R. 12(A)(1)(c); *Torres, supra*, at ¶ 19.

CONCLUSION

{¶26} For the foregoing reasons, Appellant’s first assignment of error is well-taken, thereby rendering her second and third assignments moot. Appellant’s conviction and sentence is reversed, the judgment of the trial court vacated, and the matter dismissed with prejudice. Any further prosecution for the same conduct is barred.

Waite, J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, it is the final judgment and order of this Court that Appellant's conviction and sentence is reversed and judgment from the Court of Common Pleas of Harrison County, Ohio, is vacated and dismissed with prejudice. Costs to be taxed against the Appellee.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.