[Cite as *State v. Adams*, 2015-Ohio-4720.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

STATE OF OHIO,	:	
	:	Case No. 15CA1
Plaintiff-Appellee,	:	
	:	
vs.	:	DECISION AND JUDGMENT
	:	ENTRY
THOMAS ADAMS,	:	
	:	
Defendant-Appellant.	:	**Released: 11/09/15**

APPEARANCES:

Timothy Young, Ohio Public Defender, and Peter Galyardt, Assistant Public Defender, Columbus, Ohio, for Appellant.

Anneka Collins, Highland County Prosecuting Attorney, and James Roeder, Assistant Highland County Prosecuting Attorney, Hillsboro, Ohio, for Appellee.

McFarland, A.J.

{¶1} Thomas Adams appeals the trial court's denial of his motion to dismiss the indictment based upon a speedy trial violation. On appeal, he contends that the trial court committed reversible error when it denied his motion to dismiss on speedy trial grounds. However, because we conclude that R.C. 2941.401 governs the speedy trial requirements for Appellant, who was incarcerated at the time the charge at issue was pending, and because we conclude that Appellant did not satisfy the requirements imposed upon him under R.C. 2941.401, his sole

assignment of error is overruled. Accordingly, the decision of the trial court is affirmed.

FACTS

{¶2} Appellant was indicted on two counts of grand theft, fourth degree and third degree felonies, respectively, both in violation of R.C. 2913.02(A)(1), on October 4, 2011, and a summons was issued the same day. When the State was unable to obtain service on Appellant, a warrant was issued on October 24, 2011. On March 9, 2012, Appellant was incarcerated in Orient, Ohio, where he informed the staff there that he had pending criminal charges in Highland County Common Pleas Court. Appellant claims he asked prison officials what he needed to do to have the pending charges disposed of quickly and that he was directed to complete a form and provide it to the records office at the prison.

{¶3} The record before us includes what appears to be a form, or part of a form, with no heading or title, filled out by Appellant on March 9, 2012, which states Appellant believes he has a grand theft charge dating from "July or August." The form provides a space to list the county, city and state "[i]f you have any outstanding charges that you wish to dispose of while you are incarcerated * * *." The form then directs the information be provided to the records office. In response, Appellant listed "Highland County Greenfield Ohio." The form contains Appellant's name, inmate number and the date. It also has handwritten in an open

space on the form "Highland County Common Pleas Court, 105 North High Street, Hillsboro, Ohio 45133-1182." The form further states "[o]nce this form is filled out, put it in a kite and send it to the Record's Office. The Records Office will contact the appropriate authorities. You will be notified and offered a fast and speedy trial under R.C. 2941.401 or the Interstate Agreement on Detainers (if it is an out-of-state or federal charge), if it is an untried indictment or complaint."

{¶4} The record further contains a letter dated March 13, 2012 from the prison records officer to the Highland County Common Pleas Court advising that the office had been informed by Appellant that there may be outstanding charges pending in the court's jurisdiction and requesting that a certified warrant be sent or faxed in order that the records office could assist in placing a valid detainer. The letter also stated that Appellant had expressed an interest in disposing of the charges while incarcerated and would "be offered the opportunity to file for a Quick and Speedy Trial under the Interstate Agreement" if the charges were for an untried indictment. There is no evidence in the record that either the form or the letter were sent to the Highland County Prosecutor's Office, or that they were sent either certified or registered mail. Further, the record indicates that neither the court nor the prosecutor received them.

{¶5} Appellant was finally served with the indictment on August 15, 2014. Appellant thereafter filed a motion to dismiss based upon speedy trial grounds on

November 5, 2014. The trial court denied Appellant's motion on January 8, 2015. In exchange for the dismissal of the fourth degree felony count, Appellant pled no contest to the third degree felony count of grand theft and was sentenced to a one-year term of imprisonment, to be served consecutively to a prison term from Madison County. It is from this order that Appellant now brings his timely appeal, setting forth a single assignment of error for our review.

