

[Cite as *State v. Robinson*, 2017-Ohio-6895.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105243

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

SAMUEL ROBINSON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-590059-A

BEFORE: Jones, J., Kilbane, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: July 20, 2017

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LARRY A. JONES, SR., J.:

{¶1} Defendant-appellant, Samuel Robinson, appeals the trial court's denial of his motion to dismiss based on speedy trial grounds. We affirm.

{¶2} On November 17, 2008, Robinson was sentenced to 14 years in prison in Cuyahoga C.P. No. CR-08-509615-A. On October 29, 2009, Robinson was sentenced to an additional 34 years in Cuyahoga C.P. No. CR-09-520748-A. On October 9, 2014, Robinson was indicted in the case that is the subject of this appeal, Cuyahoga C.P. No. CR-14-590059-A, on one count of rape and kidnapping. A summons to appear in court was sent to Robinson's last known address and a warrant was issued. On October 10, 2014, a capias was printed and sent to the Cuyahoga County Sheriff's Office. On October 16, 2014, the Cuyahoga County Sheriff's Office sent a letter of apprehension to the Lake County Sheriff's Office. Eventually, the summons was returned unclaimed. On November 26, 2014, the trial court issued an entry ordering that the October 10, 2014 capias remain in effect.

{¶3} According to plaintiff-appellee, state of Ohio, on or about March 23, 2016, the Cuyahoga County Prosecutor's Office discovered that Robinson was serving his sentences for CR-08-509615-A and CR-09-520748-A in the Marion Correctional Institution. On March 25, 2016, a capias was issued at the prosecutor's office's request for Robinson in CR-14-590059-A. Robinson was transferred and booked into the Cuyahoga County Jail on March 30, 2016.

{¶4} Robinson moved to dismiss his case, arguing that his speedy trial rights had

been violated. The trial court denied his motion, and Robinson pleaded no contest to the indictment. The trial court sentenced him to a total of ten years in prison to be served concurrently to his other prison terms.

{¶5} Robinson now appeals, raising one assignment of error for our review:

I. The trial court committed prejudicial error by denying defendant-appellant's motion to dismiss based upon a violation of his right to speedy trial.

{¶6} In his sole assignment of error, Robinson argues that the trial court erred in denying his motion to dismiss, because the state violated his constitutional and statutory rights to a speedy trial.

Constitutional Right to a Speedy Trial

{¶7} The Sixth Amendment to the United States Constitution guarantees an accused in a criminal prosecution the right to a speedy trial. The Due Process Clause of the Fourteenth Amendment makes this provision applicable to the states. *Klopfer v. North Carolina*, 386 U.S. 213, 222-223, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967). Furthermore, Section 10, Article I of the Ohio Constitution guarantees a criminal defendant the right to a speedy trial. In regard to the Sixth Amendment right to a speedy trial, the United States Supreme Court has stated:

The Sixth Amendment right to a speedy trial is * * * not primarily intended to prevent prejudice to the defense caused by passage of time; that interest is protected primarily by the Due Process Clause and by statutes of

limitations. The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges.

United States v. MacDonald, 456 U.S. 1, 8, 102 S.Ct. 1497, 71 L.Ed.2d 696 (1982). *See also State v. Triplett*, 78 Ohio St.3d 566, 568, 679 N.E.2d 290 (1997).

{¶8} To determine whether an accused has been denied his or her constitutional right to a speedy trial, a court must consider the following four factors: (1) the length of the delay, (2) the reason for the delay, (3) the accused's assertion of his or her right to a speedy trial, and (4) the prejudice to the accused as a result of the delay. *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); *Triplett* at *id.* None of these four factors are determinative of whether an accused suffered a violation of his constitutional right to a speedy trial; rather, the court must consider the four factors collectively. *Barker* at 533.

1. Length of Delay

{¶9} “The first factor, the length of the delay, is a ‘triggering mechanism,’ determining the necessity of inquiry into the other factors.” *Triplett* at 569. Unless there is some delay which is “presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.” *Barker* at 530. Post-accusation delay approaching one year is generally found to be presumptively prejudicial. *Doggett v.*

United States, 505 U.S. 647, 652, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992), fn. 1.

