

[Cite as *State v. Jones*, 2009-Ohio-3371.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 90903**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**LAROYAL D. JONES**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-488186

**BEFORE:** Cooney, A.J., Boyle, J., and Celebrezze, J.

**RELEASED:** July 9, 2009

**JOURNALIZED:**

## **FOR APPELLANT**

LaRoyal D. Jones, pro se  
Inmate No. A561-177  
NCCTF  
2000 S. Avon Belden Rd.  
Grafton, OH 44044

## **ATTORNEYS FOR APPELLEE**

William Mason  
Cuyahoga County Prosecutor

BY: Brett Kyker  
Assistant County Prosecutor  
8<sup>th</sup> Floor, Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} Defendant-appellant, LaRoyal Jones (“Jones”), pro se, appeals his conviction for having a weapon while under disability. Finding no merit to the appeal, we affirm.

{¶ 2} In November 2006, Jones was charged with felonious assault and having a weapon while under disability.<sup>1</sup> The matter proceeded to a jury trial, at which he was found guilty of having a weapon while under disability and not guilty of felonious assault. The trial court sentenced him to two years of community control sanctions.

{¶ 3} Jones now appeals, raising three assignments of error for our review. In the first assignment of error, he argues that his conviction for having a weapon while under disability was unconstitutional because he never received notice of the underlying disability.

{¶ 4} In the instant case, Jones was convicted under R.C. 2923.13(A)(3), which provides in pertinent part that: “[u]nless relieved from disability as provided in [R.C.] 2923.14 \*\*\*, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if \*\*\* [t]he person \*\*\* has been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse \*\*\*.”

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<sup>1</sup>The felonious assault charge carried one- and three-year firearm specifications.

{¶ 5} Jones argues that he was not aware of the disability nor was he aware of the option to request relief from disability. But this court has held that when a defendant's disability is based on a prior conviction, the defendant's actual knowledge of the disability is not required. *State v. Gibson* (Nov. 21, 1991), Cuyahoga App. No. 59541, citing *State v. Smith* (1987), 39 Ohio App.3d 24, 25, 528 N.E.2d 1292; see, also, R.C. 2923.13. Rather, "[a]ll that is required is that the person charged 'knowingly' do any of the prohibited acts. Ignorance of the law is not a defense to a prosecution under this provision." *State v. Jackson* (Jan. 15, 1987), Cuyahoga App. No. 51590.

{¶ 6} In the instant case, Jones's disability is based on a prior drug conviction. Therefore, his actual knowledge of the disability is not required and his constitutional rights were not violated.

{¶ 7} Accordingly, the first assignment of error is overruled.

{¶ 8} In the second assignment of error, Jones argues that he was denied his right to effective assistance of counsel. He claims that counsel was ineffective for stipulating to Jones's prior drug abuse conviction and to the operability of the shotgun, without first obtaining his consent. But in setting forth his arguments, Jones fails to cite to the record and to any authority in support of his claim.<sup>2</sup>

{¶ 9} An appellate court may disregard an assignment of error pursuant to App.R. 12(A)(2): "if the party raising it fails to identify in the record the error on

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<sup>2</sup>In Ohio, pro se litigants are presumed to have knowledge of the law and of correct legal procedure, and are held to the same standard as all other litigants. *Barry v. Barry*,

which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A).” See, also, *Hawley v. Ritley* (1988), 35 Ohio St.3d 157, 519 N.E.2d 390.

{¶ 10} App.R. 16(A)(7) requires that appellant include in his brief:

{¶ 11} “An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.”

{¶ 12} Moreover, it is not the duty of an appellate court to search the record for evidence to support an appellant’s argument as to any alleged error. *State v. McGuire* (Apr. 15, 1996), Preble App. No. CA95-01-001. “An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.” *State v. Watson* (1998), 126 Ohio App.3d 316, 710 N.E.2d 340, quoting *McGuire*. See, also, *Citta-Pietrolungo v. Pietrolungo*, Cuyahoga App. No. 85536, 2005-Ohio-4814, ¶35.

