

[Cite as *State v. Keeble*, 2004-Ohio-3785.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 03CA84

vs. : T.C.CASE NO. 97CR226,230

BRYANT W. KEEBLE : (Criminal Appeal from
Common Pleas Court)

Defendant-Appellant :

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O P I N I O N

Rendered on the 9th day of July, 2004.

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GRADY, J.

{¶1} Defendant, Bryant W. Keeble, appeals from an order
of the court of common pleas terminating his community
control status and imposing a term of incarceration.

{¶2} On October 13, 1999, Keeble was sentenced to four

years of community control upon his convictions for passing bad checks. One of the several sanctions imposed was that Keeble obey all Federal, state, and local laws. He was told that any violation would permit the court to impose a prison sentence of up to forty-four months.

{¶3} In October of 2000, Keeble was convicted in Federal District Court for bank robbery and was ordered incarcerated in Federal prison. On March 25, 2002, Keeble filed a motion in the court of common pleas acknowledging his violation of the community control sanction the court had imposed. He also asked the court to allow him to serve the resulting prison term in the Federal facility where he was incarcerated. No action was taken on the request, possibly because Keeble had failed to serve a copy of his motion on the county prosecutor.

{¶4} On September 24, 2003, one and one-half years after he filed his prior motion, Keeble filed a motion asking the court to dismiss his alleged community control violation.

{¶5} Keeble argued that dismissal was required by R.C. 2963.30, which codifies Ohio's subscription to the Interstate Agreement on Detainers ("IAD"), because the court had not acted within one hundred and eighty days after his March 25, 2002 acknowledgment and request. Keeble also argued a violation of his speedy trial rights and several other, related contentions.

{¶6} The common pleas court held a hearing on Keeble's

motion on the day it was filed. The court found that he had violated his community control sanction and imposed a nineteen month term of incarceration. The net effect of the court's order is that Keeble must serve an additional twelve months of incarceration after his release from Federal prison.

{¶7} Keeble, represented by counsel, filed a timely notice of appeal. His brief on appeal violates the requirements of App.R. 19(A), which requires the text to be double spaced. Counsel is admonished to observe the requirement in the future.

FIRST ASSIGNMENT OF ERROR

{¶8} "IT IS AN ERROR FOR THE COURT TO FAIL TO REFUSE TO DISMISS A COMPLAINT FOR VIOLATION OF PROBATION WHEN THE DEFENDANT HAS SUBSTANTIALLY COMPLIED WITH THE MANDATES OF OHIO REVISED CODE SECTION 2963.30 ARTICLE III(a) AND WHEN THE STATE HAS FAILED TO ACT FOR FIVE HUNDRED AND FORTY NINE (549) DAYS AND CONTINUES TO FAIL TO ACT THROUGHOUT DEFENDANT'S MOTION FOR TERMINATION OF PROBATION."

{¶9} The IAD is a compact among 48 states, the District of Columbia, Puerto Rico and the United States. Ohio adopted the IAD in 1969 and codified it at R.C. 2963.30. Article III, Subsection (a) of the IAD sets out a procedure whereby a prisoner in a party state may demand trial within 180 days of any "untried indictment, information, or complaint" which serves as the basis for a detainer filed against him by another party state. Upon receiving notice

of a detainer, the prisoner may request final disposition of the case by notifying the warden of the institution in which he is held and the prosecuting agency in the charging state of the untried indictment. If the prosecuting agency fails to bring the untried indictment to trial within 180 days, the court must dismiss the charges and the detainer ceases to have any effect.

{¶10} It is unclear whether Keeble's March 25, 2002 application, by its terms, triggers the requirements of R.C. 2963.30. Even if it did, Keeble's failure to serve notice on the county prosecutor is probably fatal. A more fundamental issue exists, however: whether a proceeding to terminate community control is subject to the requirements of R.C. 2963.30.

{¶11} The issue presented was addressed in *Carchman v. Nash* (1985), 473 U.S. 716, 105 S.Ct. 3401, 87 L.Ed.2d 516. Nash was on probation for a New Jersey conviction. New Jersey is a party to the IAD. Pennsylvania, also a party to the IAD, convicted him of a second crime some time later. The New Jersey court filed a detainer for probation violation with the appropriate Pennsylvania corrections officials. Upon receiving notice of the detainer, Nash sent a series of pro se letters to New Jersey officials invoking Article III of the IAD and seeking final disposition of the probation violation charge within 180 days. New Jersey failed to act within the 180-day window and Nash moved to have the charge dismissed. The New Jersey court denied

Nash's motion and sentenced him to 36 months of incarceration.

{¶12} The Supreme Court examined the text of Article III and found that the term "untried," when combined with "indictment, information or complaint," refers to criminal charges pending against the prisoner. *Id.* at 724 - 725. The Court held that "[a] probation violation charge...does not accuse an individual with having committed a criminal offense in the sense of initiating a prosecution...[and] does not come within the terms of Art[icle] III." *Id.* at 725.

{¶13} As in *Nash*, Defendant Keeble sent a pro se motion to the court of common pleas invoking the IAD. Contrary to Defendant's assertion, it is irrelevant whether this amounts to an effort to substantially comply with the IAD. A community control violation allegation lodged in the jurisdiction of a party to the IAD, like the probation violation in *Nash*, does not equate to a pending criminal charge. Therefore, it does not constitute an untried indictment that triggers the requirements of the IAD set out in R.C. 2963.20. The trial court did not err when it denied Keeble's motion to dismiss for failure to comply with the time requirements of that section.

{¶14} The Defendant's First Assignment of Error is overruled.

SECOND ASSIGNMENT OF ERROR

{¶15} "THE COURT ERRED IN FAILING TO DISMISS THE

COMPLAINT FOR PROBATION VIOLATION AND REVOCATION FILED BY THE GREENE COUNTY PROBATION DEPARTMENT AGAINST DEFENDANT AND FAILING TO TERMINATE PROBATION TO WHEN (sic) THERE WERE CONTINUOS UNEXPLAINED AND UNREASONABLE DELAYS BY THE STATE IN BRINGING A DETAINED HE (sic) BEFORE THE COURT TO CONSTITUTE VIOLATION OF DUE PROCESS MANDATING DISMISSAL OF PENDING UNRESOLVED REVOCATION OF PROBATION PROCEEDINGS."

{¶16} Defendant makes several arguments concerning his right to a speedy trial. As a general rule the right to a speedy trial applies to the trial of pending criminal charges, not sentencing.

{¶17} Defendant first argues that the two-year gap between his guilty plea in 1997 and his sentencing in 1999 violates Sup.R. 39(B)(4)'s requirement to hold sentencing within 15 days of a finding of guilty. However, unlike other rules promulgated by the Ohio Supreme Court under Section 5(B), Article IV, Ohio Constitution, the Rules of Superintendence are promulgated under Section 5(A)(1) and do not supercede conflicting statutes. See e.g. *State v. Smith* (1976), 47 Ohio App.2d 317. The statutory scheme for imposing sentence for violating community control conditions is established in R.C. 2951.07.13 Defendant's community control was properly revoked under that section, which trumps any contrary provision of the Rule of Superintendence.

{¶18} Defendant next argues that his statutory right to a speedy trial codified in R.C. 2945.71 was violated by the

two-year gap between his guilty plea in 1997 and sentencing in 1999. R.C. 2945.71(C)(2) guarantees a trial within 270 days after arrest on a felony charge. Sentencing is not a trial on a pending criminal charge, however. The Defendant's "trial" ended when he pled guilty to all four counts of passing bad checks on September 29, 1997, just over three months after his indictment and well within the limits established by R.C. 2945.71(C)(2). Defendant's second argument fails.

{¶19} Finally, Defendant argues that the several delays in this case violated his right under Crim.R. 32(A) to have his sentence imposed without "unnecessary delay." The sentence that Defendant appeals was initiated by the motion he filed on September 24, 2003. The court entered judgment denying the motion and imposing sentence for violation of community control the same day. A judgment entered the same day a motion was filed can not be considered delayed unnecessarily and Defendant's third argument fails.

{¶20} The Second Assignment of Error is overruled. The judgment of the trial court will be affirmed.

BROGAN, J. and YOUNG, J., concur.

Copies mailed to:

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