[Cite as *State v. Quinnie*, 2013-Ohio-1208.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 12AP-484
v.	:	(C.P.C. No. 11CR-02-899)
Carolyn J. Quinnie,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 28, 2013

Michael DeWine, Attorney General, and *Daniel H. Huston*, for appellee.

Carolyn J. Quinnie, pro se.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶ 1} Defendant-appellant, Carolyn J. Quinnie, appeals from a judgment of the Franklin County Court of Common Pleas convicting her of one count of theft, a fourth-degree felony, in violation of R.C. 2913.02(A). For the reasons that follow, we affirm the judgment of the trial court.

I. BACKGROUND

{¶ 2} On February 15, 2011, appellant was indicted on one count of theft, a felony of the fourth degree, in violation of R.C. 2913.02(A). A jury rendered a verdict of guilty, and the trial court sentenced appellant to five years of community control with a suspended sentence of 15 months incarceration. Additionally, appellant was ordered to

pay restitution to the Ohio Department of Job and Family Services ("ODJFS") in the amount of $70,109.92.

II. ASSIGNMENTS OF ERROR

{¶ 3} This appeal followed, and appellant brings the following five assignments of error for our review:

> I. THE TRIAL SHOULD HAVE GRANTED A MISTRIAL AND/OR DISMISSAL WITH PREJUDICE DUE TO ATTORNEY TYRESHA BROWN-O'NEAL VIOLATING DEFENDANT CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL BY DECEPTION AND BOLDFACE "LIES" ABOUT 180-DAY PERIOD IN REGARDS TO THE WAIVER TO A SPEEDY TRIAL SIGNATURE PAGE (ONLY), BEING PRESENTED TO A DEFENDANT AS A FORM TO PROVE THAT, CAROLYN J. QUINNIE WERE PHYSICALLY PRESENT AT NUMEROUS CONTINUANCES (PRETRIALS) SCHEDULED TO ACCOMMODATE JUDGE CHARLES A. SCHNEIDER AND ASSISTANT ATTORNEY GENERAL CONSTANCE NEARHOOD (PROSECUTOR'S DEFENSE).
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> II. WHEN COUNSEL'S PERFORMANCE IS DEFICIENT IN THE CONDUCT OF TRIAL COUPLED WITH REFUSING TO SUBMIT DEFENDANT'S EVIDENCE IN HER PERSONAL POSSESSION (TRUNK OF CAR) AS PART OF COURT RECORD ON THE DEFENDANT'S BEHALF AND REFUSING TO SUBPOENA ANY WITNESSES ON THE BEHALF OF CAROLYN J. QUINNIE'S HER CLIENT IS A VIOLATION OF 6TH AMENDMENT OF THE U.S. CONSTITUTION AND VIOLATING THE RIGHT TO A FAIR TRIAL BY THE OHIO AND FEDERAL CONSTITUTIONS.
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> III. WHEN PROSECUTION ATTORNEY WITHHOLDS DISCOVERY EVIDENCE WITHIN ITS ENTIRETY AND KNOWINGLY ALLOWS STATE WITNESSES TO PERJURE THEMSELVES TO PREVENT PROSECUTION FROM THE STATE OF OHIO ATTORNEY GENERAL OFFICE ALONG WITH JUDGE CHARLES A. SCHNEIDER DENYING MOTION FOR DISCOVERY (SUBPOENA 10CR00100070); PREVENTS DEFENSE ATTORNEY FROM BEING ABLE TO PRODUCE "REASON OF DOUBT" WITHOUT VIEWING DEFENDANT'S EVIDENCE COLLECTED FROM DISCOVERY (SUBPOENA 10CR00100070) AND PREVENTS DEFENSE ATTORNEY FROM PREPARING AN ADEQUATE

> AND EFFECTIVE ASSISTANCE OF COUNSEL FOR CAROLYN J. QUINNIE'S DEFENSE.
>
> IV. WHEN COUNSEL'S PERFORMANCE IS DEFICIENT IN THE CONDUCT OF TRIAL BY ALLOWING FOUR SEPARATE OCCASIONS OF JURY TAMPERING AND NOT MOTIONING FOR A MISTRIAL DEMONSTRATES INEFFECTIVE ASSISTANCE OF COUNSEL AND VIOLATES CAROLYN J. QUINNIE RIGHT TO A FAIR TRIAL AND EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE OHIO AND FEDERAL CONSTITUTIONS.
>
> V. WHEN STATE OF OHIO ATTORNEY GENERAL OFFICE SENIORN ASSISTANT ATTORNEY CONSTANCE NEARHOOD AND OTHER COLLEGUE (ASSISTANT ATTORNEY GENERAL) PROSECUTED CAROLYN J. QUINNIE WHILE KNOWINGLY (MISCONDUCT) BEING AWARE THAT THEIR OFFICE AND ODJFS HAD VIOLATED 3EASE HHC LTD RIGHT TO A FAIR AND SPEEDY TRIAL; AND DUE PROCESS RIGHTS BY "REFUSING TO ALLOW" ODJFS TO REPLY TO A WRITTEN REQUEST FOR RECONSIDERATION OF SUSPENSION DUE TO AN INDICTMENT DATE 2-15-2011 UNDER PROVIDER AGREEMENT NUMBER 2800035 (SIGNED 3-11-2011 BY DEFENDANT) AND KNOWINGLY ENGAGED IN ACTS OF TAMPERING WITH COURT RECORD AT THE FRANKLIN COUNTY, OHIO COMMON PLEAS COURT CLERK OF COURT'S DOCKET BY DELETING THE DATES OF THE NUMEROUS CONTINUOUS (PRETRIALS) CAROLYN J. QUINNIE APPEARED WITH INEFFECTIVE ASSISTANCE OF COUNSEL ATTORNEY TYRESHA BROWN-O'NEAL.

(Sic passim.)

III. DISCUSSION

A. First Assignment of Error

{¶ 4} In her first assignment of error, appellant contends her right to a speedy trial was violated. An accused is guaranteed the constitutional right to a speedy trial pursuant to the Sixth and Fourteenth Amendments of the United States Constitution and Ohio Constitution, Article I, Section 10. *State v. Taylor*, 98 Ohio St.3d 27, 2002-Ohio-7017, ¶ 32. These speedy trial rights are essentially equivalent. *State v. Butler*, 19 Ohio St.2d 55, 57 (1969). Ohio's speedy trial statutes, found in R.C. 2945.71 et seq., were

implemented to enforce those constitutional guarantees. *Brecksville v. Cook*, 75 Ohio St.3d 53, 55 (1996); *State v. Blackburn*, 118 Ohio St.3d 163, 2008-Ohio-1823, ¶ 10.

{¶ 5} R.C. 2945.71(C)(2) requires a criminal defendant against whom a felony charge is pending to be brought to trial within 270 days from his arrest. Appellant was not arrested on these charges. Instead, she received a certified summons on March 10, 2011; therefore, we will begin counting days from March 10. *State v. Dillon*, 10th Dist. No. 05AP-679, 2006-Ohio-3312, ¶ 33, discretionary appeal not allowed, 111 Ohio St.3d 1493, 2006-Ohio-6171; *State v. Riley*, 162 Ohio App.3d 730, 2005-Ohio-4337, ¶ 20 (12th Dist.); *State v. Galluzzo*, 2d Dist. No. 2004 CA 25, 2006-Ohio-309, ¶ 30; *State v. Shabazz*, 8th Dist. No. 95021, 2011-Ohio-2260, ¶ 25.

{¶ 6} Here, 340 days elapsed from March 11, 2011 until appellant's trial began on February 14, 2012. Upon demonstrating that more than 270 days elapsed before trial, a defendant establishes a prima facie case for dismissal based on a speedy trial violation. *State v. Miller*, 10th Dist. No. 06AP-36, 2006-Ohio-4988, ¶ 9. Once a defendant establishes a prima facie case for dismissal, the state bears the burden to prove that time was sufficiently tolled and the speedy trial period extended. *Id.*; *State v. Butcher*, 27 Ohio St.3d 28, 31 (1986). Hence, the proper standard of review in speedy trial cases is to simply count the number of days passed, while determining to which party the time is chargeable, as directed in R.C. 2945.71 and 2945.72. *State v. Jackson*, 10th Dist. No. 02AP-468, 2003-Ohio-1653, ¶ 32, citing *State v. DePue*, 96 Ohio App.3d 513, 516 (4th Dist.1994). In order to meet its burden, the state argues that the speedy trial time was tolled as a result of multiple continuances that delayed appellant's trial. We agree.

{¶ 7} Pursuant to R.C. 2945.72(H), the time within which an accused must be brought to trial is extended by "[t]he period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion."

{¶ 8} The state requested the first continuance, and the matter was continued from July 14 to August 9, 2011. While the continuance entry does not specify the reason for the continuance, the entry indicates appellant waived her right to a speedy trial for the period of this continuance. Thereafter, the trial court granted continuances upon appellant's own motion or upon the joint motions of the parties from August 9 to

December 12, 2011. Each continuance entry for this period contains a waiver of appellant's speedy trial rights. On December 12, 2011, the matter was continued until February 13, 2012 because the court was in trial, and the record reflects appellant waived her right to a speedy trial with respect to this continuance. The last continuance, from February 13 to February 14, 2012, was due to the trial judge being out of the office for that day. According to the record, appellant's trial dates were continued either at her request or by the request of the parties for a total of 125 days. These continuances toll the speedy trial time limits. R.C. 2945.72(H) (continuances on accused's own motion toll time); *Dillon* at ¶ 35 (continuances granted upon joint motions toll time); *State v. Brown*, 7th Dist. No. 03-MA-32, 2005-Ohio-2939, ¶ 41-44 (continuances granted on accused's own motion or by joint motions toll time). Thus, we need not consider whether the continuances requested by the state or upon motion of the court are reasonable, as required by R.C. 2945.72(H), because, even if we were to charge that time against the state, appellant was brought to trial in 215 days, which is well within the 270-day time limitation.

{¶ 9} Appellant argues the continuances should not toll the time period because they were not reasonable. R.C. 2945.72(H), however, does not require that a continuance granted upon the accused's own motion be reasonable for the time period to be tolled. Additionally, any continuances granted by a joint motion or agreement of the parties also toll the statutory time period. *Dillon* at ¶ 35; *State v. Canty*, 7th Dist. No. 08-MA-156, 2009-Ohio-6161, ¶ 83; *State v. Brime*, 10th Dist. No. 09AP-491, 2009-Ohio-6572, ¶ 13 (tolling time for continuance requested by both the state and defense counsel); *State v. Barbour*, 10th Dist. No. 07AP-841, 2008-Ohio-2291, ¶ 17 (distinguishing continuances requested by state versus those requested by defendant or on joint motion). The only continuances that must be reasonable in order to toll the statutory time limits are those requested by the state or sua sponte ordered by the trial court. *State v. Kist*, 173 Ohio App.3d 158, 2007-Ohio-4773, ¶ 35 (11th Dist.).

{¶ 10} Appellant also argues that these continuances should not toll the time period because she did not consent to them, and her counsel lied to her and advised her to sign the continuance entries. It is well-established that a defendant is bound by the actions of counsel in waiving speedy trial rights by seeking or agreeing to a continuance,

even over the defendant's objections. *State v. McQueen*, 10th Dist. No. 09AP-195, 2009-Ohio-6272, ¶ 37, citing *State v. McBreen*, 54 Ohio St.2d 315 (1978). Additionally, there is no evidence in the record to support appellant's allegation that her counsel was untruthful.

{¶ 11} Based on the record herein, we conclude appellant was tried within the statutory speedy trial time limits.

{¶ 12} Having found that appellant's statutory right to a speedy trial was not violated, we next address whether her constitutional right to a speedy trial was violated. In *Barker v. Wingo*, 407 U.S. 514, 530 (1972), the United States Supreme Court set forth four factors to consider when evaluating whether an appellant's right to a speedy trial was violated: (1) whether the delay before trial was uncommonly long, (2) whether the government or the criminal defendant is more to blame for the delay, (3) whether in due course, the defendant asserted his right to a speedy trial, and (4) whether he suffered prejudice as a result of the delay. These factors are balanced in a totality of the circumstances setting with no one factor controlling. *Id*. The Supreme Court of Ohio has also adopted this test to determine if an individual's constitutional speedy trial rights have been violated. *State v. Selvage*, 80 Ohio St.3d 465, 467 (1997).

{¶ 13} The first of these factors, the length of the delay, "is to some extent a triggering mechanism. Until 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; *Doggett v. United States*, 505 U.S. 647, 651 (1992). Therefore, the *Barker* analysis is only triggered once a "presumptively prejudicial" delay is shown. *Doggett* at 651-52; *State v. Yuen*, 10th Dist. No. 03AP-513, 2004-Ohio-1276, ¶ 10. Generally, delay is presumptively prejudicial as it approaches one year. *State v. Miller*, 10th Dist. No. 04AP-285, 2005-Ohio-518, ¶ 12. Here, appellant's trial began less than one year after her indictment. Assuming without deciding that a presumptively prejudicial delay has been shown, we will consider the other *Barker* factors to determine if appellant's constitutional speedy trial rights were violated.

