

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

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| STATE OF OHIO, | : | |
| | : | CASE NO. CA2014-06-144 |
| Plaintiff-Appellee, | : | |
| | : | <u>OPINION</u> |
| | : | 3/23/2015 |
| - VS - | : | |
| | : | |
| RICHARD TODD WILLIAMS, | : | |
| | : | |
| Defendant-Appellant. | : | |

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2005-06-1135

Michael T. Gmoser, Butler County Prosecuting Attorney, Michael A. Oster, Jr., Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

Richard Todd Williams, A547-019, London Correctional Institution, P.O. Box 69, London, Ohio 43140, defendant-appellant, pro se

M. POWELL, P.J.

{¶ 1} Defendant-appellant, Richard Todd Williams, appeals a decision of the Butler County Court of Common Pleas denying his motion to dismiss the case for lack of subject-matter jurisdiction.

{¶ 2} On June 29, 2005, the Butler County Grand Jury indicted appellant on three counts of rape and four counts of gross sexual imposition. The state alleged that appellant

sexually abused his pre-teenage stepchildren over a period of four years. Following a jury trial in January 2007, appellant was found guilty of one count of rape, and guilty of the lesser included offense of gross sexual imposition as to the remaining two counts of rape. The jury also found appellant guilty of four counts of gross sexual imposition. Appellant was sentenced to life in prison on his rape conviction, and to consecutive terms of five years imprisonment on each of the gross sexual imposition convictions. Appellant was also classified a sexual predator. On July 28, 2008, this court upheld appellant's conviction for rape and gross sexual imposition. *State v. Williams*, 12th Dist. Butler No. CA2007-04-087, 2008-Ohio-3729.

{¶ 3} On April 29, 2014, appellant filed a pro se motion to dismiss the case for lack of subject-matter jurisdiction. Appellant argued the trial court lacked jurisdiction to convict him because he was charged with a defective complaint. On June 6, 2014, the trial court denied the motion. The trial court found it had jurisdiction because any alleged defects in the complaint were irrelevant to appellant's conviction, as appellant was tried and convicted on an indictment.

{¶ 4} Appellant appeals, raising one assignment of error:

{¶ 5} THE TRIAL COURT ABUSED IT'S DISCRETION WHEN IT FAILED TO DISMISS THE DEFENDANT INDICTMENT FOR LACK OF SUBJECT MATTER JURISDICTION CAUSING A MANIFEST MISCARRIAGE OF JUSTICE AND A VIOLATION OF THE DEFENDANT'S CONSTITUTIONAL RIGHTS TO DUE PROCESS. [SIC]

{¶ 6} Appellant first argues the trial court lacked subject-matter jurisdiction to convict him, and thus erred in denying his motion to dismiss, because he was charged with a defective complaint under Crim.R. 3. Appellant appears to argue the complaint was defective because the arrest affidavit or complaint "was not properly signed or sworn to," "no valid complaint was filed," and "an oath was not otherwise properly administered by a notary

public or deputy clerk."

{¶ 7} Subject-matter jurisdiction involves a court's power to hear a case. As such, the issue can never be waived and may be raised at any time. *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, ¶ 10. Because a trial court's determination it has subject-matter jurisdiction involves a question of law, we review the trial court's determination de novo. See *State v. Walls*, 12th Dist. Butler No. CA99-10-174, 2000 WL 1818567 (Dec. 11, 2000); *State v. Thacker*, 4th Dist. Lawrence No. 04CA5, 2004-Ohio-3978.

{¶ 8} The filing of a valid complaint is a necessary prerequisite to a court's acquisition of jurisdiction. *Mbodji* at ¶12. However, "[a]n accused in a felony case is not tried upon the affidavit filed against him but on the indictment by the grand jury." *Foston v. Maxwell*, 177 Ohio St. 74, 76 (1964); *Thacker* at ¶ 12.

{¶ 9} In the case at bar, there is no evidence appellant was charged with, let alone convicted on, a complaint. Rather, appellant was tried and convicted on the indictment issued by the Butler County Grand Jury on June 29, 2005. Consequently, appellant's indictment properly gave the trial court subject-matter jurisdiction over the case. *State v. Gaitor*, 7th Dist. Mahoning No. 13 MA 189, 2014-Ohio-4010, ¶ 16; *State v. Leigh*, 2d Dist. Montgomery No. 18294, 2001 WL 1345957 (Nov. 2, 2001). In addition, in light of the indictment, any alleged defects in the complaint would be irrelevant and harmless to appellant's conviction. See *Thacker* at ¶ 12; *State v. Turner*, 3d Dist. Allen No 1-11-01, 2011-Ohio-4348, ¶ 21; *State v. Phillips*, 7th Dist. Mahoning No. 14 MA 34, 2014-Ohio-5309, ¶ 17 (grand jury's indictment cures any defect in the failure to file a criminal complaint under Crim.R. 3).

{¶ 10} Appellant also argues the trial court lacked subject-matter jurisdiction because "although signed[,] [t]he grand jury foreperson did not write the words a true bill and the indictment was not notarized."

{¶ 11} Crim.R. 7 and R.C. 2939.20 both govern indictments. Contrary to appellant's assertion, neither requires an indictment to be "notarized." We also note that appellant has not cited any case law in support of his assertion. A review of the June 29, 2005 indictment shows that it was signed by the foreperson under the notation "A TRUE BILL." The fact that the notation "a true bill" was pre-printed on appellant's indictment, and not handwritten by the foreperson, does not render the indictment defective. *Payne v. Jeffreys*, 109 Ohio St.3d 239, 2006-Ohio-2288, ¶ 6 (indictment satisfied R.C. 2939.20 where the words "a true bill" were in a preprinted indictment form and the grand-jury foreman subscribed his name as foreman under that endorsement); *Key v. State*, 10th Dist. Franklin No. 04AP-113, 2004-Ohio-5341, ¶ 9.

{¶ 12} We find that the June 29, 2005 indictment charging appellant with rape and gross sexual imposition is not defective and complies with Crim.R. 6, Crim.R. 7, and R.C. 2939.20. Consequently, the trial court had subject-matter jurisdiction to convict and sentence appellant based upon the grand jury indictment. The trial court, therefore, did not err in denying appellant's motion to dismiss.

{¶ 13} Appellant's assignment of error is overruled.

{¶ 14} Judgment affirmed.

S. POWELL and HENDRICKSON, JJ., concur.