{¶ 13} Because Jones failed to cite any legal authority and failed to cite to the record in support of his argument, we decline to review the second assignment of error.

{¶ 14} Thus, the second assignment of error is overruled.

{¶ 15} In the third assignment of error, Jones argues that he was denied his right to a speedy trial. He claims that trial counsel was deficient for failing to pursue a dismissal of his case for lack of a speedy trial.

{¶ 16} Jones failed to raise his speedy trial claim except as part of a claim on appeal alleging ineffective assistance of trial counsel; therefore, he has waived all but plain error. *State v. Stewart*, Cuyahoga App. No. 86411, 2006-Ohio-813; *State v. Hinson*, Cuyahoga App. No. 87132, 2006-Ohio-3831.<sup>3</sup>

{¶ 17} Plain error consists of an obvious error or defect in the trial proceeding that affects a substantial right. Crim.R. 52(B). The Ohio Supreme Court has stated that for a reviewing court to find plain error, the court must find error, the error must be plain, which means an obvious defect in trial proceedings, and the error must have affected the defendant's substantial rights. *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002-Ohio-68, 759 N.E.2d 1240. Plain error must be obvious as well as outcome-determinative. *Barnes*, citing *State v. Sanders*, 92 Ohio St.3d 245, 2001-Ohio-189, 750 N.E.2d 90. Therefore, plain error occurs only when, but for the error, the outcome of the trial clearly would have been different. *State v. Long* (1978), 53 Ohio St.2d 91, 372 N.E.2d 804; *State v. Hill*, 92 Ohio St.3d 191, 203, 2001-Ohio-141, 749 N.E.2d 274.

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<sup>3</sup>Jones maintains that he requested on numerous occasions that his case be dismissed for lack of speedy trial. But, Jones failed to cite to the record when these requests were made. Therefore, we cannot consider this argument.

{¶ 18} Jones claims that his speedy trial rights were violated because 416 days had elapsed between the date of his arrest on September 23, 2006 and the date of his trial on November 13, 2007.

{¶ 19} R.C. 2945.71(C)(2) provides that a person against whom a felony charge is pending shall be brought to trial within 270 after the person's arrest. For purposes of computing time under R.C. 2945.71(C)(2), each day the accused is held in jail in lieu of bail on the pending charge shall be counted as three days. See R.C. 2945.71(E). In other words, "[a] felony defendant in Ohio must be tried within ninety days if incarcerated on the pending charge or within two hundred seventy days if on bail." *State v. Pond*, Cuyahoga App. No. 91061, 2009-Ohio-849, quoting *State v. Coleman* (1989), 45 Ohio St.3d 298, 304, 544 N.E.2d 622.

{¶ 20} Jones was arrested on September 23, 2006, and was formally charged with felonious assault on September 26, 2006. "[T]he right to speedy trial arises after one is charged with a crime." *Click v. Eckle* (1962), 174 Ohio St. 88, 91, 186 N.E.2d 731. Prior to being charged with a crime, the person "is in no position to demand a speedy trial." *State v. Meeker* (1971), 26 Ohio St.2d 9, 18, 268 N.E.2d 589. Therefore, Jones's speedy trial time started to run on September 26, 2006.

{¶ 21} Jones posted bond on October 3, 2006, and remained out on bail until the commencement of his trial on November 13, 2007. As a result, from September 26, 2006 to October 3, 2006, his time ran three-for-one for a total of 21 days. After October 3, 2006, his speedy trial time ran one-for-one. Therefore, Jones

should have been brought to trial by June 11, 2007, unless the time was tolled by one of the circumstances identified in R.C. 2945.72.

{¶ 22} R.C. 2945.72 provides that the time within which an accused must be brought to trial may be extended for:

“(B) Any period during which the accused is mentally incompetent to stand trial or during which his mental competence to stand trial is being determined, or any period during which the accused is physically incapable of standing trial;

“(C) Any period of delay necessitated by the accused’s lack of counsel, provided that such delay is not occasioned by any lack of diligence in providing counsel to an indigent accused upon his request as required by law;

“\*\*\*

“(E) Any period of delay necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused;

“\*\*\*

“(H) The period of any continuance granted on the accused’s own motion, and the period of any reasonable continuance granted other than upon the accused’s own motion \*\*\*.”

{¶ 23} A review of the record in the instant case reveals that many of the circumstances in R.C. 2945.72 extended the time within which Jones should have been brought to trial. Defense counsel was concerned with Jones’s competency and sanity and requested a psychiatric evaluation that tolled Jones’s speedy trial time. Furthermore, Jones filed motions for discovery and several motions for a continuance. Some of the continuances were attributed to his change in counsel. He changed counsel twice (one assigned and one retained) before obtaining trial counsel.

{¶ 24} The trial court continued the matter at the State's request in two instances because the prosecutor was in trial and the victim failed to appear at the November 7, 2007 trial date. Because the competency evaluations and his motions for discovery and continuance tolled his speedy trial time under R.C. 2945.72, the court brought Jones to trial within the 270-day time period.

{¶ 25} Thus, we find that Jones's statutory right to speedy trial was not violated.

{¶ 26} Jones also argues that his constitutional right to speedy trial was violated under the test outlined in *Barker v. Wingo* (1972), 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101.

{¶ 27} In *Barker*, the United States Supreme Court developed a balancing test to determine whether a defendant's constitutional right to a speedy trial has been violated, even though the statutory time frame had not been exceeded. In the application of this test, the behavior of both the prosecution and defense is compared and contrasted. *Id.* The test requires a court to weigh the following four factors: (1) length of delay; (2) the reason for it; (3) assertion by defendant of his right; and (4) amount of prejudice to the defendant. *Id.*

{¶ 28} In interpreting the first *Barker* factor, the Ohio Supreme Court recognized that this factor performs a gate-keeping function, insofar as a delay approaching one year typically is required to establish "presumed prejudice," the existence of which is necessary to trigger an inquiry into the other three factors.

*State v. Triplett*, 78 Ohio St.3d 566, 1997-Ohio-182, 679 N.E.2d 290. Jones's 13-month delay triggers a review of the other three factors.

{¶ 29} The second *Barker* factor examines the justification claimed by the State for the delay. The State claims that Jones's constitutional right to a speedy trial was not violated because the majority of the delay was at Jones's request. We agree.

{¶ 30} A review of the record reveals that Jones requested several continuances and requested a referral to the court psychiatric clinic. He also requested continuances because his court-appointed attorney and first retained attorney withdrew. As a result, this factor weighs heavily against Jones.

{¶ 31} The third *Barker* factor, assertion by the defendant of his right, also weighs heavily against Jones. Jones claims that he informed his attorneys from the beginning that he was ready for trial. He claims that defense counsel asked for a dismissal on November 7, 2007 because the victim was not present. But Jones failed to cite to the record in support of his speedy trial assertions. Thus, we decline to review this argument.<sup>4</sup>

{¶ 32} The last *Barker* factor requires this court to consider the prejudice to Jones as a result of the delay between his arrest and trial. In *Barker and Doggett v. United States* (1992), 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520, the Supreme

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<sup>4</sup>We also note that the court speaks through its journal. *State, ex rel. Foxall v. Cossairt* (1946), 146 Ohio St. 328, 65 N.E.2d 870. A review of the docket reveals no motion to dismiss for lack of speedy trial was filed by Jones pro se.

Court identified three types of prejudice that may arise from a lengthy delay: (1) oppressive pretrial incarceration; (2) anxiety and concern of the accused; and (3) the possibility that the accused's defense will be impaired by dimming memories and the loss of exculpatory evidence.

{¶ 33} In reviewing the record, we do not find any prejudice that resulted to Jones. The majority of the continuances were at Jones's request. His repeated requests for continuances and his attorney changes, along with the court's concern for his competency to stand trial, outweigh any prejudice that he claims to have sustained.

{¶ 34} Thus, we conclude that Jones's constitutional right to speedy trial was not violated.

{¶ 35} Accordingly, the third assignment of error is overruled.

Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

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COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

MARY J. BOYLE, J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR