

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
MEIGS COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 20CA8
	:	
v.	:	
	:	
SEAN B. MITCHELL,	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
Defendant-Appellant.	:	

APPEARANCES:

Kathryn Cornelius-Blume, Dagger, Johnston, Miller, Ogilvie & Hampson, LLP,
Lancaster, Ohio, for Appellant.

James K. Stanley, Meigs County Prosecuting Attorney, Pomeroy, Ohio, for
Appellee.

Smith, P.J.

{¶1} Sean B. Mitchell (“Appellant”) appeals the June 24, 2020 judgment entry and final decision of the Meigs County Court of Common Pleas which found that the trial court had subject matter jurisdiction in Appellant’s underlying criminal case when Appellant was sentenced in 2013. On appeal, Appellant contends that the trial court erred when it failed to dismiss Appellant’s matter with prejudice based upon violation of Appellant’s constitutional rights under the Extradition Clause of the United States Constitution and also violation of constitutional speedy trial rights. Upon review, we find that the constitutional

claims in Appellant's untimely Motion to Vacate and Set Aside Judgment should have been dismissed, as the trial court lacked jurisdiction to consider them.

FACTS

{¶2} The underlying facts are fully recited in *State v. Mitchell*, 4th Dist. Meigs No. 13CA13, 2015-Ohio-1132, ("*Mitchell I*"), at Paragraphs 2-5, 9 and 10. For our purposes here, it is sufficient to recite that in 2009, Appellant, after being apprehended by Mississippi law enforcement officials for bank robbery, confessed to robbing a bank in Meigs County, Ohio. On December 10, 2009, while Appellant was incarcerated in Mississippi, he was indicted by a Meigs County Grand Jury on four counts: aggravated robbery, a felony of the first degree, in violation of R.C. 2911.01(A); robbery, a felony of the second degree, in violation of R.C. 2911.02(A)(2); theft, a felony of the fourth degree, in violation of R.C. 2913.02(A)(1); and, kidnapping, a felony of the first degree, in violation of R.C. 2905.01(A)(2).

{¶3} On July 10, 2012, Appellant was sentenced in Mississippi for his crimes committed there. Appellant was eventually brought to Ohio in 2013. On August 29, 2013, with the assistance of counsel, Appellant entered guilty pleas to the four counts contained in the indictment.

{¶4} On September 30, 2013, Appellant was sentenced in the Meigs County Court of Common Pleas. The trial court imposed a sentence of five years in

prison, to be served consecutively to his sentence in Mississippi. Appellant was then returned to the State of Mississippi to complete his prison sentence there.

{¶5} Appellant timely appealed his Ohio prison sentence in *Mitchell I*. In our March 19, 2015 decision in *Mitchell I* we found no merit to Appellant's arguments, however we remanded for correction of the sentencing entry.¹ On April 16, 2015, the trial court entered a Nunc Pro Tunc corrective entry. Appellant did not appeal the Nunc Pro Tunc entry.

{¶6} On January 17, 2019, Appellant filed a pro se Motion for Jail Time Credit. On March 1, 2019, Appellant filed a pro se Motion to Vacate or Set Aside Judgment. In both pleadings, Appellant argued that Meigs County did not use reasonable diligence in bringing Appellant from Mississippi to Ohio to face the Ohio charges. Appellant further alleged that at Appellant's 2013 sentencing, the Meigs County Prosecutor was dishonest in her representation to the trial court regarding the delay.

{¶7} Hearing on Appellant's pro se motions was delayed for various reasons before and after the Covid 19 pandemic ensued. During that time, Appellant was appointed counsel. On March 20, 2020, defense counsel filed Defendant's Brief in Support of the previously filed pro se motions. The State's response to Appellant's

¹We found no merit to Appellant's arguments that the trial court failed to consider his military service pursuant to R.C. 2929.14 and 2929.12. We further found that his sentence was not contrary to law. However, we did find that the trial court erred by failing to specifically incorporate its findings supporting imposition of a consecutive sentence. We remanded the case for correction of the omission in the sentencing entry.

motions was filed the same day. The matter finally came on for hearing on April 23, 2020.

{¶8} In its June 24, 2020 decision, subject of this appeal, the trial court found that the Meigs County Common Pleas Court had jurisdiction over Appellant and subject matter of his criminal case when Appellant pled guilty and was convicted in 2013. The trial court's entry specifically noted:

Mississippi was not a party to the IAD [Interstate Agreement on Detainers] and Ohio was without power to force Mississippi to turn over Defendant until all the coordinating parties and agencies agree for Defendant to be released from Mississippi and transported to Ohio. All the parties were not in coordination for that event until June 13, 2013. This Court specifically finds that the Defendant's speedy trial rights did not commence until June 13, 2013.

{¶9} This timely appeal followed. Additional facts and dates pertinent to resolution of this appeal are set forth below, where appropriate.

ASSIGNMENT OF ERROR

- I. THE TRIAL COURT ERRED WHEN IT FAILED TO DISMISS APPELLANT'S MATTER, WITH PREJUDICE, AS APPELLANT'S CONSTITUTIONAL RIGHTS AFFORDED UNDER THE EXTRADITION CLAUSE OF THE UNITED STATES CONSTITUTION AND SPEEDY TRIAL RIGHTS UNDER OHIO LAW WERE VIOLATED.

A. STANDARD OF REVIEW

{¶10} Subject matter jurisdiction refers to a court's power to hear and decide a particular case on its merits. *See State v. Wycuff*, 4th Dist. Pickaway No.

19CA28, 2020-Ohio-5320, at ¶ 9; *BCL Enterprises, Inc. v. Ohio Dept. of Liquor Control*, 77 Ohio St.3d 467, 469, 1997-Ohio-254, 675 N.E.2d 1; *Morrison v. Steiner*, 32 Ohio St.2d 86, 290 N.E.2d 841, paragraph one of the syllabus (1972). A judgment rendered by a court lacking subject matter jurisdiction is void ab initio. *Patton v. Diemer*, 35 Ohio St.3d 68, 518 N.E.2d 941, paragraph three of the syllabus (1988). A sentence is also void when a sentencing court lacks jurisdiction over the subject matter of the case or personal jurisdiction over the accused. *See State v. Harper*, 160 Ohio St. 3d 480, 2020-Ohio-2913, 159 N.E.3d 248, at ¶ 42.

{¶11} When subject matter jurisdiction is lacking it can be raised at any time, it is not barred by the doctrine of res judicata, and it renders a judgment void as opposed to voidable. *See State v. Helms*, 7th Dist. Mahoning No. 14MA96, 2015-Ohio-1708, at ¶ 15; *State v. Lomax*, 96 Ohio St.3d 318, 2002-Ohio-4453, 774 N.E.2d 249, ¶ 17; *State v. Wilson*, 73 Ohio St.3d 40, 45, 652 N.E.2d 196 (1995), fn. 6. *See also State v. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraphs six and nine of the syllabus. “ ‘The determination of whether a judgment is void is a question of law.’ ” *State v. Jayjohn*, 4th Dist. Vinton No. 2021-Ohio-2286, at ¶ 29, quoting *State v. Cave*, 4th Dist. Scioto No. 20CA3291, 2021-Ohio-874, at ¶ 5. (Internal citations omitted.) A question of law necessitates a de novo review of the matter. *See Wycuff, supra*, at ¶ 7.

{¶12} Appellant has framed the issues presented in this appeal as

involving the subject matter jurisdiction of the trial court. R.C. 2945.71(C)(2) provides that an accused charged with a felony must proceed to trial within 270 days after the person's arrest. Appellant argues that the Meigs County Prosecutor failed to exercise reasonable diligence, as required by R.C. 2945.72 (A), to extradite him from Mississippi and to secure his presence in Meigs County, Ohio. Appellant asserts that speedy trial time attached as of July 13, 2011, when the Governor of Mississippi, Haley Barbour, issued a Mississippi Rendition Warrant directing the sheriff of Meigs County to take custody of Appellant. The Meigs County Sheriff did not take custody of Appellant and return Appellant to Ohio until just prior to his arraignment on June 28, 2013. Thus, Appellant contends that reasonable diligence was not exercised and the tolling provisions pertaining to extradition did not apply in Appellant's case. Appellant concludes that as a result, the trial court was divested of subject matter jurisdiction by January 2012, creating a void judgment entry.

{¶13} In *State v. Helms, supra*, the appellate court rejected the argument that a violation of Helms' speedy trial rights deprived the trial court of subject matter jurisdiction and resulted in his conviction being void. *Id.* at ¶ 16.² The 11th District rejected the same argument more recently in *State v. Johnson*, 11th Dist. Lake No. 2016-L-064, 2017-Ohio-884. We also reject Appellant's

² “[S]peedy trial issues do not eliminate a criminal court’s subject matter jurisdiction and do not result in void proceedings. *State v. Moore*, 7th Dist. No. 12MA197, 2013-Ohio-4000, ¶¶ 14-18 (and explaining void versus voidable); *State v. Weaver*, 7th Dist. No. 12BE21, 2013-Ohio-430, ¶ 15 (speedy trial issue does not void conviction or sentence).”

characterization of his conviction as being void based on a lack of subject matter jurisdiction, as presented in his appellate brief. Rather, we find his appeal to be limited to consideration of speedy trial issues relating to Appellant's involvement in extradition proceedings.

{¶14} Therefore, in determining the appropriate standard of review, we note that Appellant's appeal comes before us on the implicit denial of Appellant's pro se motions for jail time credit and for vacation of the allegedly void judgment in his case.³ Appellant's underlying motion challenging his sentence was captioned "Motion to Vacate or Set Aside Judgment." " "[C]ourts may recast irregular motions into whatever category necessary to identify and establish the criteria by which the motion should be judged." " " *State v. Brown*, 4th Dist. Scioto No. 16CA3770, 2017-Ohio-4063, at ¶ 19, quoting *State v. Burkes*, 4th Dist. Scioto No. 13CA3582, 2014-Ohio-3311, ¶ 11, quoting *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12.

{¶15} The Supreme Court of Ohio has held that " "[w]here a criminal defendant, subsequent to his or her direct appeal, files a motion seeking vacation or correction of his or her sentence on the basis that his or her constitutional rights have been violated, such a motion is a petition for postconviction relief as defined in R.C. 2953.21." " *State v. Osborn*, 4th Dist. Adams No. 18CA1064, 2018-Ohio-3866, at ¶ 7, quoting *State v. Reynolds*, 79 Ohio St.3d 158, 679 N.E.2d 1131

³Appellant's appeal does not challenge the trial court's decision regarding his motion for jail time credit.

(1997), syllabus. A “Motion to Correct or Vacate Sentence, despite its caption, meets the definition of a motion for postconviction relief set forth in R.C. 2953.21(A)(1), because it is a motion that was (1) filed subsequent to [defendant's] direct appeal, (2) claimed a denial of constitutional rights, (3) sought to render the judgment void, and (4) asked for vacation of the judgment and sentence.”

Reynolds at 160. In this case, Appellant's underlying motion contains a constitutional claim alleging violation of his constitutional rights under the Extradition Clause of the United States Constitution as well as violation of his constitutional (and statutory) speedy trial rights. Therefore, the motion meets the definition of a petition for postconviction relief pursuant to R.C. 2953.21. *Osborn, supra*, at ¶ 10. *See also Jayjohn, supra*, at ¶ 6.

{¶16} The postconviction relief process is a collateral civil attack on a criminal judgment rather than an appeal of the judgment. *See Jayjohn, supra*, at ¶ 10; *State v. Smith*, 4th Dist. Highland No. 19CA16, 2020-Ohio-116; *State v. Calhoun*, 86 Ohio St.3d 279, 281, 1999-Ohio-102, 714 N.E.2d 905. The postconviction relief proceeding is designed to determine whether “there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States.” R.C. 2953.21(A)(1)(a). Postconviction relief is not a constitutional right; instead, it is a narrow remedy that gives the petitioner no more rights than those granted by statute. *See Smith, supra*. It is a means to resolve constitutional claims that cannot

be addressed on direct appeal because the evidence supporting the claims is not contained in the record. *See State v. Teets*, 4th Dist. Pickaway No. 17CA21, 2018-Ohio-5019, ¶ 14. “This means that any right to postconviction relief must arise from the statutory scheme enacted by the General Assembly.” *State v. Apanovitch*, 155 Ohio St.3d 358, 2018-Ohio-4744, 121 N.E.3d 351, ¶ 35. Our review of a timely filed petition for postconviction relief is limited to the abuse of discretion standard. *See Jayjohn, supra*, at ¶ 9.

{¶17} An “abuse of discretion” is more than an error of law or judgment; it implies that the trial court's attitude was unreasonable, arbitrary or unconscionable. *Id.* at ¶ 9; *State v. Herring*, 94 Ohio St.3d 246, 255, 762 N.E.2d 940 (2002); *State v. Adams*, 60 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). In reviewing for an abuse of discretion, appellate courts must not substitute their judgment for that of the trial court. *Bennett, supra*; citing *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 732, 654 N.E.2d 1254 (1995); *In re Jane Doe 1*, 57 Ohio St.3d 135, 137-138, 566 N.E.2d 1181 (1991).

LEGAL ANALYSIS

1. Appellant’s motion to vacate and set aside judgment was untimely.

{¶18} R.C. 2953.21(A)(1)(a), petition for postconviction relief, provides that:

“Any person in any of the following categories may file a petition in the court that imposed sentence, stating the grounds

for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief: (i) Any person who has been convicted of a criminal offense * * * and who claims that there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States * * *.”

{¶19} Pursuant to R.C. 2953.21(2)(a), a petition under R.C. 2953.21 (A)(1)(a) must be filed no later than 365 days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication.

{¶20} In this case, Appellant's direct appeal was filed in 2013. The trial transcript was filed in this court of appeals on separate dates, March 26, 2014 and April 25, 2014. Giving Appellant the benefit of the later date, it is obvious that Appellant's "Motion to Vacate or Set Aside Judgment" should have been filed no later than 365 days after April 25, 2014. Appellant's motion, however, was filed on March 1, 2019, nearly four years later. Thus, consideration of Appellant's motion for postconviction relief is barred due to untimeliness. *See, e.g., State v. Rinehart*, 4th Dist. Ross No. 17CA3606, 2018-Ohio-1261, at ¶ 13 (Petition for postconviction relief filed after 10 years after expiration of 365-day period was untimely); *State v. Heid*, 4th Dist. Scioto No. 15CA3710, 2016-Ohio-2756, at ¶ 1 (Petition for postconviction relief filed almost seven years after the expiration of the time for filing an appeal from 2008 conviction was clearly untimely). While

the trial court did not address any issue of timeliness, we find Appellant's motion is obviously untimely.

{¶21} An exception to the time requirement is contained in R.C. 2953.23. *See State v. Sowards*, 4th Dist. Gallia No. 18CA2, 2018-Ohio-4173, at ¶ 23. A trial court may not entertain a postconviction relief petition unless the petitioner first demonstrates one of the following: (1) the petitioner was unavoidably prevented from discovering the facts necessary for the claim for relief; or (2) the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation. R.C. 2953.23(A)(1)(a). If the petitioner demonstrates one of the foregoing threshold findings, the petitioner then must establish that but for the constitutional error at trial no reasonable finder of fact would have found him guilty. R.C. 2953.23(A)(1)(b); *accord State v. Rinehart*, 4th Dist. Ross No. 17CA3606, 2018-Ohio-1261, at ¶ 14.

{¶22} During the trial court proceedings, "Defendant's Brief in Support," filed March 20, 2020, addressed timeliness as follows:

Defendant has been serving his sentence in Ohio since being picked up in Mississippi by the Meigs County Sheriff's Office on November 14, 2017, ultimately being admitted to the Ohio prison system on November 16, 2017. During that time, Appellant has come to possess several documents including the version of the 2011 Ohio Governor's Warrant signed by the Mississippi Governor, the 2011 Mississippi Governor's Rendition Warrant, and the 2013 communications from the Meigs County Prosecutor's Office. None of these items were made available to Defendant until he was able to obtain them since returning to Ohio for his sentence. None of these

materials were provided to Defendant through any formal or informal discovery process. Defendant was only able to recently obtain copies of many of the documents referenced herein **AFTER his return to Ohio**. Defendant did not delay bringing this matter to this Court's attention for as soon as he obtained the documents through his own accord he filed the instant pro se motions which brings him before this Court.

{¶23} “ ‘A defendant is “unavoidably prevented” from the discovery of facts if he had no knowledge of the existence of those facts and could not have, in the exercise of reasonable diligence, learned of their existence within the time specified for filing his petition for postconviction relief.’ ” *Sowards, supra*, at ¶ 23, quoting *State v. Cunningham*, 2016-Ohio-3106, 65 N.E.3d 307, at ¶ 19 (3d Dist.), citing *State v. Holnapy*, 11th Dist. Lake No.2013-L-002, 2013-Ohio-4307, ¶ 32, and *State v. Roark*, 10th Dist. Franklin No. 15AP-142, 2015-Ohio-3206, ¶ 11. Moreover, “[t]he ‘facts’ contemplated by this provision are the historical facts of the case, which occurred up to and including the time of conviction.” *State v. Williamitis*, 2nd Dist. Montgomery No. 21321, 2006-Ohio-2904, at ¶ 18. Neither party has addressed the issue of timeliness in this appeal.

{¶24} Even if Appellant had argued entitlement to the exception set forth in R.C. 2953.23(A)(1), we would find no merit. Appellant's assertion in the trial court brief that he had “come to possess * * * the 2011 Ohio Governor's Warrant signed by Mississippi Governor, the 2011 Mississippi Governor's Rendition Warrant, and the 2013 communications from the Meigs County Prosecutor's Office” is unsupported. Appellant has not provided any supporting affidavits as to

cause or reason that he was unable to obtain the above-referenced documents which he used to file his pro se motions in 2017.

{¶25} As indicated above, we have construed the issue on appeal as one of speedy trial, not subject matter jurisdiction, and therefore have declined to find Appellant's conviction to be void. In cases where a postconviction motion is untimely and an appellant fails to argue one of the exceptions set forth in R.C. 2953.23 (A)(1), we do not apply an abuse of discretion standard of review to the argument but instead conclude that the trial court lacked jurisdiction to entertain such motions. *See Jayjohn, supra*, at ¶ 20; *Osborn, supra*, at ¶ 12.

{¶26} Therefore, we find that the trial court lacked jurisdiction to address Appellant's claims of violation of extradition and speedy trial rights and should have dismissed his postconviction motion on the basis of untimeliness.

{¶27} Even if Appellant's petition was not untimely, we would find consideration of his arguments would be barred for several additional reasons.

2. Appellant's speedy trial claims would be barred by application of the doctrine of res judicata.

{¶28} Res judicata bars Appellant from raising claims that he could have raised in his direct appeal. “ ‘[R]es judicata applies to proceedings involving postconviction relief.’ ” *State v. Shaffer*, 4th Dist. Lawrence No. 14CA15, 2014-Ohio-4976, at ¶ 16, quoting *State v. Burton*, 4th Dist. Gallia No. 13CA12, 2014-Ohio-2549, ¶ 17, citing *State v. Szefcyk*, 77 Ohio St.3d 93, 95, 671 N.E.2d 233

(1996). “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 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. Perry*, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967), paragraph nine of the syllabus; *see also State v. Davis*, 139 Ohio St.3d 122, 2014-Ohio-1615, 9 N.E.3d 1031, ¶ 28.

{¶29} Appellant’s case presents some parallels to those presented in *Shaffer, supra*. Shaffer was indicted on one count of tampering with evidence and one count of grand theft for an incident occurring in July 2009. Shaffer was in the custody of West Virginia officials and was not prosecuted on the Ohio charges until he was released from a West Virginia prison in 2013. Shaffer was represented by counsel and entered a guilty plea to grand theft in return for dismissal of the tampering with evidence charge. He was sentenced to 12 months in prison. Shaffer commented at sentencing, “They had me arrested in West Virginia, they never sentenced me, never brought me to court on it. I think it’s wrong, but there’s nothing I can do about it.”

{¶30} Instead of appealing his conviction and sentence, Shaffer filed a pro se petition for postconviction relief, claiming he was deprived of his rights

guaranteed under the Interstate Agreement on Detainers (IAD) and his constitutional speedy trial rights. We noted in *Shaffer*:

Shaffer could have raised the issues of noncompliance with the timing requirements of the IAD and his constitutional speedy trial rights at trial and on appeal from his conviction. Indeed, he claims now to have alluded to this issue at his sentencing hearing by complaining about Ohio authorities not timely trying him after he was arrested in West Virginia in 2009. But, although he was represented by counsel, he did not raise his specific claim by requesting dismissal of the indictment at trial or on appeal. At that point he had already pleaded guilty to grand theft and did not request that his plea should be withdrawn or that the case should be dismissed. Therefore, res judicata barred him from raising these issues in his petition for postconviction relief. See *State v. Palmer*, 7th Dist. Jefferson No. 11 JE 17, 2012-Ohio-5255, ¶ 6.

Shaffer, supra, at ¶ 17.

{¶31} Likewise, Appellant herein could have raised speedy trial issues at trial and in his direct appeal. We note that in *Mitchell I*, defense counsel requested Appellant receive a concurrent sentence with credit for 1,424 days. This indicates that Appellant would have been well aware of any issues concerning the passage of time in his criminal case. Similar to *Shaffer* Appellant was represented by counsel, yet he did not raise his specific claim by requesting dismissal of the indictment at trial or on appeal. Nor did Appellant request that his plea should be withdrawn on this basis.⁴ Therefore, res judicata would have barred Appellant from raising speedy trial issues in his petition for postconviction relief.

⁴Our review of Appellant's trial court case docket on the Meigs County Clerk of Court's online site does not record that Appellant ever filed any pre-sentence or post-sentence motion to withdraw his guilty pleas. The transcript of the April 23, 2020 hearing on motions reflects at Page 49,

3. Appellant entered guilty pleas.

{¶32} Earlier this year, this Court in *State v. Bateman*, 4th Dist. Jackson No. 19CA13, 2021-Ohio-57, found that by pleading guilty pursuant to a plea agreement, Bateman forfeited his right to argue speedy trial issues on appeal. *Id.* at

¶ 10. In *Bateman*, we observed:

[A] guilty plea “ ‘ “renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction if factual guilt is validly established.” ’ ” *State v. Lewis*, 4th Dist. Adams No. 18CA1073, 2019-Ohio-3154, ¶ 7, quoting *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, 810 N.E.2d 927, ¶ 78, quoting *Menna v. New York*, 423 U.S. 61, 62, fn.2, 96 S.Ct. 241. Consequently, “ ‘a voluntary, knowing, and intelligent guilty plea waives any alleged constitutional violations unrelated to the entry of the guilty plea and non-jurisdictional defects in the proceedings.’ ” *Id.*, citing *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, 855 N.E.2d 48, ¶ 105; *State v. Storms*, 4th Dist. Athens No. 05CA30, 2006-Ohio-3547, ¶ 9. This includes waiver of a defendant's speedy trial rights. *Montpelier v. Greeno*, 25 Ohio St.3d 170, 170, 495 N.E.2d 581 (1986); *State v. Kelley*, 57 Ohio St.3d 127, 130, 566 N.E.2d 658 (1991).

Bateman, at ¶ 9. See also *State v. Martin*, 4th Dist. Pike No. 19CA900, 2020-Ohio-3216, at ¶ 6; *State v. Dickens*, 4th Dist. Meigs No. 05CA14, 2006-Ohio-4920, at 6; *State v. Hiatt*, 4th Dist. Adams No. 94CA578, 1996 WL 422464, at *5.

{¶33} Appellant has not challenged the voluntary, knowing, and intelligent nature of his guilty pleas. In this appeal, he has not provided transcripts of the change of plea or sentencing hearings. However, the record reflects that he signed

a form captioned “Guilty Plea & Finding of Guilty” on August 29, 2013. The first page of the form indicates: “I am represented by an attorney. He has advised me of my rights, * * * possible defenses which I might have, and of the consequences of any admissions or pleas of guilty.” Furthermore, the last page of the form also sets forth the following:

**WAIVER OF JURY TRIAL AND
ACKNOWLEDGMENT OF RIGHTS**

I, the Defendant in the above case, being now in open court, hereby voluntarily waive and relinquish my right to trial by jury. Further, I acknowledge that all explanations required by the Ohio Criminal Rules of Procedure 11(C) have been explained to me and I fully understand that a plea of guilty gives up those rights.

{¶34} Appellant’s signature, a second time, is just beneath the statement.

Both the original judgment entry containing Appellant’s sentence and the nunc pro tunc entry reflect that Appellant was afforded all rights pursuant to Criminal Rules 11 and 32, and that the Court advised Appellant of his rights and possible penalties under the law. Given that Appellant was made aware of all possible defenses and shortly thereafter filed a motion for jail time credit, Appellant certainly should have known that speedy trial was a possible issue. And as previously indicated, Appellant raised no such issue in his direct appeal.

{¶35} In this case, Appellant has not challenged the voluntary, knowing, and intelligent nature of his guilty pleas, which were made with the assistance of

counsel. Based on the foregoing, Appellant would have waived his right to raise speedy trial issues in his motion for postconviction relief.

4. Appellant's speedy trial claim would also be without merit.

{¶36} The Sixth Amendment to the United States Constitution guarantees an accused the right to a speedy trial in all criminal prosecutions. *See State v. Belville*, 4th Dist. Lawrence No. 19CA27, 2021-Ohio-820, at ¶ 9. That guarantee is applicable to the states through the Fourteenth Amendment Due Process Clause. *Id. See Klopfer v. North Carolina*, 386 U.S. 213, 222-223, 87 S.Ct. 988 (1967). Similar protection is afforded under Article I, Section 10 of the Ohio Constitution. *See State v. Meeker*, 26 Ohio St.2d 9, 268 N.E.2d 589 (1971), paragraph one of the syllabus. Ohio law also includes a statutory speedy trial right. *See State v. Bishop*, 4th Dist. Vinton No. 02CA573, 2003-Ohio-1385, at ¶ 11. R.C. 2945.71 governs speedy trial and provides in section (C)(2) that a criminal defendant charged with a felony shall be brought to trial within 270 days of his arrest. *See also Belville, supra*, at ¶ 10.

{¶37} Appellate review of a trial court's decision on a motion to dismiss for a violation of speedy trial requirements presents a mixed question of law and fact. *See State v. James*, 4th Dist. Ross No. 13CA3393, 2014-Ohio-1702, ¶ 23; *State v. Brown*, 131 Ohio App.3d 387, 391, 722 N.E.2d 594 (4th Dist. 1998). Thus, appellate courts will defer to a trial court's findings of fact as long as competent, credible evidence supports them. *Brown* at 391. Appellate courts then

independently determine whether the trial court properly applied the law to the facts. *Id.* As this Court has previously explained, “ “upon review of a speedy trial issue, a court is required to count the days of delay chargeable to either side and determine whether the case was tried within applicable time limits.” ’ ’ ” *State v. Anderson*, 4th Dist. Scioto No. 15CA3696, 2016-Ohio-7252, ¶ 15, quoting *State v. Bailey*, 4th Dist. Ross No. 14CA3461, 2015-Ohio-5483, ¶ 15, in turn quoting *State v. Bailey*, 4th Dist. Scioto No. 09CA3287, 2010-Ohio-2239, ¶ 56.

“Furthermore, when reviewing the legal issues presented in a speedy trial claim, we must strictly construe the relevant statutes against the state.” *Brown* at 391, citing *Brecksville v. Cook*, 75 Ohio St.3d 53, 57, 661 N.E.2d 706 (1996).

{¶38} In the appellate brief, Appellant’s arguments have focused on the previously discussed meritless jurisdictional argument and the claimed violation of his extradition rights under the U.S. Constitution. Appellant has not set forth the required framework for analysis of constitutional speedy trial violations. Appellant concedes that Ohio’s speedy trial statutes, R.C. 2945.71 to R.C. 2945.73 do not apply to persons incarcerated pending the outcome of extradition proceedings. *See State v. Neal*, 5th Dist. Delaware No. 2005CA-02006, 2005-Ohio-6699, citing *State v. Haynes*, 8 Ohio App. 3d 119, 456 N.E.2d 1279 (8th Dist. 1982).

{¶39} Thus, we begin by observing that the United States Constitution, Article IV, Section 2, cl.2, known as the “Extradition Clause,” reads as follows:

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

In *In re Rowe*, 67 Ohio St. 2d 115, 118, 423 N.E.2d 167 (1981), the Supreme Court of Ohio observed: “ ‘ “The Extradition Clause was intended to enable each state to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed.” ’ ” *Michigan v. Doran*, 439 U.S. 282, 99 S. Ct. 530, 534, 535-536 (1978), quoting *Biddinger v. Commissioner of Police*, 245 U.S. 128, 132-133, 38 S.Ct. 41, 42-43 (1917); quoting *Appleyard v. Massachusetts*, 203 U.S. 222, 227, 27 S.Ct. 122, 123 (1906). The purpose of the clause was to preclude any state from becoming a sanctuary for fugitives from justice of another state. *See Michigan v. Doran*, 439 U.S. 282, 99 S. Ct. 530 at 534.

{¶40} Appellant concedes there is no speedy trial violation between the June 13, 2013 extradition date and August 29, 2013, when he entered his guilty pleas. However, Appellant claims that the Meigs County Prosecutor failed to use reasonable diligence to extradite him back to Ohio—the delay between July 13, 2011 and June 13, 2013. R.C. 2945.72 provides that, “[T]he time within which an accused must be brought to trial * * * may be extended by * * * (A) [a]ny period during which the accused is unavailable for hearing or trial, * * * *by reason of the pendency of extradition proceedings, provided that the prosecution exercises reasonable diligence to secure his availability* * * *.” (Emphasis added.) Even if

Appellant's motion for postconviction relief had not been untimely, or otherwise barred by res judicata or waiver, we would find no merit to his speedy trial claims.

{¶41} The United States Supreme Court has recognized that we must make four separate inquiries when deciding if the delay violated the constitutional right to a speedy trial. This inquiry involves, (1) whether the delay before trial was uncommonly long; (2) whether the government or the criminal defendant is more to blame for that delay; (3) whether the defendant asserted his right to a speedy trial; and (4) whether the defendant suffered prejudice because of the delay. *See Id.; Doggett v. United States*, 505 U.S. 647, 651, 112 S.Ct. 2686 (1992). None of these individual factors is determinative of whether the state violated the defendant's constitutional right to a speedy trial. Instead, we must consider the four factors collectively. *See Barker v. Wingo*, 407 U.S. 514, 533, 92 S.Ct. 2182 (1972). In *Bishop, supra*, we pointed out that in order to trigger the analysis, the defendant must allege that the interval between accusation and trial is “presumptively prejudicial.” *Doggett*, at 651-52, citing *Barker* at 530-31. The *Doggett* court also noted that a delay approaching one year becomes “presumptively prejudicial.” *Doggett* at 652, fn. 1.

{¶42} In this case, Appellant challenges the delay between July 13, 2011, when the Mississippi governor signed a Rendition Warrant, and June 13, 2013, when Appellant was returned to Ohio and arraigned, nearly two years later. The pertinent documents and dates made part of the trial court's record and attached to

the parties' various pleadings throughout the trial court proceedings are listed herein as follows:

- | | |
|-----------------|---|
| Dec. 10, 2009 | Appellant's indictment in Meigs County. |
| Dec. 21, 2009 | Praecipe for Notice to Prisoner of Pending Indictment. |
| March 24, 2010 | Appellant's request for court-appointed counsel. |
| July 12, 2010 | Appellant is sentenced in Mississippi. |
| Nov. 2, 2010 | Demand for Discovery and Request for Bill of Particulars filed by Atty. Herman Carson. |
| Dec. 20, 2010 | Praecipe for Arrest Warrant. |
| May 6, 2011 | Cover letter with enclosed application from Meigs County Asst. Pros. Matthew J. Donahue Requesting Executive Warrant. |
| June 20, 2011 | Executive Agreement from Office of Gov. John Kasich/Demand for Interstate Rendition Of Appellant. |
| July 13, 2011 | Rendition Warrant Directing Custody of Appellant to Sheriff Robert Beegle signed by Miss. Gov. Haley Barbour. |
| January 9, 2012 | Haley Barbour leaves office. Phil Bryant assumes Governorship January 10, 2012. ⁵ |
| Jan. 17, 2013 | Correspondence to Gov. Kasich that Mississippi requires new warrant. |
| Feb. 22, 2013 | Executive Agreement from Gov. Kasich to Mississippi Gov. Phil Bryant. |

⁵ Information taken from National Governor's Association website, <https://www.nga.org/governors>.