ASSIGNMENT OF ERROR

"I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED THOMAS ADAMS'S MOTION TO DISMISS ON SPEEDY-TRIAL GROUNDS. R.C. 2941.041; R.C. 2945.71; R.C. 2945.72; R.C. 2945.73."

LEGAL ANALYSIS

{¶6} In his sole assignment of error, Appellant contends that the trial court committed reversible error when it denied his motion to dismiss on speedy trial grounds. Appellant cites R.C. 2941.401 and R.C. 2945.71 through R.C. 2945.73 in support of his argument. The State contends that Appellant did not comply with the terms of R.C. 2941.401 and as a result, his speedy trial rights were not violated. Based upon our review of the record and the following statutory and case law, we agree with the State.

{¶7} The Sixth Amendment to the United States Constitution guarantees an accused the right to a speedy trial in all criminal prosecutions. That guarantee is

applicable to the states through the Fourteenth Amendment Due Process Clause. *Klopfer v. North Carolina*, 386 U.S. 213, 222-223, 87 S.Ct. 988 (1967). Similar protection is afforded under Section 10, Article I of the Ohio Constitution. See *State v. Meeker*, 26 Ohio St.2d 9, 268 N.E.2d 589 (1971), paragraph one of the syllabus ("The provisions of Section 10, Article I of the Ohio Constitution and of the Sixth Amendment to the United States Constitution, as made applicable to the states by the Fourteenth Amendment, guarantee to a defendant in a criminal case the right to a speedy trial."). Furthermore, Ohio law also includes a statutory speedy-trial right. See R.C. 2945.71 et seq. However, the statutory and constitutional rights are separate and distinct from one another. *State v. Hilyard*, 4th Dist. Vinton No. 05CA598, 2005-Ohio-4957, ¶ 7.

{¶8} R.C. 2945.71(C)(2) provides that a criminal defendant charged with a felony shall be brought to trial within 270 days of his arrest. R.C. 2945.72(A) extends that time when "the accused is unavailable for hearing or trial, by reason of other criminal proceedings against him, within or outside the state, by reason of his confinement in another state, or by reason of the pendency of extradition proceedings, provided that the prosecution exercises reasonable diligence to secure his availability." Here, Appellant raises no constitutional claims regarding his right to speedy trial. Further, when a defendant is incarcerated on other charges, as Appellant was in this case, R.C. 2941.401 prevails over the general speedy trial

statutes of R.C. 2945.71 et seq., governing the time within which the defendant must be brought to trial. *State v. Cox*, 4th Dist. Jackson No. 01CA10, 2002-Ohio-2382, ¶ 17; citing *State v. Davis* (June 4, 1997), 4th Dist. Ross No. 96CA2181; citing *State v. Hill* (Dec. 30, 1996), 4th Dist. Meigs No. 96CA4, 1996 WL 754250; see also, *State v. Pesci*, 11th Dist. Lake No. 2001-L-026, 2002-Ohio-7131, ¶ 41.

{¶9} As such, this case involves the interpretation of a statute, which we review de novo, without deference to the trial court's determination. In re Adoption of T.G.B., 4th Dist. Adams Nos. 11 CA919, 11 CA920, 2011-Ohio-6772, ¶ 4. " 'The primary goal of statutory construction is to ascertain and give effect to the legislature's intent in enacting the statute. * * * The court must first look to the plain language of the statute itself to determine the legislative intent.' " Id.; quoting *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512, ¶ 9. If the meaning of a statute is unambiguous and definite, we must apply it as written and without further interpretation. *Mathews v. Waverly*, 4th Dist. Pike No. 08CA787, 2010-Ohio-347, ¶ 23. Only if a statute is unclear and ambiguous may we interpret it to determine the legislature's intent. *State v. Chappell*, 127 Ohio St.3d 376, 2010-Ohio-5991, 939 N.E.2d 1234, ¶ 16. And, because the Supreme Court of Ohio has held that R.C. 2941.401 is not ambiguous, we need not interpret it; we must simply apply it. *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶ 13, 20; *State v. Miller*, 4th Dist. Athens No. 11CA26, 2012-

Ohio-1823, ¶ 7. "Furthermore, when reviewing the legal issues presented in a speedy trial claim, we must strictly construe the relevant statutes against the state." *State v. Fisher*, 4th Dist. Ross No. 11CA3292, 2012-Ohio-6144, ¶ 8; See also *State v. Brown*, 131 Ohio App.3d 387, 391, 722 N.E.2d 594 (4th Dist.1998).

{¶10} R.C. 2941.401 governs the time within which the state must bring an incarcerated defendant to trial and provides:

> "When a person has entered upon a term of imprisonment in a correctional institution of this state, and when during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he shall be brought to trial within one hundred eighty days after he causes to be delivered to the prosecuting attorney and the appropriate court in which the matter is pending, written notice of the place of his imprisonment and a request for a final disposition to be made of the matter, except that for good cause shown in open court, with the prisoner or his counsel present, the court may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the warden or superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time served and remaining to be served

on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the adult parole authority relating to the prisoner.

The written notice and request for final disposition shall be given or sent by the prisoner to the warden or superintendent having custody of him, who shall promptly forward it with the certificate to the appropriate prosecuting attorney and court by registered or certified mail, return receipt requested.

The warden or superintendent having custody of the prisoner shall promptly inform him in writing of the source and contents of any untried indictment, information, or complaint against him, concerning which the warden or superintendent has knowledge, and of his right to make a request for final disposition thereof.

Escape from custody by the prisoner, subsequent to his execution of the request for final disposition, voids the request.
If the action is not brought to trial within the time provided, subject to continuance allowed pursuant to this section, no court any longer has jurisdiction thereof, the indictment, information, or complaint is void, and the court shall enter an order dismissing the action with prejudice.
* * *."

{¶11} In *State v. Hairston*, supra, at ¶ 20, the Supreme Court of Ohio held that "R.C. 2941.401 places the initial duty on the defendant to cause written notice to be delivered to the prosecuting attorney and the appropriate court advising of the place of his imprisonment and requesting final disposition[.]" The Court further held that "the statute imposes no duty on the state until such time as the incarcerated defendant provides the statutory notice." Id. In *Hairston*, the defendant made no attempt to notify the prosecutor or the court of his location and did not make a request for final disposition.

{¶12} In the case sub judice, Appellant contends he satisfied the requirements of R.C. 2941.401. Although it appears from the record Appellant made some attempt to comply with the requirements of R.C. 2941.401, his actions did not satisfy the requirements under the statute. For instance, and as set forth above, there appears in the record a form or part of a form that does in fact reference R.C. 2941.401. The form has no title.[1] Appellant included his name, location and offense he believed that was possibly pending and provided it to the records office. The records office in turn claims that it mailed the form, along with

[1] In *State v. Williams*, 4th Dist. Highland No. 12CA12, 2013-Ohio-950, the incarcerated defendant sent a form entitled "Inmate's Notice of Place of Imprisonment and Request for Disposition of Indictments" to both the court and the prosecutor pursuant to R.C. 2941.401. In *State v. Miller*, 4th Dist. Athens No. 11CA26, 2012-Ohio-1823, the incarcerated defendant filed a request for disposition of his pending complaint in the Athens County Municipal Court. The form provided to the prison records office in the case sub judice bore no title indicating it was actually a request for a final disposition. Further, although it was mailed to the court, the court did not receive it, and no attempt was made to provide it to the prosecutor. Thus, the State had no notice of Appellant's location or his apparent desire for a final disposition.

a letter from the records officer, requesting that a certified warrant be sent or faxed in order that the records office could assist in placing a valid detainer. The letter also stated that Appellant had expressed an interest in disposing of the charges while incarcerated and would "be offered the opportunity to file for a Quick and Speedy Trial under the Interstate Agreement" if the charges were for an untried indictment.

