

[Cite as *State v. McCormick*, 2009-Ohio-3169.]

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF SUMMIT    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.     24516

Appellee

v.

THOMAS J. McCORMICK

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.    CR 08 01 0239(B)

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 30, 2009

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MOORE, Presiding Judge.

{¶1} Appellant, Thomas McCormick, appeals from the decision of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} On April 21, 2008, Appellant, Thomas McCormick was indicted on one count of aggravated robbery, in violation of R.C. 2911.01(A)(3), one count of robbery, in violation of R.C. 2911.02(A)(2), and one count of felonious assault, in violation of R.C. 2903.11(A)(1). As a result of the indictment, a warrant was issued for his arrest and on May 15, 2008, McCormick was arrested. McCormick pled not guilty to the charges and a jury trial was set for July 22, 2008.

{¶3} On July 16, 2008 the trial court issued a journal entry stating that upon McCormick's request, the June 14, 2008 status call was continued. The court further ordered that the trial be postponed. All parties agree that at some point prior to this entry, McCormick's

counsel was hospitalized due to a heart attack. On July 30, 2008, the trial court issued an entry stating that the trial in this case was reset for September 30, 2008. On September 22, 2008, McCormick filed a motion to dismiss, asserting that the State failed to bring him to trial within the speedy trial time period. The State responded to this motion and on September 26, 2008, the trial court held a hearing at which it denied the motion. The matter proceeded to a jury trial, and after jury selection, McCormick entered a no contest plea to the charges in the indictment. On October 30, 2008, McCormick was sentenced to three years of incarceration. He has timely appealed his conviction, and has raised one assignment of error for our review.

## II.

### **ASSIGNMENT OF ERROR**

“THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY DENYING [MCCORMICK’S] MOTION TO DISMISS BASED UPON VIOLATION OF THE SPEEDY TRIAL ACT.”

{¶4} In his sole assignment of error, McCormick contends that the trial court committed error by denying his motion to dismiss based upon violation of the speedy trial act. We do not agree.

{¶5} Both the United States Constitution and Section 10, Article I of the Ohio Constitution guarantee a criminal defendant the right to a speedy trial. *State v. Pachay* (1980), 64 Ohio St.2d 218, 219-20. Further, the courts must strictly enforce such rights. *Id.* at 221. This “strict enforcement has been grounded in the conclusion that the speedy trial statutes implement the constitutional guarantee of a public speedy trial.” *Id.*, citing *State v. Pudlock* (1975), 44 Ohio St.2d 104, 105.

{¶6} R.C. 2945.71 dictates the time limits within which a defendant must be brought to trial. Under R.C. 2945.71(C)(2), a person charged with a felony “[s]hall be brought to trial

within two hundred seventy days after the person's arrest." This time period may be extended for a number of reasons enumerated under R.C. 2945.72. Therefore, to determine if the trial court erred in denying McCormick's motion to dismiss based on speedy trial grounds, this Court must review the record and "determine the exact number of days that should have been tallied against the state[.]" *State v. Broughton* (1991), 62 Ohio St.3d 253, 257.

{¶7} McCormick presents this Court with the transcript of the September 26, 2008 motion to dismiss hearing. At the hearing, the trial court noted that it had read the motions and "that I had the two court reporters \*\*\* read to me their notes of the proceedings on the two occasions in which the trial scheduling was an issue. I did not order those proceedings transcribed but, clearly, they can be if necessary, if there is an appeal." McCormick's counsel indicated at this hearing that he was not present at those hearings due to a serious illness. The State argued that the continuance was due to McCormick's counsel's health issues and therefore the speedy time period was properly tolled. The trial court confirmed this fact, stating that in McCormick's counsel's absence, substitute counsel requested that the trial be continued. The trial court further indicated that McCormick was present when his substitute counsel requested the continuance.

{¶8} While the trial court made clear that the transcripts from these hearings were available to be transcribed for appeal, McCormick has failed to do so. As appellant in this matter, it was McCormick's duty to provide a transcript for appellate review because he bore the burden of demonstrating error by reference to matters in the record. *State v. Skaggs* (1978), 53 Ohio St.2d 162, 163. App.R. 9(B) required him to order from the reporter the portion of the transcript that he deemed necessary for the resolution of his assigned errors. As we stated above, in order to review a speedy trial argument, we are required to review the entire record. Although

App.R. 9(B) allowed McCormick to file only portions of the record, it further required him to notify the State of the parts of the transcript that he intended to include as well as a statement of the assignments of error that he intended to present on appeal. If, after receiving this notice, the State believed the record was incomplete, the State was required to notify the appellant of the portions of the record that it deemed necessary to be included. App.R. 9(B).

{¶9} In the instant case, there is no record of McCormick notifying the State that he intended not to include the transcripts of the hearings referred to by the trial court or that he provided the State with a statement of his intended assigned error. Accordingly, the State was not on notice that the record would be incomplete, or that it would be required to request additional portions of the record to substantiate its argument with regard to the tolling of the speedy trial clock. Therefore, McCormick has not met the burden of producing a transcript of the proceedings from which he claims error. Without the necessary transcript, we must presume regularity of the proceedings. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. McCormick's sole assignment of error is overruled.

### III.

{¶10} McCormick's sole assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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CARLA MOORE  
FOR THE COURT

WHITMORE, J.  
CONCURS

DICKINSON, J.  
CONCURS, SAYING:

{¶11} I concur in the majority's opinion and judgment. I write separately to make it clear that, if the two transcripts to which the trial court referred at the September 26, 2008, hearing had been provided this Court and they showed what the trial court said they showed, the outcome of this appeal would have been identical to the outcome we have reached. See *State v. Richardson*, 2d Dist. No. 03CA92, 2004-Ohio-5815, at ¶16.

APPEARANCES:

KERRY O'BRIEN, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.