- May 7, 2013 Rendition warrant directing custody of Appellant to Meigs County Sheriff Wood, signed by Gov. Phil Bryant.
- June 13, 2013 Meigs County Sheriff takes Appellant into custody.⁶
- June 28, 2013 Arraignment in Meigs County.
- Aug. 26, 2013 Email from Atty. Carson to Prosecutor Williams regarding discussing plea agreement and extradition.
- Aug. 29, 2013 Guilty Plea and Finding of Guilty.

Noticeably absent from this list of dates is the date Appellant signed extradition papers.

{¶43} Applying the *Doggett* analysis to Appellant’s speedy trial claim, we first acknowledge that the delay between July 2011 and June 2013 is presumptively prejudicial. However, Appellant herein is clearly to blame for leaving the State of Ohio and robbing another bank in Mississippi, thus causing himself to be incarcerated by Mississippi authorities and necessitating the cumbersome extradition process. The question then becomes, did the State of Ohio fail to use due diligence to return Appellant to Meigs County.

{¶44} Appellant has maintained that he did not fight extradition. At the April 23, 2020 hearing Appellant testified that he received a packet of documents from the Meigs County Prosecutor “probably in December of 2009 with a set of

⁶Appellant testified that he was picked up and returned to Meigs County on June 27, 2013. The court found that June 13, 2013 was when Appellant was brought to Ohio. The parties have not disputed this date in the briefs.

instructions to mail if I wanted to proceed with the charges. * * * Every piece of paper I received from the Court of Meigs County, I returned, I uh, had them notarized and returned so that I could proceed with the case.” He later testified, “I’ve never not agreed, I’ve never fought, at any level, not to do the paperwork * * *.” He further testified, “[T]he * * * transfer company picked me up and when I got to Ohio, I...there was an envelope that said Mitchell Extradition Packet and when I opened it * * * there was a 2011 warrant * * * the original letter from the office of Haley Barbour and * * * the extradition papers I had signed * * *.”

{¶45} Appellant asserts that the first warrant issued July 13, 2011 started the speedy trial clock in his case. Appellant contends the fact that a second warrant was applied for in January 2013 demonstrates that the State of Ohio “messed up.” In support, Appellant cites the September 2013 sentencing transcript and argues that the prosecutor misrepresented the extradition facts at his sentencing. “The determination as to whether a state had made sufficient efforts to satisfy the ‘due diligence’ requirement is a fact-specific one, however, and the precise amount of effort that is required is apt to vary depending on the circumstances of the case.” *State v. Kutkut*, 8th Dist. No. 98479, 2013-Ohio-1442, at ¶ 13, quoting *United States v. Wangrow*, 924 F.2d 1434, 1437 (8th Cir.1991).

{¶46} The State responds that although Mississippi agreed to release Appellant as of July 13, 2011, nothing required that he be released “at that specific time.” Thus, the State of Ohio had no authority to retrieve Appellant until all

parties were coordinated. The State directs our attention to the January 17, 2013 cover letter to Governor Kasich which enclosed the application and supporting documents for extradition. In the last paragraph of the letter, the prosecutor writes “The State of Mississippi refused to return him to Ohio until all of their matters were resolved. * * * Your office previously issued a Governor’s warrant in 2011, but our office has been advised that due to a change in administration, that warrant is no longer valid.”

{¶47} Further, we note that attached to the application for the second warrant is the prosecutor’s sworn affidavit, which states in pertinent part as follows: “The delay in presenting this application was unavoidable for the reason that the Mississippi penal institute refused to honor a previous Governor’s warrant because it had a change of administration in its state.”

{¶48} The record reflects the parties discussed Appellant’s extradition in the August 26, 2013 email. Attorney Carson wrote to the Meigs County Prosecutor to follow up on plea negotiations; to emphasize that Appellant wished to resolve the Meigs County charges so he would not suffer additional consequences while incarcerated in Mississippi; and to reiterate that the former Meigs County Assistant Prosecutor had indicated that “steps were being taken to implement a Governor’s Warrant for [Appellant’s] extradition back to Ohio since Mississippi was not part of the Interstate Compact and would not release [Appellant] to Ohio despite his willingness to waive extradition to return to Ohio

immediately.” Attorney Carson attributed the delay to the former [Sheriff Beegle] not undertaking to execute the warrant.

{¶49} At the April 23, 2020 hearing, Appellant testified that he believed the actual reason he was not returned to Ohio expediently was “financial.” Appellant testified that he never received an explanation regarding the delay until Sheriff Wood picked him up. Appellant expressed his belief that the State of Ohio, at his 2013 sentencing, misled the trial court to believe the excessive delay was due to the need of a second Governor’s warrant.⁷ Appellant’s redirect testimony about the delay was as follows:

A: That’s what Mr. Wood and, uh, Major Scott Trussell said on the way back. That they didn’t have the money to pick me up.