{¶13} We agree with the trial court that although this may have been a first step in the process, it by no means completed the process of officially requesting, pursuant to R.C. 2941.401, a final disposition or trial on pending charges or an untried indictment. In fact, the warden had no official knowledge that Appellant had a pending untried indictment, as contemplated in the statute. It appears the letter was sent to confirm or verify that one existed. Both the letter and the form indicate that a formal request for a final disposition would be offered or made available if it was confirmed that there existed an untried indictment, not that the letter or form were then requesting a final disposition. We simply cannot conclude that the paperwork that was provided by Appellant and mailed by the prison was sufficient to trigger the running of speedy trial time. Although Appellant did make some effort, unlike *Hairston*, we do not believe his actions strictly complied with the requirements of R.C. 2941.401. See, *State v. Colon*, 5th Dist. Stark No. 09CA232, 2010-Ohio-2326, ¶ 21 ("[w]here an inmate makes an application under

R.C. 2941.401, strict compliance by the inmate with the notice and information requirements in the statute are necessary in order for the inmate to take advantage of the subsequent burden placed on the warden and hence the state.");[2] *State v. Gill*, 8th Dist. Cuyahoga No. 82742, 2004-Ohio-1245, ¶ ¶ 12, 17 (expressly declining to adopt a "substantial compliance" standard, but finding the defendant fully complied with the statutory requirements of R.C. 2941.401).[3]

{¶14} In light of our finding that Appellant did not satisfy the requirements of R.C. 2941.401, we cannot conclude that his speedy trial rights were violated. Thus, his sole assignment is overruled. Accordingly, the decision of the trial court is affirmed.

JUDGMENT AFFIRMED.

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[2] In *Colon*, the incarcerated defendant properly submitted a "request for final disposition and a notice of availability" to the warden.

[3] In *Gill*, the incarcerated defendant properly submitted a "notice of availability and a demand for final disposition of the untried indictment" to the warden.

Hoover, P.J., Concurring in Judgment Only with Concurring Opinion:

{¶15} It appears that the principal opinion is requiring strict compliance by the inmate with the notice and information requirements in R.C. 2941.401. Instead, I would apply the "substantial compliance" standard. The Third District Court of Appeals explains the "substantial compliance" standard in *State v. Moore*, 2014-Ohio-4879, 23 N.E.3d 206, ¶¶ 16-18 (3rd Dist.):

> We note the apparently mandatory nature of R.C. 2941.401, listing a number of procedures that "shall" be followed under its express language. *See also* R.C. 2963.30. In spite of this mandatory language, however, Ohio courts analyzing both R.C. 2941.401 and R.C. 2963.30 (IAD), have consistently held that only substantial compliance with the statutes by the inmate is required in order to trigger the running of the 180–day time limitation. The Ohio Supreme Court held that "[t]he one-hundred-eighty-day time period set forth in R.C. 2963.30, Ohio's codification of the Interstate Agreement on Detainers, begins to run when a prisoner *substantially complies* with the requirements of the statute set forth in Article III(a) and (b) thereof." (Emphasis added.) *State v. Mourey*, 64 Ohio St.3d 482, 597 N.E.2d 101 (1992), paragraph one of the syllabus. Ohio appellate courts followed this reasoning in IAD and R.C. 2941.401 cases. *See,*

e.g., State v. Centafanti, 5th Dist. Stark No. 2007–CA–00044, 2007-Ohio-4036, 2007 WL 2269481, ¶ 43–44, *remanded sub nom. State v. Centafanti,* 120 Ohio St.3d 275, 2008-Ohio-6102, 898 N.E.2d 45 (holding that substantial compliance is required to satisfy R.C. 2941.401); *State v. Quinones,* 168 Ohio App.3d 425, 2006-Ohio-4096, 860 N.E.2d 793 (8th Dist.), ¶ 17 (analyzing IAD); *Gill,* 8th Dist. Cuyahoga No. 82742, 2004-Ohio-1245, 2004 WL 528449, at ¶ 24 (holding that substantial compliance is the appropriate standard under R.C. 2941.401 "in those instances where documents actually reach a location"); *McDonald,* 7th Dist. Mahoning No. 97 C.A. 146, 1999 WL 476253 ("Substantial compliance is all that is required of a defendant under R.C. 2941.401."); *State v. York,* 66 Ohio App.3d 149, 153, 583 N.E.2d 1046 (12th Dist.1990) (requiring substantial compliance with IAD).

