[Cite as *State v. Brown*, 2014-Ohio-154.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

State of Ohio — Court of Appeals No. H-13-019

Appellant — Trial Court No. CRI 20130200

v.

William G. Brown — **DECISION AND JUDGMENT**

Appellee — Decided: January 17, 2014

* * * * *

Russell V. Leffler, Huron County Prosecuting Attorney,
for appellant.

David J. Longo, Huron County Public Defender, for appellee.

* * * * *

YARBROUGH, P.J.

{¶ 1} Appellant, the state of Ohio, appeals the judgment of the Huron County Court of Common Pleas, granting appellee's, William Brown, motion to dismiss the indictment pursuant to R.C. 2941.401. We affirm.

I. Facts and Procedural Background

{¶ 2} The underlying facts in this case are undisputed. On March 7, 2012, appellee was involved in a high speed chase with the police. As a result of the chase, appellee was charged with possessing criminal tools and failure to comply with the order or signal of a police officer. He was arrested and placed in the Richland County jail. At the time of the chase, appellee was on parole from Louisiana.

{¶ 3} Appellee was released on bail on March 14, 2012. While appellee was on bail, he was visited at his residence in Norwalk, Ohio, by Richland County probation officer, Daniel Myers. At his visit, Myers intended to arrest appellee for violating his parole from Louisiana. Not wanting to be arrested, appellee punched Myers in the mouth, causing Myers to fall to the ground. Myers apparently hit his head as he was falling, and was temporarily incapacitated, giving appellee enough time to flee from the home. As a result of the incident, a charge was entered in the Norwalk Municipal Court against appellee for assaulting a probation officer.

{¶ 4} Myers was later apprehended in Youngstown, Ohio. He was transferred to Richland County on April 6, 2012, and was served with an indictment for possessing criminal tools and failure to comply with the order or signal of a police officer. Additionally, a holder was placed on appellee in Richland County for the charge of assaulting a probation officer.

{¶ 5} Myers ultimately pleaded guilty to possessing criminal tools and failure to comply with the order or signal of a police officer. As a result of his guilty plea, appellee

was found to be in violation of the terms of his parole. Consequently, he was ordered to serve a four-year prison term. Thereafter, appellee was transferred to the Lorain Correctional Institution.

{¶ 6} While in prison, appellee was informed of the pending charges from Huron County. The warden of the prison provided appellee a form to request early disposition of the charges under R.C. 2941.401. Appellee promptly completed the form, and delivered it to the warden for transfer to the prosecuting attorney and appropriate court.

{¶ 7} The warden mailed the form via certified mail on August 20, 2012. However, instead of forwarding the form to the Norwalk Municipal Court (where the charges were actually pending) and the city prosecutor, the warden sent the form to the Huron County Court of Common Pleas and the county prosecutor. Appellee's request was subsequently lost before it could be transferred to the Norwalk authorities.

{¶ 8} Approximately 200 days after the warden mailed appellee's request for early disposition, the state voluntarily dismissed appellee's case in municipal court. Since it was a felony case, the matter was transferred to the Huron County Court of Common Pleas. Appellee was not arraigned in Huron County until April 1, 2013.

{¶ 9} At his arraignment, appellee entered a plea of not guilty. After pleading not guilty, appellee filed a motion to dismiss the indictment on speedy trial grounds, arguing that the matter should be dismissed because the case was not brought within the 180-day period prescribed in R.C. 2941.401. Upon receiving the state's memorandum in opposition, the court scheduled a hearing on the motion. On the date of the hearing, the

parties decided to stipulate to the relevant facts and submit the case without oral argument.

{¶ 10} After considering the parties' arguments and the stipulated facts, the trial court granted appellee's motion on July 25, 2013. Accordingly, the charge for assaulting a probation officer was dismissed with prejudice. The state's timely appeal followed.

II. Analysis

{¶ 11} On appeal, the state assigns the following assignment of error for our review:

> IT WAS ERROR FOR THE TRIAL COURT TO DISMISS THE CHARGES PURSUANT TO O.R.C. SECTION 2941.401.

