

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY**

VILLAGE OF BRADFORD	:		
	:		Appellate Case No. 2009-CA-29
Plaintiff-Appellee	:		
	:		Trial Court Case No.
	:		2008-CRB-3539
v.	:		
	:		
ROBERT J. WERTS	:		(Criminal Appeal from
	:		Municipal Court)
Defendant-Appellant	:		
	:		

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O P I N I O N

Rendered on the 20th day of August, 2010.

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LENEE M. BROSH, Atty. Reg. #0075642, Municipal Court Prosecutor's Office, 201
West Main Street, Troy, Ohio 45373
Attorney for Plaintiff-Appellee

ROBERT J. WERTS, 111 Wise Street, Bradford, Ohio 45308
Defendant-Appellant, *pro se*

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FAIN, J.

{¶ 1} Defendant-appellant Robert J. Werts appeals from his convictions and fines for violating plaintiff-appellee the Village of Bradford's noxious weed ordinance, § 557.02 of the Bradford Code of Ordinances. Werts contends that he was not brought to trial within the requirements of R.C. 2945.71, et seq. He also contends

that one of three noxious weed charges pending against him remains adjudicated.

{¶ 2} Based upon our review of the record, we conclude that Werts failed to assert his statutory speedy trial rights until after he was tried and convicted of two noxious weed violations, so he forfeited claims of speedy trial violations with respect to those offenses. Although the record is murky, we conclude, based upon an earlier decision of this court, that the third noxious weed charge to which Werts refers has been dismissed, and therefore does not remain adjudicated. Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 3} On August 8, 2008, nine complaints were filed against Werts in the Miami County Municipal Court, alleging various violations of the Bradford Code of Ordinances. Charges one through six were fourth-degree misdemeanors alleging improper maintenance of the exterior of Werts's property or the improper storage of vehicles on Werts's property. Charges seven, eight and nine were minor misdemeanors alleging noxious weed violations.

{¶ 4} On or before the day set for trial, Werts filed a jury demand. On the day set for trial, the trial court found Werts's jury demand to be well-taken with respect to the first six charges, alleging fourth-degree misdemeanors, and continued them for trial at a later time. The trial court proceeded with a bench trial of charges seven, eight and nine. It is clear that the trial court found Werts guilty of charges eight and nine, and fined him \$150 on each of those charges. The disposition of charge seven is less clear. This subject will be addressed in Part III, below.

{¶ 5} At some point, Werts filed a motion to dismiss the charges against him,

upon statutory speedy trial grounds. Although the actual motion is not in our record, there is a docket entry reflecting a motion to dismiss on February 20, 2009. We assume that this was Werts's motion to dismiss on speedy trial grounds, since the only other motion to dismiss referred to in the record, filed September 25, 2008, is in our record, and is based upon alleged discovery violations, not upon speedy trial grounds.

{¶ 6} On February 26, 2009, the trial court sustained the motion to dismiss the charges pending against Werts (which were the fourth-degree misdemeanor charges), upon statutory speedy-trial grounds. In response to an order of this court for clarification, the trial judge caused to be filed in our court on June 17, 2009, an entry clarifying that the trial court's order of February 26, 2009 dismissing the charges on speedy-trial grounds applied only to the six pending fourth-degree misdemeanor charges, which were the charges remaining pending at that time.

{¶ 7} Werts appeals from his convictions and fines for violating Bradford's noxious weed ordinance.

II

{¶ 8} Bradford, who is appealing pro se, has not set forth explicit assignments of error, as required by App. R. 16(A)(3), but we infer two assignments of error, the first of which is as follows:

{¶ 9} "THE TRIAL COURT ERRED BY FAILING TO DISMISS THE MINOR MISDEMEANOR CHARGES UPON STATUTORY SPEEDY-TRIAL GROUNDS."

{¶ 10} R.C. 2945.71(A) requires that a minor misdemeanor charge be brought to trial within thirty days after the defendant's arrest or the service of summons. The

Village of Bradford points out that this provision is not self-executing. R.C. 2945.73(B) requires that a motion to dismiss upon speedy-trial grounds must be made at, or prior to, the commencement of trial, which, in the case of these minor misdemeanor charges, was November 10, 2008.

{¶ 11} Although Werts contends, in his brief, that he brought the speedy trial issue to the trial court's attention at or before the commencement of trial, there is nothing in the record to support that contention. The only thing in the record that could be an invocation of Werts's statutory speedy-trial rights is his motion to dismiss filed on February 20, 2009, well after the trial of the minor misdemeanor, noxious weed charges. Speedy trial rights must be asserted by a defendant in a timely fashion or they are waived. *State v. Hart*, Montgomery App. No. 19556, 2003-Ohio-5327, ¶¶ 11-13.

{¶ 12} Because Werts failed to assert his right to a speedy trial of the minor misdemeanor charges in a timely fashion, he has forfeited that right. Werts's First Assignment of Error is overruled.

III

{¶ 13} We infer Werts's Second Assignment of Error to be as follows:

{¶ 14} "THE TRIAL COURT ERRED BY FAILING TO ADJUDICATE CHARGE NUMBER SEVEN."

{¶ 15} Werts contends that charge number seven, one of three noxious weed, minor misdemeanor charges, has never been adjudicated. He expresses a concern that this charge may yet result in a conviction and fine.

{¶ 16} The record is murky with regard to the disposition of charge seven.

There are signed judgment entries concerning charges eight and nine, also noxious weed, minor misdemeanor charges, reflecting that Werts was convicted of both of those charges, and was fined \$150 on each of those charges. There is no signed disposition of charge seven.

{¶ 17} We do have in the record a listing of all nine charges, reflecting that charges one through seven were dismissed, and that charges eight and nine resulted in convictions and \$150 fines. This listing is not signed by anybody. There is a contrary indication in the trial judge's clarification entry, filed in this court on June 17, 2009, since it recites that by the time of the trial court's speedy-trial dismissal entry, on February 26, 2009, "the Defendant had already been tried, convicted and sentenced on the three minor misdemeanor charges * * * ." But we have no signed judgment entry to that effect in our record.

{¶ 18} The Village of Bradford asserts that charge seven was dismissed. We find support for that assertion in our entry filed herein on July 14, 2009, which contains the following passage:

{¶ 19} "Pursuant to the above-referenced bench trial, the trial court rendered a decision and entry on December 8, 2008 finding Werts guilty on three counts of failure to control noxious weeds in violation of Section 557.02 of the Codified Ordinances of the Village of Bradford, Ohio. At that time, the court provided that sentencing would take place on January 9, 2009.

{¶ 20} "On January 9, 2009, the trial court sentenced Werts on two charges of noxious weeds, ordering him to pay a fine of \$150.00 plus court costs on each count.

It appears that the third count alluded to in the December 8, 2008 had been

dismissed.” (Emphasis added.)

{¶ 21} We conclude that the law of this case, as exemplified by our above-quoted entry of July 14, 2009, is that charge seven has been dismissed. This is in accordance with the position taken by the Village of Bradford in its brief – “it seems that the trial court on its own initiative dismissed one charge of noxious weeds and sentenced Appellant on only two charges” – and should alleviate any concerns that Werts may have that the prospect of a conviction and fine on charge seven remains a possibility.

{¶ 22} Werts’s Second Assignment of Error is not supported by the record, and is overruled.

IV

{¶ 23} Both of Werts’s assignments of error having been overruled, the judgment of the trial court is Affirmed.

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BROGAN and DINKELACKER, JJ., concur.

(Hon. Patrick T. Dinkelacker, First District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

Lenee M. Brosh
Robert J. Werts
Hon. Mel Kemmer