

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23908
v.	:	T.C. NO. 09CRB6555
EMARI JOHNSON	:	(Criminal appeal from
Defendant-Appellant	:	Municipal Court)

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OPINION

Rendered on the 18th day of March, 2011.

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MATTHEW KORTJOHN, Atty. Reg. No. 0083743, Assistant Prosecutor, City of Dayton,
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Attorney for Plaintiff-Appellee

TINA M. McFALL, Atty. Reg. No. 0082586, Assistant Public Defender, 117 S. Main Street,
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Attorney for Defendant-Appellant

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BROGAN, J. (by assignment)

{¶ 1} Emari Johnson appeals from his conviction in the Dayton Municipal Court of three counts of sexual imposition. He contends that his conviction should be set aside because he was denied the effective assistance of counsel.

{¶ 2} Johnson was originally arrested and charged on June 12, 2009 with four counts of sexual imposition and three counts of public indecency. On June 15, 2009, Johnson entered not guilty pleas to all the charges and on June 18, 2009, Attorney David Cranmer was appointed to represent him. On June 22, 2009, the trial court ordered that Johnson be examined for competency and sanity. On July 16, 2009, the court found Johnson competent to stand trial based on the stipulated reports of physicians. On July 31, 2009, Attorney Cranmer moved to withdraw from representing Johnson because he (Cranmer) had secured a position with a government agency. The trial court granted Cranmer's motion on August 4, 2009.

{¶ 3} On August 17, 2009, Johnson appeared in court and entered a guilty plea to three counts of sexual imposition. He was represented by Attorney Kathryn Bowling. The trial court sentenced Johnson to sixty days in jail with credit for time served. Johnson had been in jail in lieu of posting bail since his arrest. On September 2, 2009, the trial court set the matter for further proceedings on September 22, 2009, to notify Johnson of his duty to register as a Tier II sex offender. On September 22, 2009, the trial court vacated Johnson's previous guilty plea and sentence because of "a procedural omission" which is not explained in the record below. (See pg. 4 of September 22, 2009 proceedings). Johnson again pled guilty to the three sexual imposition charges and received the same sentence which was imposed on August 17, 2009. The court dismissed one sexual imposition charge and three public indecency charges at the request of the prosecutor.

{¶ 4} Johnson argues in his sole assignment of error that he was denied the effective assistance of counsel because Attorney Bowling should have moved to dismiss the

charges against him on September 22, 2009, on speedy trial grounds. Johnson argues he was required to be brought to trial within ninety days for a first degree misdemeanor per R.C. 2945.71(B)(2). Johnson contends 103 days had expired from the date of his arrest until September 22, 2009, allowing for all tolling events the State is entitled to deduct per R.C. 2945.72. Johnson argues that the court's vacation of his guilty plea operated to make that plea a nullity.

{¶ 5} The State for its part argues that by August 17, 2009, when Johnson entered his first guilty plea, the ninety-day period for bringing Johnson to trial had not expired and the later vacation of it by the court did not render it a nullity.

{¶ 6} We agree with the State that Johnson's plea on August 17, 2009, was not a nullity. The trial court had subject matter jurisdiction to accept Johnson's plea and to sentence him. It also, of course, possessed jurisdiction to vacate it before a final appealable order was entered. Johnson's plea of guilty on August 17, 2009, was well within the statutory speedy trial requirement.

{¶ 7} In *State v. McAllister* (1977), 53 Ohio App.2d 176, the Cuyahoga County Court of Appeals held that the provisions of Ohio's speedy trial statutes are directed solely to an original trial following the arrest of the defendant, and have no application to the time within which a defendant must be tried following the vacation of a no contest plea. When a defendant enters a guilty plea within the statutory speedy trial period, he has been afforded his right to a speedy trial. *State v. Clarence Jones* (April 3, 1991), Hamilton App. No. C-900539.

{¶ 8} Appellant has failed to demonstrate that his trial counsel was ineffective in not moving to dismiss his charges on speedy trial grounds. The assignment of error is overruled. The judgment of the trial court is affirmed.

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FROELICH, J. and HALL, J., concur.

(Hon. James A. Brogan, retired from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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Hon. John S. Pickrel