{¶10} In this case, we find the delay of 17 months between indictment and arraignment was presumptively prejudicial; thus, the *Barker* analysis is triggered. Once the *Barker* analysis is triggered, the length of delay, beyond the initial threshold showing, is again considered and balanced against the other relevant factors. *State v. Hubbard*, 12th Dist. Butler No. CA2014-03-063, 2015-Ohio-646, ¶ 15, citing *State v. Boyd*, 4th Dist. Ross No. 04CA2790, 2005-Ohio-1228, ¶ 11.

{¶11} The length of the delay in this case was 17 months and we do not find that the delay weighs heavily in Robinson's favor. In *Triplett* at 569-571, the Ohio Supreme Court found that a 54-month delay did not violate the defendant's constitutional right to a speedy trial. The *Triplett* court analyzed the length of the delay and found:

[T]he delay in this case, while significant, did not result in any infringement on Triplett's liberty. In fact, according to her own testimony, she was completely ignorant of any charges against her. The interests which the Sixth Amendment was designed to protect—freedom from extended pretrial incarceration and from the disruption caused by unresolved charges—were not issues in this case. Therefore, while the first factor does technically weigh in Triplett's favor, its weight is negligible.

Id. at 569.

{¶12} Likewise, in *Hubbard*, the court, citing *Triplett*, found that a 27-month delay did not weigh heavily in favor for Hubbard. At the time the indictment was filed against

Hubbard, he was serving time in prison on an unrelated case, had no knowledge of the pending charges, and there was nothing to indicate that his life was disrupted by the unresolved charges against him. *Hubbard* at ¶ 18; *see also State v. Smith*, 8th Dist. Cuyahoga No. 81808, 2003-Ohio-3524, ¶ 12 (finding that a 16-month delay weighed only negligibly in favor of the defendant on his constitutional speedy-trial challenge because he was unaware of the indictment and incarcerated on unrelated charges).

{¶13} In this case, Robinson was incarcerated on two unrelated cases, was unaware of the charges against him, and there is nothing to indicate that his life was disrupted by the unresolved charges against him. Therefore, the length of the delay weighs only slightly in favor of Robinson.

2. Reason for Delay

{¶14} In determining if the reason for the delay should weigh in favor of the accused or the state, if an accused caused or contributed to the delay, this factor would weigh heavily against him or her. *Smith* at ¶ 14. Likewise, if the state purposefully causes a delay, hoping to gain some impermissible advantage at trial, this factor would weigh heavily against the state and in favor of dismissal. *Hubbard* at ¶ 19, citing *Doggett*, 505 U.S. at 656, 112 S.Ct. 2686, 120 L.Ed.2d 520. In this case, there was no evidence that Robinson caused or contributed to the delay or that the state purposefully caused the delay to gain a tactical advantage. “Between diligent prosecution and bad-faith delay, official negligence in bringing an accused to trial occupies the middle ground.” *Hubbard* at *id.*, quoting *Doggett* at 656-657. “Although negligence is obviously to be

weighed more lightly than a deliberate intent to harm the accused's defense, it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun.” *Hubbard* at *id.*, quoting *Doggett* at 657.

{¶15} Robinson was incarcerated on two unrelated cases at the time he was indicted. Those cases both arose from this county and were tried by the same prosecutor's office. But, because Robinson can point to no evidence that the state intentionally delayed service of the indictment and arrest warrant, the state's failure to locate Robinson and serve him with the indictment and arrest warrant amounts to prosecutorial negligence, not purposeful action by the state to gain a tactical advantage. *See Smith* at ¶ 16. Even so, the state's negligence weighs in favor of Robinson.

3. Assertion of Right to a Speedy Trial

{¶16} An accused's assertion of, or failure to assert, his or her right to a speedy trial is a factor to be considered in determining whether his or her constitutional rights were violated. *Barker*, 407 U.S. at 528, 92 S.Ct. 2182, 33 L. Ed.2d 101; *Triplett*, 78 Ohio St.3d at 570, 679 N.E.2d 290. Although indicted in October 2014, Robinson did not assert his speedy-trial right until August 23, 2016. Robinson was unaware of the charges against him until he was served with the arrest warrant, which occurred sometime between March 25 and March 30, 2016. As a result, his failure to raise a speedy-trial issue during this time period cannot be held against him. *See Hubbard* at ¶ 21. Yet, even after he was served with the arrest warrant, was arraigned, and was appointed counsel, Robinson still waited almost five months to file his motion to dismiss and assert

his speedy-trial right.¹ This delay must be weighed, at least to some extent, against Robinson's claim of a serious deprivation of his right to a speedy trial. *Hubbard* at *id.*; *State v. Walker*, 10th Dist. Franklin No. 06AP-810, 2007-Ohio-4666, ¶ 31 (although defendant asserted his right to a speedy trial at his arraignment, he delayed seeking dismissal of the charges for two months following arrest and arraignment and that delay must be weighed against his claim of his right to a speedy trial); *Triplett* at 570. Consequently, Robinson's assertion of his right to a speedy trial weighs only moderately in his favor.

4. Prejudice to the Defendant

{¶17} In *Barker*, the United States Supreme Court identified three interests that the speedy-trial right is designed to protect: (1) oppressive pretrial incarceration, (2) the anxiety and concern of the accused, and (3) the possibility that the accused's defense will be impaired. *Id.* at 532. "Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Id.* A defendant is prejudiced if a witness dies, disappears, or is unable to recall accurately events of the distant past. *Id.*

{¶18} Oppressive pretrial incarceration is not a factor in this case because

¹This court acknowledges that Robinson filed a pro se motion to dismiss on speedy trial grounds on April 26, 2016, after he had been assigned counsel. "In Ohio, a criminal defendant has the right to representation by counsel or to proceed pro se with the assistance of standby counsel. However, these two rights are independent of each other and may not be asserted simultaneously." *State v. Martin*, 103 Ohio St.3d 385, 2004-Ohio-5471, 816 N.E.2d 227, paragraph one of the syllabus. Thus, we disregard any arguments advanced in pro se filings.

Robinson is serving a lengthy sentence on unrelated charges. With respect to the second type of prejudice, the anxiety and concern an accused faces, Robinson has not made such a claim; in fact Robinson has claimed that he was unaware of the impending charges. As for the third type of prejudice, the possible impairment of an accused's defense, again Robinson has not claimed that his defense was hindered in any way by the delay in proceedings.

{¶19} Finally, although not dispositive, we note that the period of delay in Robinson's case is significantly shorter than the eight and one-half years at issue in *Doggett*, the 54-month delay in *Triplett*, or the 27-month delay in *Hubbard*. Moreover, that weight, as explained above, is negligible because the interests the Sixth Amendment protects against were not implicated in this case. *Hubbard* at ¶ 26. The record does not suggest that the delay was due to anything other than prosecutorial negligence. Although Robinson asserted his speedy-trial right in a somewhat timely manner, the record contains no evidence of any actual prejudice as a result of the challenged delay. Therefore, our review of the *Barker* factors leads us to the conclusion that Robinson's Sixth Amendment speedy-trial right was not violated, and thus, the trial court did not err in denying Robinson's motion to dismiss based on his constitutional right to a speedy trial.

Statutory Speedy-Trial Rights

{¶20} We next consider Robinson's statutory right to a speedy trial. Robinson argues that the trial court further erred in denying his motion to dismiss because the state

violated his statutory speedy-trial rights under R.C. 2941.401.

{¶21} R.C. 2941.401 protects the right of a criminal defendant who is incarcerated to have other charges against him or her brought to trial. It provides in relevant part as follows:

When a person has entered upon a term of imprisonment in a correctional institution of this state, and when during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he [or she] shall be brought to trial within one hundred eighty days after he [or she] caused to be delivered to the prosecuting attorney and the appropriate court in which the matter is pending, written notice of the place of his [or her] imprisonment and a request for a final disposition to be made of the matter, except that for good cause shown in open court, with the prisoner or his [or her] counsel present, the court may grant any necessary or reasonable continuance. * * *

The warden or superintendent having custody of the prisoner shall promptly inform him [or her] in writing of the source and contents of any untried indictment, information, or complaint against him [or her], concerning which the warden or superintendent has knowledge, and of his [or her] right to make a request for final disposition thereof. * * *

If the action is not brought to trial within the time provided, subject to continuance allowed pursuant to this section, no court any longer has jurisdiction thereof, the indictment, information, or complaint is void, and the court shall enter an order dismissing the action with prejudice.

Id.

{¶22} Robinson argues that the state violated R.C. 2941.401 by failing to exercise reasonable diligence in attempting to notify him of the charges against him.

{¶23} In *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, the Ohio Supreme Court was asked to determine whether R.C. 2941.401 places a duty of reasonable diligence upon the state to discover the whereabouts of an incarcerated defendant against whom charges are pending. Hairston was indicted for aggravated robbery, kidnapping, and robbery in October 2000. A summons was sent to Hairston's home address, but Hairston did not receive it because he was in the county jail on a parole violation. When Hairston failed to appear at his arraignment, a capias was issued for his arrest. Finally, a detainer was served on Hairston, advising him of the charges in the October 2000 indictment. Hairston argued the state's failure to exercise reasonable diligence to discover his whereabouts required dismissal of the charges under R.C. 2941.401. The trial court denied the motion, but the Tenth Appellate District reversed and ordered that the charges be dismissed with prejudice. *Id.* at ¶ 7-9.

{¶24} The Ohio Supreme Court disagreed with the Tenth Appellate District's interpretation of R.C. 2941.401. It found the statutory language unambiguous in that it places the "the initial duty on the defendant to cause written notice to be delivered to the prosecuting attorney and the appropriate court advising of the place of his imprisonment and requesting final disposition." *Id.* at ¶ 20. Further, the statute imposes no duty upon the state "until such time as the incarcerated defendant provides the statutory notice."

Id. In reaching this determination, the court held that the statute did not allow a defendant to avoid prosecution because the state failed to locate him or her. *Id.* at ¶ 25.

{¶25} The court determined that because Hairston did not provide the requisite notice to the prosecuting attorney or the court, he never triggered the process that would have caused him to be brought to trial within 180 days of his notice and request even though, under the facts of the case, it was apparent the warden did not have knowledge of the charges pending against Hairston. *Id.* at ¶ 21.

{¶26} Likewise, in this case, the record reflects that the warden did not have knowledge that charges had been filed against Robinson, and Robinson did not exercise his rights under R.C. 2941.401. Thus, R.C. 2941.401 does not apply in this case and the state violated no statutory speedy-trial requirement under R.C. 2941.401. *See Hubbard*, 12th Dist. Butler No. CA2014-Ohio-03-063, 2015-Ohio-646 at ¶ 38.

{¶27} Robinson relies on this court's decision in *Cleveland Metroparks v. Signorelli*, 8th Dist. Cuyahoga No. 90157, 2008-Ohio-3675, to support his argument that the state had a duty to exercise reasonable diligence to secure his availability. In *Signorelli*, this court found that the incarcerated defendant's speedy-trial rights had been violated. The defendant, who was imprisoned due to a conviction in an unrelated case, had his attorney appear before the trial court and inform the court and prosecutor of his incarceration. He also filed a time stamped R.C. 2941.401 notice of availability with the local clerk of courts informing the court of his current location. *Id.* at ¶ 22. Thus, this court found, the defendant had substantially complied with the requirements of R.C.

2941.401 by notifying the prosecutor and the trial court of his incarceration.

{¶28} Unlike the defendant in *Signorelli*, Robinson did not act or seek to comply with the requirements of R.C. 2941.401 because he did not inform either the trial court or the prosecutor of his incarceration. The jurisdictional limitation was not triggered in this case and Robinson's statutory speedy-trial rights were not violated. *See Hubbard at id.*; *see also State v. Rice*, 2015-Ohio-5481, 57 N.E.3d 84 (1st Dist.) (citing *Hubbard*, distinguishing *Signorelli*, and finding no statutory speedy-trial violation when warden did not have any knowledge that charges had been filed against defendant and defendant did not exercise his rights under R.C. 2941.401).

{¶29} Having found no merit to Robinson's constitutional and statutory speedy-trial challenges, his sole assignment of error is overruled.

{¶30} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

LARRY A. JONES, SR., JUDGE

MARY EILEEN KILBANE, P.J., and
MARY J. BOYLE, J., CONCUR