{¶ 12} In Ohio, if a defendant is incarcerated in a state correctional institution, he has a right to be brought to trial within 180 days. He may assert his right by complying with R.C. 2941.401, which provides, in relevant part:

> 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 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.

* * *

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.

{¶ 13} In the present case, the state argues that appellee's request was deficient because it was mailed to the wrong prosecuting attorney and court. The state notes that the statute requires appellee to deliver the request to the "prosecuting attorney and the appropriate court in which the matter is pending."

{¶ 14} While appellee acknowledges that the notice was sent to the wrong prosecuting attorney and court, he contends that the warden was responsible for ensuring that the notice was sent to the right place. Appellee insists that he should not be held responsible for the warden's mistake, because he "had no means of catching or correcting the warden's mistake." Appellee argues that he complied with his responsibilities under the statute, and that the warden's failure to inform him of the correct source of the indictment should not be imputed to him. Thus, the issue before us is whether a criminal defendant is entitled to dismissal of the charges pending against him where the notice under R.C. 2941.401 is given to the wrong prosecutor and court through no fault of the defendant.

{¶ 15} A careful analysis of the language contained in R.C. 2941.401 reveals that appellee was entitled to dismissal of the charges. Notably, the statute specifically states that it is the warden's responsibility to "promptly inform [appellee] in writing of the source and contents of any untried indictment, information, or complaint against him, * * * and of his right to make a request for final disposition thereof." That the warden would bear such responsibility makes sense in light of the reality that the defendant's ability to discover the details of any untried indictment is substantially impaired while he is incarcerated. After receiving notice of the untried indictment, appellee was responsible for completing a request for final disposition and sending it "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." (Emphasis added.)

{¶ 16} Here, the state acknowledges that appellee properly completed the request and delivered it to the warden. Further, the state stipulated to the fact that the warden mistakenly forwarded the request and notice to the Huron County authorities rather than the Norwalk municipal authorities. Nonetheless, the state seeks to impute the warden's mistakes to appellee.

{¶ 17} As appellee points out in his appellate brief, the question before us was directly addressed in *State v. Gill*, 8th Dist. Cuyahoga No. 82742, 2004-Ohio-1245. In *Gill*, the incarcerated defendant's request was never received by the court before which the charges were pending. *Id.* at ¶ 11. Thus, the state argued that "the failed delivery of Gill's notice to the court, in accordance with the wording in the first paragraph of R.C. 2941.401, results in Gill's speedy trial time never starting to run." Similar to appellee's argument here, Gill argued that he complied with the statute and that he should not be penalized for the warden's mistake. *Id*. The court agreed with Gill, finding that the statute does not require an inmate to "personally insure the delivery of the documents to both the appropriate court and prosecutor, an unlikely task for a jailed inmate." *Id*. at ¶ 17. It went on to state:

> [T]he inmate must properly complete and forward all necessary information and documents to the warden for processing as prescribed by the statute. Where the inmate forwards incomplete, inaccurate, misleading

> or erroneous information, any subsequent errors by the warden or superintendent will be imputed to the inmate. Where, however, as here, the evidence is that the inmate fully complied with the statutory requirements of R.C. 2941.401, by including all the proper information, the error cannot be imputed to the inmate.

{¶ 18} In this case, as in *Gill*, appellee "fully complied with the statutory requirements of R.C. 2941.401." The fact that the request contains all the proper information is undisputed. The state does not claim that appellee's request contains inaccurate, misleading, or erroneous information. It merely argues that the warden's failure to send the request to the appropriate authorities should preclude dismissal of the indictment.

{¶ 19} Having carefully reviewed the language contained in R.C. 2941.401, we agree with our sister court that appellee should not suffer the consequences of the warden's mistakes. Accordingly, appellant's assignment of error is not well-taken.

III. Conclusion

{¶ 20} For the foregoing reasons, the judgment of the Huron County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE