

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

STATE OF OHIO,	:	Case No. 16CA7
Plaintiff-Appellee,	:	
v.	:	<u>DECISION AND</u>
KYLE B. CRIST,	:	<u>JUDGMENT ENTRY</u>
Defendant-Appellant.	:	RELEASED: 12/22/2016

APPEARANCES:

Ryan Shepler, Kernan & Shepler, LLC, Logan, Ohio, for defendant-appellant.

Kyle C. Henderson, Hocking County Prosecuting Attorney, and William L. Archer, Jr., Assistant Hocking County Prosecuting Attorney, Logan, Ohio, for plaintiff-appellee.

Hoover, J.

{¶1} This is an appeal from the Hocking County Common Pleas Court in which defendant-appellant Kyle B. Crist pleaded no contest to, and was found guilty of, illegal manufacture of drugs, a second-degree felony in violation of R.C. 2925.04(A). Crist claims that the trial court erred when it overruled his speedy-trial motion to dismiss. However, while Crist was in jail in lieu of bail on the pending charges of this case, probation holders from two other courts were placed on Crist. Thus, Crist was not entitled to the triple-count provision of R.C. 2945.71(E); and the time for complying with his speedy-trial rights had not run prior to his filing of the motion to dismiss or the ultimate disposition of the case. Accordingly, we find Crist’s argument to be without merit and affirm the judgment of the trial court.

I. Facts and Procedural Posture

{¶2} Crist was arrested on September 18, 2014, during a drug bust in Logan, Ohio. Charges were initially filed through the Hocking County Municipal Court, where Crist waived his right to a preliminary hearing. The case was then bound over to the Hocking County Common Pleas Court; and Crist was indicted on October 3, 2014, for the illegal manufacture of drugs, illegal assembly or possession of chemicals for the manufacture of drugs, tampering with evidence, and aggravated possession of drugs. Crist remained in the Southeastern Ohio Regional Jail on a cash or surety bond from the time of his arrest on September 18, 2014, through his sentencing on February 9, 2015.

{¶3} On October 17, 2014, Crist filed a discovery demand. The State filed its response to the discovery demand on October 20, 2014. In his request for discovery, Crist indicated that there would be no reciprocal discovery, and that he may testify in his own defense.

{¶4} On December 19, 2014, the trial court *sua sponte* continued the jury trial set for December 30, 2014. The entry filed by the trial court indicated that the trial court judge had a longstanding planned vacation that necessitated the continuance.

{¶5} On December 29, 2014, Crist filed a motion to dismiss based upon the failure to bring him to trial within the statutory time limits of R.C. 2945.71. In his motion to dismiss, Crist claimed that 291 days of un-tolled time had elapsed since his arrest, when each day he had spent in jail was counted as three days in accordance with R.C. 2945.71(E).

{¶6} The trial court heard arguments and testimony on the motion to dismiss on January 16, 2015, and January 27, 2015. Ultimately, the trial court overruled the motion, concluding inter alia, that Crist was not entitled to a three for one count because a

probation holder had been placed on him while he was in jail on the pending charges of the case.

{¶7} Crist subsequently pleaded no contest to illegal manufacture of drugs on February 9, 2015, and was found guilty of the offense. The remaining counts of the indictment were dismissed by plea agreement. Crist was sentenced to three years in prison.

{¶8} Crist filed his initial notice of appeal on February 25, 2015. However, because the trial court's sentencing entry failed to dispose of all counts of the indictment, and because no other journal entry appeared in the record resolving all charges against Crist, we determined that no final appealable order existed. Consequently, we determined that we lacked jurisdiction to address the merits of his appeal; and we dismissed it. *See State v. Crist*, 4th Dist. Hocking No. 15CA5, 2015-Ohio-5173 (released December 7, 2015).

{¶9} To rectify the issue, the trial court filed a nunc pro tunc judgment entry of sentence on March 14, 2016. The nunc pro tunc entry indicates, inter alia, that Crist was convicted on Count I, received three years of imprisonment on that count, and that the other three counts of the indictment were dismissed. Thereafter, Crist initiated the present appeal by filing a notice of appeal on March 30, 2016.

II. Assignment of Error

{¶10} Crist assigns the following error for our review:

The trial court erred in overruling Mr. Crist's motion to dismiss for violation of the speedy trial statute.

III. Law and Analysis

{¶11} In his sole assignment of error, Crist contends that the trial court erred when it denied his motion to dismiss based on the speedy-trial provisions of R.C. 2945.71.

1. Standard of Review

{¶12} Appellate review of a trial court's decision on a motion to dismiss for a speedy-trial violation involves a mixed question of law and fact. *State v. James*, 4th Dist. Ross No. 13CA3393, 2014–Ohio–1702, ¶ 23; *State v. Smith*, 4th Dist. Ross No. 10CA3148, 2011–Ohio–602, ¶ 18. We will defer to a trial court's factual findings if some competent and credible evidence supports them, but we review de novo the court's application of the law to those facts. *See State v. Carr*, 4th Dist. Ross No. 12CA3358, 2013–Ohio–5312, ¶ 12; *State v. Fisher*, 4th Dist. Ross No. 11CA3292, 2012–Ohio–6144, ¶ 8.

2. Crist's Statutory Speedy-Trial Rights Were Not Violated.

{¶13} “The Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution guarantee a criminal defendant the right to a speedy trial.” *State v. Blackburn*, 118 Ohio St.3d 163, 2008–Ohio–1823, 887 N.E.2d 319, ¶ 10. This guarantee is implemented in R.C. 2945.71, which provides the specific time limits within which a person must be brought to trial. *Id.* The trial-time tolling provisions are set forth in R.C. 2945.72.

{¶14} R.C. 2945.71(C)(2) provides that a person against whom a felony charge is pending shall be brought to trial within 270 days after arrest. If an accused is in jail in

lieu of bail solely on the pending charge, the statute mandates that each day count as three days for purposes of speedy-trial calculation. R.C. 2945.71(E); *State v. Sanchez*, 110 Ohio St.3d 274, 2006-Ohio-4478, 853 N.E.2d 283, ¶ 7. If an accused is not brought to trial within the statutory time limit, the accused must be discharged. R.C. 2945.73(B). However, the R.C. 2945.71 time limits can be extended for any reason set out in R.C. 2945.72, but those extensions must be strictly construed against the State. *See State v. Alexander*, 4th Dist. Scioto No. 08CA3221, 2009–Ohio–1401, ¶ 17; *State v. Monroe*, 4th Dist. Scioto No. 05CA3042, 2007–Ohio–1492, ¶ 27.

{¶15} Crist claims that he was not brought to trial within the statutory limit because 97 days, which were subject to the triple-count provision, were not tolled while he was being held in jail in lieu of bail on the pending charges. He contends that the 97 days include: (1) 28 days from his arrest on September 18, 2014, until the date he filed his request for discovery on October 17, 2014, and (2) 69 days from when the State responded to his request for discovery on October 20, 2014, and he filed his motion to dismiss on December 29, 2014. When applying the triple-count provision to the 97 days, Crist contends that 291 days of un-tolled time had passed from his initial arrest and the filing of his motion to dismiss.

{¶16} We disagree with Crist’s calculation of speedy-trial time, and conclude that the trial court properly denied his motion to dismiss. Where, in addition to the pending charges, a defendant is being held in jail on a probation or parole holder, he is not entitled to the triple-count provision. *Sanchez* at ¶ 7; *State v. McCallister*, 4th Dist. Scioto No. 13CA3558, 2014-Ohio-2041, ¶ 16; *State v. Beverly*, 4th Dist. Ross No. 04CA2809, 2005–Ohio–4954, ¶ 10. “Rather, an accused’s speedy trial time runs on a

one-to-one basis when he or she is being held on a holder.” *McCallister* at ¶ 16, citing *State v. Midlam*, 2d Dist. Greene No. 2012CA25, 2012–Ohio–5539, ¶ 8. “The determination of whether an accused is held solely on the pending charges is a legal conclusion dependent upon the underlying facts.” *Beverly* at ¶ 11.

{¶17} Here, there was testimony at the January 27, 2015 hearing that on September 19, 2014, a probation holder was placed on Crist from the Fairfield County Common Pleas Court; and on that same date, a probation holder was placed on Crist from the Hocking County Municipal Court. Those holders were still in effect at the January 27, 2015 hearing. The testimony also established that the holder from Fairfield County Common Pleas Court was forwarded to the Southeastern Ohio Regional Jail, and that the jail received it on September 27, 2014. There was also testimony that the Hocking County Municipal Court holder was forwarded to the jail, signed by Lute, and returned to the probation department. The trial court in its written judgment overruling the motion to dismiss explicitly found that a probation holder was issued while Crist was in jail on the pending charges of the case. Because Crist was being held on two probation holders, in addition to the charges of the instant case, the triple-count provision under R.C. 2945.71(E) did not apply for the time period September 19, 2014 to December 29, 2014. Calculating speedy-trial time on a one-to-one basis, it is clear that the case was disposed of well within the required 270 day time period.

{¶18} We also reject Crist’s argument that the triple count provision should apply because the holders “were not properly proven”. Specifically, Crist contends that the holders were not properly proven because certified copies were never introduced into evidence, and because there is no evidence that Crist was ever served with the holders, or

that the holders were actually in effect. First, we note that the Ohio Supreme Court has expressly rejected the notion that a copy of the holder must be placed in the record; especially where other sufficient evidence of the holder exists. *See State v. Brown*, 64 Ohio St.3d 476, 482, 597 N.E.2d 97 (1992) (“In this case, it would have been helpful if * * a copy of the parole holder had been placed in the record. However, there was other sufficient evidence of the parole holder for the trial court to deny Brown’s motion to dismiss. The transcripts of the hearing on the motion to dismiss and the in-chambers conference on the day of trial provide sufficient evidence of a parole holder.”). Even so, a copy of the holder from the Hocking County Municipal Court was filed in this case and is included in the record. The holder was signed by the probation officer and Lute; the holder also included a time stamp from the Hocking County Municipal Court dated September 19, 2014, and a facsimile time stamp indicating it was delivered to the “regional jail” on September 19, 2014. Furthermore, the record in this case contains testimony from two probation officers clearly indicating that probation holders were issued for Crist, were received by the jail at which Crist was being held, and remained effective at least through the hearings on the motion to dismiss. In other words, sufficient evidence exists that the holders were valid. Accordingly, we conclude that Crist may not rely upon the R.C. 2945.71(E) triple-count provision when determining speedy-trial time.

{¶19} Because the trial court did not err in denying Crist’s motion to dismiss based on speedy-trial grounds, we overrule his sole assignment of error.

IV. Conclusion

{¶20} Having overruled Crist’s sole assignment of error for the foregoing reasons, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs.

The Court finds that reasonable grounds existed for this appeal.

It is ordered that a special mandate issue out of this Court directing the Hocking 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. and McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Marie Hoover, 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.