Q: And * * * at what time did this conversation occur? What was the date?

A: June 27th.

Q: Of what year?

A: Of two thousand and thirteen (2013).

Q: And where did this conversation take place?

A: In the Sheriff’s car. * * * That was on my way to being arraigned.

{¶50} Appellant subsequently testified on re-cross:

Q: And, if Mr. Wood took the job of Sheriff in January of two thousand thirteen [2013], would it be reasonable to believe that he was talking about since he became sheriff or did, was that pinpointed in your question and answer with him?

⁷The transcript indicates that this discussion was in reference to jail time credit and that the prosecutor indicated “part of” the delay was because Appellant was not available until he was sentenced in Mississippi.

A: We, it was...

Q: That he didn't have the money or the...to be able to get you?

A: It was actually Mr. Trussell who probably said it initially and he was in the Sheriff Department and has been the entire time.

Q: Ok. So, Mr. Trussell said it and not the Sheriff then?

A: We, what I'm saying is we all talked about it.

{¶51} Based on our review of the record, we find that, under the circumstances of Appellant's case, the State of Ohio did exercise reasonable diligence to extradite Appellant from Mississippi to face his Ohio charges. During the two years Appellant was incarcerated in Mississippi, the State of Mississippi's administration changed, as did the administration of the Meigs County Sheriff's Office. While the record does not include evidence of every single phone call between the Meigs County Prosecutor's Office and Mississippi authorities, there is plenty of evidence of the efforts made with regard to the official paperwork.

{¶52} The record also lacks evidence of what additional steps could have been undertaken between the Meigs County Sheriff's Office and Mississippi authorities. Furthermore, in light of the documentation, Appellant's testimony, unsupported hearsay at best, does not support his claim that the State of Ohio failed to use reasonable diligence to retrieve him. We agree with the trial court's finding that:

“Mississippi is not a party to the Interstate Agreement on Detainers (IAD) and therefore, Ohio was without power to force Mississippi to turn over Defendant until all the coordinating parties and agencies agreed for the Defendant to be released from Mississippi and transported to Ohio. * * * All parties were not in coordination for that event until June 13, 2013.”

See also State v. Davis, 5th Dist. Richland No. 01-CA-67, 2002-Ohio-2502, (Proceedings to extradite defendant to another state were “pending,” though defendant signed a waiver of extradition, and thus the time for bringing defendant to trial in Ohio was extended while defendant was unavailable for trial.)

{¶53} Regarding the failure to exercise reasonable diligence in retrieving an out-of-state defendant, the appellate court in *State v. Gutierrez*, 3rd Dist. Putnam No.12-10-01, 2010-Ohio-4549, at ¶ 21 commented:

Courts have found that the State failed to exercise reasonable diligence where there was no evidence that the defendant attempted to avoid prosecution or changed residences, and where the sheriff's office simply entered the arrest warrant into the NCIC database and took no further action, *State v. Baker*, 12th Dist. No. CA2008-03-008, 2009-Ohio-674; where the defendant was living at the address of record, the record contained no evidence that any affirmative action was taken to serve or arrest the defendant, and the State did not attempt to serve the defendant via mail, *State v. Hayman*, 3d Dist. No. 13-09-22, 2010-Ohio-1264; and, where the charging county sent a teletype and letter advising authorities in Michigan, where the defendant was incarcerated on another charge, of its warrant and then took no action for over a ten-year period, *State v. Major*, 180 Ohio App.3d 29, 903 N.E.2d 1272, 2008-Ohio-6534.

{¶54} By comparison, in Appellant’s case, it is simply incorrect to characterize the prosecutor’s actions as failing to exercise reasonable diligence. *See also State v. Love*, 8th Dist. Cuyahoga No. 41436, 1980 WL 355049, at *2, (Delay in extradition proceedings was clearly reasonable in light of the fact that record did not disclose to what extent delay was attributable to the acts of the California authorities).

{¶55} Completing the *Doggett* analysis, we again note that Appellant did not assert his speedy trial claim in the trial court. Finally, we find Appellant did not suffer prejudice. Appellant’s brief decries the State’s lack of diligence as causing him to remain in Mississippi for “two years longer than desired.” While the record indicates Appellant did everything within his power as he awaited extradition, Appellant, in fact, was serving his Mississippi prison sentence. And while Appellant’s bond may have been increased and he may have been denied certain privileges through the Mississippi criminal system due to the pending Ohio charges, Mississippi officials conducted these acts. Any prejudice in this regard was not caused by Ohio officials and does not change the outcome of Appellant’s Ohio charges. Based on the foregoing, we find no merit to Appellant’s claim that his constitutional speedy trial right was violated.

CONCLUSION

{¶56} Based on our analysis above, we find Appellant’s Motion to Vacate and Set Aside Judgment should have been dismissed based on its untimeliness. As

a result, the trial court lacked jurisdiction to consider it and should have dismissed, rather than denied, the claims for violation of extradition and constitutional speedy trial rights. Accordingly, the judgment appealed is affirmed but modified, under the authority of App.R. 12(A)(1)(a), to reflect dismissal of Appellant's constitutional claims in this matter.

JUDGMENT AFFIRMED AS MODIFIED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED AS MODIFIED and that costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Meigs County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hess, J. and Wilkin, J. concur in Judgment and Opinion.

For the Court,

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.