

[Cite as *State v. Veal*, 2010-Ohio-2141.]

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

STATE OF OHIO	:	
	:	Appellate Case No. 23258
Plaintiff-Appellant	:	
	:	Trial Court Case No. 06-CR-2800
v.	:	
	:	(Criminal Appeal from
KENNETH VEAL	:	Common Pleas Court)
	:	
Defendant-Appellee	:	
	:	

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O P I N I O N

Rendered on the 14th day of May, 2010.

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MATHIAS H. HECK, JR., by CARLEY J. INGRAM, Atty. Reg. #0020084, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422
Attorney for Plaintiff-Appellant

GLEN H. DEWAR, Public Defender, by CHARLES L. GROVE, Public Defender's Office, 117 South Main Street, Suite 400, Dayton, Ohio 45422
Attorney for Defendant-Appellee

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BROGAN, J.

{¶ 1} The State of Ohio appeals from the trial court's dismissal of an indictment against defendant Kenneth Veal on that basis that it cannot retain criminal jurisdiction over him when he is incompetent to stand trial and cannot be restored to competence within the statutory time limit.

{¶ 2} In support of its ruling, the trial court relied on *State v. Williams*, 179 Ohio App.3d 584, 2008-Ohio-6245, in which we declared R.C. 2945.39 unconstitutional insofar as it permits a trial court to retain criminal jurisdiction over a defendant who is incompetent and not restorable within the required time. The Ohio Supreme Court granted a discretionary appeal in *Williams* on April 8, 2009, but no decision has been rendered.

{¶ 3} In its present appeal, the State asks us to reconsider our ruling in *Williams*. In support, the State contends commitment under R.C. 2945.39 is civil, not criminal. It also argues that involuntary commitment of a defendant under R.C. 2945.39 does not violate the defendant's right to equal protection or due process. Finally, recognizing that we rejected these arguments in *Williams*, the State expresses its desire to preserve the issues in case the Ohio Supreme Court reverses our judgment.

{¶ 4} Upon review, we decline the State's invitation to reconsider *Williams*, which we decided less than eighteen months ago. Based on our ruling in that case, we reject the State's argument that commitment under R.C. 2945.39 is civil in nature. *Williams*, supra, at 597. We also reject the State's argument that the statute does not violate equal protection or due process. *Id.* at 598-606.

{¶ 5} In an effort to preserve the trial court's judgment, Veal presents his own assignment of error raising an alternative argument.¹ Specifically, he contends the trial court should have dismissed the indictment against him because he has been

¹Because Veal did not file a notice of cross appeal, he can defend the trial court's judgment on alternative grounds but not seek to change it. See App.R. 3(C).

deprived of an opportunity to present an insanity defense. Veal reasons that a delay in prosecution has hampered his ability to establish legal insanity, which differs from his competence to stand trial. Because the trial court properly dismissed the indictment against Veal under *Williams*, we need not address this alternative argument.

{¶ 6} The State's assignment of error is overruled, and the judgment of the Montgomery County Common Pleas Court is affirmed.

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GRADY and FROELICH, JJ., concur.

Copies mailed to:

Mathias H. Heck, Jr.
Carley J. Ingram
Glen H. Dewar
Charles L. Grove
Hon. A. J. Wagner