{¶ 14} The second factor focuses on the reasons for the delay. This factor is concerned with whether the government or the defendant is more to blame for the delay. *Doggett* at 651. A large portion of the delay in this case occurred as a result of

continuances either requested solely by appellant's trial counsel or by agreement of the parties. The state requested a continuance on one occasion and the trial court did so twice. Hence, this factor does not weigh in appellant's favor.

{¶ 15} The next factor concerns appellant's assertion of her rights to a speedy trial. Appellant filed a pro se motion to dismiss the charges based on her speedy trial rights after the trial had concluded and the jury rendered its verdict. Thus, while appellant did assert her right to a speedy trial, this factor is not a persuasive factor in our consideration. *State v. Walker*, 10th Dist. No. 06AP-810, 2007-Ohio-4666, ¶ 31 (weighing defendant's two-month delay in filing motion to dismiss against defendant's claim).

{¶ 16} The final factor is prejudice. In assessing prejudice in this context, we consider the specific interests the right to a speedy trial was designed to protect: oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the defendant's defense will be impaired by dimming memories and loss of exculpatory evidence. *Doggett* at 654; *Walker* at ¶ 32. Pretrial incarceration is not implicated because appellant did not spend any time in jail awaiting trial on these charges. Although facing criminal charges for an extended period of time necessarily entails some level of anxiety and concern, appellant does not allege any particular reason for this factor to weigh heavily in our consideration. *See State v. Glass*, 10th Dist. No. 10AP-558, 2011-Ohio-6287, citing *State v. Eicher*, 8th Dist. No. 89161, 2007-Ohio-6813, ¶ 33 ("blanket statement" of anxiety caused by delay was insufficient to establish prejudice).

{¶ 17} After carefully considering the *Barker* factors, we conclude that the delay in this case between indictment and trial does not violate appellant's constitutional right to a speedy trial. Finding that neither appellant's statutory right nor constitutional right to a speedy trial was violated in this case, we overrule appellant's first assignment of error.

B. Second and Fourth Assignments of Error

{¶ 18} Because they are interrelated and both assert she received ineffective assistance of trial counsel, appellant's second and fourth assignments of error will be addressed together.

{¶ 19} To establish a claim of ineffective assistance of counsel, an appellant must show that counsel's performance was deficient and that counsel's deficient performance

prejudiced him. *State v. Jackson*, 107 Ohio St.3d 53, 2005-Ohio-5981, ¶ 133, citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The failure to make either showing defeats a claim of ineffective assistance of counsel. *State v. Bradley*, 42 Ohio St.3d 136, 143 (1989), quoting *Strickland* at 697 (" '[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.' ").

{¶ 20} In order to show counsel's performance was deficient, an appellant must prove that counsel's performance fell below an objective standard of reasonable representation. *Jackson* at ¶ 133. The appellant must overcome the strong presumption that defense counsel's conduct falls within a wide range of reasonable professional assistance. *Strickland* at 689. To show prejudice, the appellant must establish that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, ¶ 204.

{¶ 21} In her assigned errors, appellant contends her counsel was ineffective for failure to present evidence, failure to subpoena witnesses, failure to conduct a proper cross-examination of witnesses, and failure to file a motion for a mistrial on the basis of jury tampering.

{¶ 22} Initially, we note the decision whether to call a witness is generally a matter of trial strategy and, absent a showing of prejudice, does not deprive a defendant of effective assistance of counsel. *State v. Samatar*, 152 Ohio App.3d 311, 2003-Ohio-1639, ¶ 90 (10th Dist.), citing *State v. Williams*, 74 Ohio App.3d 686, 694 (8th Dist.1991). Additionally, decisions regarding cross-examination are within the trial counsel's discretion and generally do not form the basis for a claim of ineffective assistance of counsel. *State v. Harris*, 10th Dist. No. 09AP-578, 2010-Ohio-1688, ¶ 28, citing *State v. Flors*, 38 Ohio App.3d 133, 139 (8th Dist.1987). The extent and scope of cross-examination clearly falls within the ambit of trial strategy, and debatable trial tactics do not establish ineffective assistance of counsel. *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, ¶ 146. " '[A]n appellate court reviewing an ineffective assistance of counsel claim must not scrutinize trial counsel's strategic decision to engage, or not engage, in a particular line of questioning on cross-examination.' " *State v. Dorsey*, 10th Dist. No.

04AP-737, 2005-Ohio-2334, ¶ 22, quoting *In re Brooks*, 10th Dist. No. 04AP-164, 2004-Ohio-3887, ¶ 40.

{¶ 23} Moreover, appellant speculates without any evidentiary support that counsel's failure to subpoena additional witnesses and failure to conduct a proper examination was prejudicial. The record contains no evidence suggesting how these additional witnesses would have testified or how the witnesses would have testified had cross-examination been conducted differently. As this court has stated, "[i]t is impossible for a court to determine on a direct appeal from a criminal conviction whether counsel was ineffective in his or her representation where the allegations of ineffectiveness are based on facts outside the record." *State v. Reinhardt*, 10th Dist. No. 04AP-116, 2004-Ohio-6443, ¶ 49, citing *State v. Gibson*, 69 Ohio App.2d 91, 95 (8th Dist.1980). Thus, it is pure speculation to conclude that the result of appellant's trial would have been different had any additional witnesses testified or cross-examination been conducted differently. *State v. Williams*, 10th Dist. No. 08AP-719, 2009-Ohio-3237, ¶ 35, citing *State v. Thorne*, 5th Dist. No. 2003CA00388, 2004-Ohio-7055, ¶ 70 (failure to show prejudice without affidavit describing testimony of witnesses not called); *State v. Hamilton*, 10th Dist. No. 10AP-543, 2011-Ohio-3305, ¶ 28. This type of vague speculation is insufficient to establish ineffective assistance of counsel. *State v. Wiley*, 10th Dist. No. 03AP-340, 2004-Ohio-1008, ¶ 30.

{¶ 24} Further, all of appellant's challenges to the effectiveness of her counsel require a review of the transcript; however, appellant has not provided this court with a transcript of the proceedings. In *State v. O'Brien*, 10th Dist. No. 93AP-353 (Sept. 28, 1993), this court held "the duty to provide a transcript for appellate review falls upon the appellant. The appellant bears the burden of showing error by reference to the matters in the record and, when a portion of the transcript necessary for resolution of assigned errors is omitted from the record, the court has nothing to review. Thus, the court has no choice but to presume the validity of the lower court's proceedings and affirm." *Id.*, citing *Columbus v. Hodge*, 37 Ohio App.3d 68 (10th Dist.1987). *See also Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197 (1980).

{¶ 25} For the foregoing reasons, we conclude appellant has not demonstrated that she received ineffective assistance of counsel. Accordingly, we overrule her second and fourth assignments of error.

C. Third and Fifth Assignments of Error

{¶ 26} Appellant's third and fifth assignments of error are interrelated and will be addressed as one. Together these assigned errors assert prosecutorial misconduct. Specifically, appellant asserts the prosecution withheld evidence, improperly influenced witnesses, prevented ODJFS from responding to her request for reconsideration in the matter concerning her license, and engaged in acts of tampering with court records.

{¶ 27} The arguments raised in these two assignments of error suffer from the same flaws as those raised in appellant's second and fourth assignments of error. First, there is no evidentiary support for appellant's allegations of misconduct, and the allegations of misconduct rely primarily on facts outside of the record. As with allegations of ineffective assistance of counsel, where evidence supporting an appellant's allegation of prosecutorial misconduct is outside the record, the proper procedure is for the appellant to raise them in a motion for post-conviction relief and not on direct appeal. *State v. Fryer*, 90 Ohio App.3d 37, 48 (8th Dist.1993); *State v. White*, 10th Dist. No. 98AP-1379 (Nov. 2, 1999); *State v. Booker*, 63 Ohio App.3d 459 (2d Dist.1989).

{¶ 28} Secondly, to the extent appellant is suggesting prosecutorial misconduct is established in the record, other than general allegations of misconduct, appellant has not directed this court to any particular place in the record where the misconduct has occurred, nor has she provided this court with a transcript to review. As previously mentioned, the appellant bears the burden of showing error by reference to the matters in the record, and when a portion of the transcript necessary for resolution of assigned errors is omitted from the record, the court has nothing to review. *O'Brien*. Consequently, the court has no choice but to presume the validity of the lower court's proceedings and affirm. *Id*.

{¶ 29} Accordingly, we overrule appellant's third and fifth assignments of error.

IV. CONCLUSION

{¶ 30} For the foregoing reasons, appellant's five assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

CONNOR and DORRIAN, JJ., concur.
