**[Cite as *State v. Thomas*, 2011-Ohio-912.]**

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| STATE OF OHIO | ) | IN THE COURT OF APPEALS |
| | )ss: | NINTH JUDICIAL DISTRICT |
| COUNTY OF SUMMIT | ) | |

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| STATE OF OHIO | C.A. No. 25244 |
| Appellee | |
| v. | APPEAL FROM JUDGMENT ENTERED IN THE |
| SEAN A. THOMAS | BARBERTON MUNICIPAL COURT COUNTY OF SUMMIT, OHIO |
| Appellant | CASE No. CRB0903254 |

DECISION AND JOURNAL ENTRY

Dated: March 2, 2011

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WHITMORE, Judge.

**{¶1}** Defendant-Appellant, Sean A. Thomas, appeals from his criminal trespassing conviction in the Barberton Municipal Court. This Court affirms.

I

**{¶2}** On November 22, 2009, Barberton police found Thomas cooking over a camp stove in the kitchen of a home located at 315 Lucas Street in Barberton. Thomas' mother owned the home, subject to a mortgage, but had since passed away. Thomas continued to live there after her death. The Barberton Building Department had condemned the house and notices were mailed to the house and posted on the property. When police were unsuccessful in their attempts to get Thomas to leave the property, they arrested him and charged him with criminal trespass, in violation of Barberton Codified Ordinance §642.12, a fourth-degree misdemeanor.

**{¶3}** Following a bench trial on January 11, 2010, the trial court found Thomas guilty of criminal trespass. Thomas was sentenced to thirty days in jail, which was suspended on the condition he not commit any future criminal offenses, and was fined $100.

**{¶4}** Thomas timely appealed, asserting five assignments of error for our review. Thomas' assignments of error have been consolidated for ease of review.

II

Assignment of Error Number One

"CRIMINAL TRESPASS IS A VIOLATION OF THE POSSESSORY INTERESTS IN APIECE OF PROPERTY. THOSE INTERESTS IN THE PROPERTY IN QUESTION BELONGED TO SEAN THOMAS. HE COULD NOT BE GUILTY AS FOUND." (Sic.)

Assignment of Error Number Two

"CRIMINAL INTENT IS AN ESSENTIAL ELEMENT OF CRIMINAL TRESPASS. WHEN TOLD TO LEAVE IT WAS SEAN"S INTENT TO DO SO. HE WAS LEAVING! IT WAS THE POLICE WHO STOPPED HIM. LACKING OPPORTUNITY, AND INTENT HE COULD NOT BE GUILTY OF CRIMINAL TRESPASS." (Sic.)

Assignment of Error Number Three

"THE BARBERTON BUILDING COMMISSIONER DID NOT HAVE THE AUTHORITY TO CONDEMN THE PROPERTY, OR BAR ENTRY."

Assignment of Error Number Four

"APPELLANT WAS DENIED HIS RIGHTS AGAINST WARRANT LESS ENTRANCE, TO BE READ HIS RIGHTS, TO SPEEDY TRIAL, AND TO TRIAL BY JURY." (Sic.)

Assignment of Error Number Five

"LACKING COUNCIL (sic) HE COULD NOT BE SENTENCED TO CONFINEMENT."

**{¶5}** Initially, we note that Thomas appears before this Court pro se, consistent with his appearance before the trial court. Previously, this Court has noted that pro se litigants are afforded:

> "[R]easonable leeway such that their motions and pleadings should be liberally construed so as to decide the issues on the merits, as opposed to technicalities. However, a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound. He is not given greater rights than represented parties, and must bear the consequences of his mistakes. This Court, therefore, must hold [pro se appellants] to the same standard as any represented party." (Internal citations omitted.) *Sherlock v. Myers*, 9th Dist. No. 22071, 2004-Ohio-5178, at ¶3.

We further note that, although separately captioning five different assignments of error, Thomas has combined all of his alleged errors into one argument in the body of his brief, so we fashion our analysis accordingly. See App.R. 16(A)(7); Loc.R. 7(B)(7). The bulk of the argument contained in Thomas' brief appears to sound in a manifest weight challenge. That is, he generally asserts that the trial court's judgment was against the manifest weight of the evidence because he had a possessory interest in the residence and, therefore, could not be guilty of criminal trespass. He further denies knowing that the property was condemned or that he refused to leave the property when requested to do so by police. Thomas also provides a limited argument asserting that he was not informed that he had the right to have appointed counsel represent him.

**{¶6}** The nature of Thomas' challenges requires us to review the state of the record before this Court. App.R. 9(C) provides that:

> "[i]f no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee no later than twenty days prior to the time for transmission of the record pursuant to App.R. 10, who may serve objections or propose amendments to the statement within ten days

> after service. The statement and any objections or proposed amendments shall be forthwith submitted to the trial court for settlement and approval. The trial court shall act prior to the time for transmission of the record pursuant to App.R. 10, and, as settled and approved, the statement shall be included by the clerk of the trial court in the record on appeal."

On February 10, 2010, Thomas filed and served on the State a pleading captioned "Statement and Praecipe" in which he indicated that he would be submitting a statement of the evidence and proceedings that had occurred before the Barberton Municipal Court to the State and to the trial court for review and approval pursuant to App.R. 9(C). In response, in March 2010, the State filed an objection to Thomas' proposed App.R. 9(C) statement. In its objection, the State disputed the content of the proposed statement, while at the same time asserting that the trial had been recorded, therefore, an App.R. 9(C) statement was unnecessary, as a transcript of the proceedings could be prepared based on the recording made by the Barberton Municipal Court. The trial court denied Thomas' motion for settlement and approval of his proposed App.R. 9(C) statement, stating that Thomas "must supply an official transcript of [the] proceedings[,] not [his] own interpretation." On June 14, 2010, the clerk of the appellate court filed a "Notice of the Filing of the Record," which indicated that only the transcript of the docket and the journal entries had been filed with this Court. On June 16, 2010, Thomas filed a motion for extension of time to transmit the record, which this Court denied, as the record had been previously transmitted at that point. Thomas then moved to "complete the record." On July 2, 2010, this Court granted Thomas until July 30, 2010, to supplement the record, and until August 15, 2010, to file his brief. Thomas later filed his brief, but did not file anything else in an effort to "complete" the record.

**{¶7}** On July 29, 2010, the State filed a "Notice of Filing Proposed Statement of Trial Proceedings." In the notice, the State informed this Court that it had prepared "a complete

transcript of the bench trial held on January 11, 2010" and had filed the same for approval with the trial court on July 23, 2010. The transcript is attached as an exhibit to the notice and does not contain any certification indicating that it was prepared by an official court reporter. See Loc.R. 6(C). The record, thereafter, is silent as to the status of the App.R. 9(C) statement submitted to the trial court.

**{¶8}** As outlined, the state of the record in this matter is problematic. It appears that Thomas' initial pursuit of an App.R. 9(C) statement was unnecessary, as a transcript of the proceeding was, in fact, available. At the same time, the State sought to pursue a transcript of the proceeding on its own initiative, but did so under the auspices of App.R. 9(C), having submitted the transcript to the trial court for approval. Having done so, there is no indication in the record before this Court that the trial court ever approved the State's proposed App.R. 9(C) statement, nor is there any indication that the transcript was prepared by an official court reporter who could certify the contents of the transcript. See id. Even if this Court were willing to overlook such significant inadequacies contained in the record, we have repeatedly stated "that it is the *appellant's duty* to transmit the transcript of proceedings to the court of appeals. This duty falls to the appellant because the appellant has the burden of establishing error in the trial court." (Internal citations omitted.) (Emphasis added.) *In re T.C.*, 9th Dist. Nos. 07CA009248 & 07CA009253, 2008-Ohio-2249, at ¶16. Thus, despite the State's best efforts to provide this Court with a complete record with which to review the merits of Thomas' alleged errors, this Court is without the ability to do so. "Where the transcript of a hearing is necessary to resolve assignments of error, but such transcript is missing from the record, the reviewing court has 'no choice but to presume the validity of the lower court's proceedings, and affirm.'" Id., quoting *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. Accordingly, this Court must

presume that Thomas' conviction was not against the manifest weight of the evidence and that the trial court adequately informed him of his right to counsel.

**{¶9}** To the extent Thomas challenges the propriety of the condemnation order, that matter is not properly before this Court, as Thomas' brief acknowledges that he has appealed the condemnation order in a separate proceeding before the Summit County Court of Common Pleas. See *Sean Thomas v. City of Barberton*, Summit County Common Pleas No. CV-2010-04-2698. See, also, *State v. Wigle*, 9th Dist. No. 25035, 2010-Ohio-3977, at ¶7 (refusing to consider a pro se appellant's argument related to other cases he had pending in other courts). To the extent any portion of Thomas' argument could be construed to challenge the basis for his arrest or any statements that he made while with police, the record reveals he failed to file a motion to suppress with the trial court, so he is now precluded from asserting such errors on appeal. Crim.R. 12(C); see, also, *Wigle* at ¶7. Finally, with respect to Thomas' generalized allegation that he was denied the right to a speedy trial or a trial by jury, the record reveals that at his arraignment on December 1, 2009, he signed a waiver as to his speedy trial rights. Additionally, he never filed a request for a jury demand, so he waived that matter for appellate review as well. See Crim.R. 5(A)(5); Crim.R. 23(A) (providing the right to a jury trial in petty offense cases, but requiring that the defendant must file a written demand for such within specified timeframes of the trial date).

**{¶10}** For the foregoing reasons, Thomas' assignments of error lack merit. Accordingly, his five assignments of error are overruled.

III

**{¶11}** Thomas' assignments of error are overruled. The judgment of the Barberton Municipal Court 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 Barberton Municipal Court, 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.

BETH WHITMORE
FOR THE COURT

CARR, P. J.
DICKINSON, J.
CONCUR

APPEARANCES:

SEAN A. THOMAS, pro se, Appellant.

HOLLY REESE, Assistant Prosecuting Attorney, for Appellee.