The standard for substantial rather than strict compliance with the statute might be justified by the nature of the right that the statute protects, i.e., the right to a speedy trial. The Ohio Supreme Court recognized that " '[t]he right to a speedy trial is a fundamental right guaranteed by the Sixth Amendment to the United States Constitution, made obligatory on the states by the Fourteenth Amendment. Section

10, Article I of the Ohio Constitution guarantees an accused this same right.' " *State v. Parker,* 113 Ohio St.3d 207, 2007-Ohio-1534, 863 N.E.2d 1032, ¶ 11, quoting *State v. Hughes,* 86 Ohio St.3d 424, 425, 715 N.E.2d 540 (1999). That is why the Ohio Supreme Court has "repeatedly announced that the trial courts are to strictly enforce the legislative mandates [of the speedy trial statutes]" and construe them against the state. *State v. Pachay,* 64 Ohio St.2d 218, 221, 416 N.E.2d 589 (1980); *see also Brecksville v. Cook,* 75 Ohio St.3d 53, 57, 661 N.E.2d 706 (1996); *Hughes,* 86 Ohio St.3d at 427, 715 N.E.2d 540; *Masters,* 172 Ohio App.3d 666, 2007-Ohio-4229, 876 N.E.2d 1007, citing *State v. Singer,* 50 Ohio St.2d 103, 109, 362 N.E.2d 1216, ¶ 9 (1977). We must thus apply this construction, against the state and in favor of the criminal defendant, to the statute at issue. *See McDonald,* 7th Dist. Mahoning No. 97 C.A. 146, 1999 WL 476253, *5 (June 30, 1999) ("By its very nature, a speedy trial statute, such as R.C. 2941.401, must be strictly construed against the State.").

Review of Ohio cases indicates that substantial compliance with R.C. 2941.401 requires that the inmate does "everything reasonably required of him that [is] within his control." *See, e.g., Mourey,* 64 Ohio St.3d at 487, 597 N.E.2d 101; *accord Centafanti,*

5th Dist. Stark No. 2007–CA–00044, 2007-Ohio-4036, 2007 WL 2269481, ¶ 44, citing *Ferguson*, 41 Ohio App.3d at 311, 535 N.E.2d 708.

{¶16} However, even applying the "substantial compliance" standard, I would find that appellant did not comply with the statutory requirements of R.C. 2941.401. Under the express language of R.C. 2941.401, three procedures are required: (1) delivery of the notice of the place of imprisonment and a request for final disposition to the prosecuting attorney and the appropriate court; (2) attachment to the request of the warden or superintendent's certificate, containing specific information about the prisoner; and (3) service of the notice and the request on the warden or superintendent having custody of the prisoner.

{¶17} Some evidence was presented showing that the letter from the Ohio Department of Rehabilitation and Correction that was written on behalf of the appellant may have been mailed to the Highland County Common Pleas Court. But, the record is completely devoid of any delivery of the notice of imprisonment and a request for final disposition upon the prosecuting attorney. The State also presented evidence that the Highland County Clerk's office did not receive the letter.

Prosecutor: Ms. Teeters, referring to around …Well, referring to 2012, does the file reflect that you received this letter?

Deputy Clerk: No.

Prosecutor: If you had received this letter, would it be in the file?

Deputy Clerk: Yes.

* * *

Prosecutor: So there is no indication whatsoever that your office received this letter?

Deputy Clerk: No.

{¶18} Therefore, since the first requirement has not been met, I would decline to examine the second and third requirements. Although I would apply the substantial compliance standard, I agree with the judgment of the principal opinion in that the appellant did not substantially comply with the requirements of R.C. 2941.401. I would also affirm the judgment of the trial court.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J.: Concurs in Judgment and Opinion.
Hoover, P.J.: Concurs in Judgment Only with Concurring Opinion.

For the Court,

BY: _____
Matthew W. McFarland,
Administrative Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.