IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

STATE OF OHIO,

Plaintiff-Appellant,

vs.

DOUGLAS CENTAFANTI,

Defendant-Appellee.

CASE NO. 07-1744

On Appeal from the Court of Appeals for Stark County, Fifth Appellate District

Court of Appeals
Case No. 2007CA00044

MEMORANDUM IN SUPPORT OF JURISDICTION OF PLAINTIFF-APPELLANT, STATE OF OHIO

JOHN D. FERRERO
PROSECUTING ATTORNEY,
STARK COUNTY, OHIO

By: KATHLEEN O. TATARKSY
Ohio Sup. Ct. Reg. No. 0017115
Assistant Prosecuting Attorney
Appellate Division
P.O. Box 20049
Canton, Ohio 44701-0049
(330) 451-7897
FAX: (330) 451-7965

Counsel for Plaintiff-Appellant

JEAN MADDEN
Ohio Sup. Ct. Reg. No. 0046672
Stark County Public Defender
200 W. Tuscarawas Street
Suite 200
Canton, Ohio 44702
(330) 451-7200

Counsel for Defendant-Appellee

TABLE OF CONTENTS

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case involves an interpretation of R.C. §2941.401 [request by a prisoner for trial on pending charges]. R.C. §2941.401 grants an inmate in a correctional institution of this state an opportunity to have all pending charges resolved and prevent the state from delaying prosecution on untried criminal charges until the inmate is released from prison. Under the statute, the inmate shall be brought to trial within one hundred eighty days after he causes to be delivered to the prosecuting attorney and the appropriate court written notice of the place of his imprisonment and request for a final disposition. The request must be accompanied by a certificate of the warden or superintendent having custody of the prisoner, stating the term of commitment, the time served and remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility and any decisions of the adult parole authority relating to the prisoner. R.C. §2941.401. Armed with that information, the State, through its prosecutors, can determine if and when to bring the inmate to trial on the untried charges. This Court has held that the statute is not ambiguous, saying in *State v. Hairston* , 101 Ohio St.3d 308, ¶13, 2004-Ohio-969, 804 N.E.2d 471, "[I]f it is not ambiguous, then we need not interpret it, we must simply apply it."

Yet the Court of Appeals [Fifth District] here has interpreted the statute and excised a crucial component. It found that even though appellee did not provide the certificate of the warden, he "substantially complied" with the statute when he sent a "notice of availability" letter to the court. What is more, the Court of Appeals imposed a duty of due diligence upon the State's prosecutors to examine every written notice that comes across their desks purporting to trigger R.C. §2941.401 rights and supply the missing information - information that the statute

clearly directs the inmate to provide. Now, the prosecutors must assume this duty even if the inmate is represented by an attorney and incarcerated in a federal prison.

The implications of this decision of the Court of Appeals affect every prosecutor in Ohio and create a burden not intended by the legislators of this State when it adopted R.C. §2941.401.

Finally, this case involves a substantial constitutional question. Does the Sixth Amendment rights of an accused to a speedy trial require the State to supplement the request of the prisoner under R.C. §2941.401 with the certificate of the warden or superintendent having custody of the prisoner.

The State requests that this Court grant jurisdiction to hear this case and review the erroneous decision of the Court of Appeals.

STATEMENT OF THE CASE AND FACTS

On July 25, 2005, criminal complaints were filed against appellee, Douglas Centafanti, in the Alliance, Ohio Municipal Court charging him with stealing a van owned by Mount Union College and that same day breaking into a business establishment in the Alliance, Ohio area. The Alliance Municipal Court issued a warrant for Centafanti's arrest. While the charges were pending, Centafanti began serving a six month prison term on federal criminal charges.

By letter dated February 13, 2006, James A. Jenkins, an attorney, wrote to the Alliance Municipal Court. The letter indicated that Centafanti was in a federal prison serving a six month prison term for an unnamed federal crime and was available for "final adjudication of any and all indictments, information, probation violations and/or complaints which are or may now be pending against him." The letter was fashioned a "notice of availability" pursuant to Ohio Revised Code 2945.71 and 2941.401. A facsimile of that letter was sent to the Clerk of Courts, Stark County Common Pleas Court. While the letter indicates in a "cc" that they were sent to the Stark County and Alliance Municipal Prosecutors, there is no evidence in the record of their receipt by the prosecutors. While the letters also indicate they were sent certified mail, Centafanti was unable to produce green cards or other indicia of certified mail - only an affidavit from Attorney Jenkins that such letters were sent. What is more, there is no evidence that Centafanti or his attorney notified the warden or superintendent having custody of him of the letter or any similar interest in making himself available to the Stark County courts for criminal disposition. In fact, the letter was not accompanied by a certificate of the warden or superintendent having custody of him. Finally, a warden or superintendent - state or federal - did not provide any certificate to the court independently at any time.

The letter was filed in the Alliance Municipal Court with a judgment entry indicating that Centafanti was "unavailable" for prosecution.

Following his federal prison sentence, Centafanti was released, the warrant charging him with the July, 2005 crimes was served and he was arrested on August 25, 2006. Then, the Stark County Grand Jury met and returned an indictment against Centafanti on charges of grand theft of a motor vehicle, R.C. §2913.02(A)(1)[F4], vandalism, R.C. §2909.05(B)(1)(a) [F5] and attempt to commit an offense [breaking and entering], R.C. §2923.02(A)[M1]. Centafanti pleaded not guilty to the charges and prior to trial filed a motion to dismiss. Centafanti argued that he exercised his "notice of availability" rights under R.C. §2956.71 [speedy trial] and R.C. §2941.401 when Attorney Jenkins sent the letter to the clerk of courts on his behalf. Since he was not tried within 180 days of the "notice of availability" letter, Centafanti claimed the trial court had no jurisdiction to proceed on the charges.

Centafanti's motion to dismiss was overruled by the trial court based on the stipulations of facts and joint exhibits of the parties. Centafanti pleaded no contest and was sentenced to nine months in prison on grand theft, nine months in prison on vandalism and six months in jail of the charge of attempt to commit an offense [breaking and entering]. The trial court ordered the sentences to run concurrently and granted Centafanti a stay pending an appeal to the Fifth District Court of Appeals [Stark County].

On August 6, 2007, the Court of Appeals announced its decision reversing the judgment of the Court of Common Pleas of Stark County, Ohio. The court entered final judgment for Centafanti. The Court of Appeals found that Centafanti did not strictly follow the mandates of R.C. §2941.401 in that he did not provide a certificate of the warden or superintendent having

custody of him. The Court, however, excused Centafanti from this mandate because the "required information arrived at the proper place:

> For appellant [Centafanti] to have strictly followed the R.C. §2941.401 requirements, he should have given his written notice to the prison authorities, who should have forwarded it to the prosecutor and court along with a certificate of inmate status. However, it is clear that, although appellant did not strictly follow that path, the required information arrived at the proper place.
>
> *State v. Centafanti*, Stark App. No. 2007 CA 00044, 2007-Ohio-4036 at ¶41.

The Court of Appeals adopted a "substantial compliance" standard finding that as long as a defendant made an effort to notify the proper authorities of his availability to dispose of all pending charges, he is entitled to have his request acted upon, notwithstanding his failure, even with the assistance of counsel, to provide a warden's certificate of inmate status. Rejecting the notion that the statute does not require the State to discover the whereabouts of an incarcerated defendant against whom criminal charges are pending, the Court of Appeals suggested there was clear evidence the State knew the location where Centafanti was incarcerated.

> Unlike *Hairston*, in the case sub judice, there is clear evidence the State knew the location where appellant was incarcerated. In the instant case, appellant sent a letter to the appropriate prosecutor's office and court, notifying them of his location of imprisonment and demanding a final disposition.
>
> *State v. Centafanti*, supra, ¶52.

The Court of Appeals, then, found that the State should have taken one of three actions. First, the Court of Appeals found the State could have communicated with the warden of the institution to obtain the appropriate certificate. Second, the State could have contacted the attorney who filed the notice who could then have forwarded the necessary information. Or

finally, the State could have notified the warden or superintendent of the pending charge against the prisoner who could have, in turn, notified the prisoner.[1] What the State could not do, according to the Court of Appeals, was to avoid the application of R.C. §2941.401 altogether.

In other words, the State had a duty, once the letter was received from Centafanti's counsel, to assist him in perfecting his demand for speedy disposition of the pending charges under R.C. §2941.401.

The Court of Appeals erred in finding that Centafanti, imprisoned in a federal prison, substantially complied with R.C. §2941.401 and it was the duty of the State to perfect his claims.

In support of its position, the State presents the following arguments.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW NO. 1: WHERE A CRIMINAL DEFENDANT IS AWARE OF PENDING CRIMINAL CHARGES AND FAILS TO ACCOMPANY HIS WRITTEN NOTICE UNDER R. C. 2941.401 WITH A CERTIFICATE OF THE WARDEN STATING THE FACTS OF HIS COMMITMENT, THE SPEEDY TRIAL TIME IS TOLLED WHILE HE IS IN PRISON.

Duties imposed on State by Court of Appeals not contemplated by R.C. §2941.401.

The issue presented in this case is whether an inmate can trigger his speedy trial rights under R.C. §2941.401 by sending a written notice of the place of his imprisonment and a request for a final disposition to be made of a pending criminal complaint when the request is not accompanied by a certificate of the warden stating the facts of his commitment. The Court of Appeals here held that because the written notice of appellee reached the Alliance Municipal Court, appellee substantially complied with R.C. §2941.401, notwithstanding that his written notice was not accompanied by a "certificate of inmate status" completed by the warden.

---

[1] *State v. Centafanti*, supra, ¶52.

As a result of appellee's "substantial compliance," the Court of Appeals found that the State had a duty to assist the appellee and his attorney to obtain the "certificate of inmate status" lacking in appellee's original request:

> All the State needed to do was communicate with the warden of the institution where appellant was incarcerated to obtain the appropriate certificate. In the alternative, the State could have contacted the attorney who filed the notice on appellant's behalf who could then have forwarded any necessary information to the court. Finally, the State could have notified the warden or superintendent having custody of the prisoner of the pending charge. The warden or superintended is, in turn, required to inform the prisoner in writing of the pending charge and his right to make a request for final disposition there. Appellant could then have requested the appropriate certificate be forwarded to the prosecutor.[2]
>
> *State v. Centafanti*, supra, ¶51.

R.C. §2941.401 imposes no such duties on the State, particularly where the inmate is incarcerated in a federal prison and represented by an attorney presumed competent to know the law. The State's proposition of law should be accepted and this Court should reverse the findings of the Court of Appeals.

R.C. §2941.401 provides a method for an incarcerated defendant serving a sentence on an unrelated crime to trigger the speedy trial rights provided by the Constitution. It states in 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 request of the prisoner shall be accompanied by a certificate of the warden or superintendent having custody of the prisoner, stating the terms of commitment under which the

---

[2]The Court of Appeals did not rule when day on which the time should begin running.

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.

....

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.

R.C. §2941.401.

This Court recently construed R.C. §2941.401 in the context of an inmate who was aware of a pending indictment but was not notified in writing of the "source and contents of any untried indictment" by the warden of the prison where he was incarcerated. This Court concluded that the warden's failure to promptly inform the defendant of the untried indictment and his right to request trial violated R.C. §2941.01. *State v. Dillon*, 114 Ohio St.3d 154, 2007-Ohio-3617, 870 N. E.2d 1149. This Court found that the statute is unambiguous. And as this Court noted in *State v. Hairston* in interpreting R.C. §2941.401, "[I]f it is not ambiguous, then we need not interpret it, we must simply apply it."[3] So too, the obligations of the inmate under the statute are unambiguous.

It is undisputed that the "notice of availability" letter of February 13, 2006 was not accompanied by a certificate of the warden as outlined in the statute.

---

[3]*State v. Hairston*, 101 Ohio St. 3d 308¶13, 2004-Ohio-969, 804 N.E. 2d 471 citing *Seain v. Weimer* (1944), 143 Ohio St. 312, 55 N.E. 2d 413, Para. 5 of the syllabus (holding that an unambiguous statute is to be applied not interpreted).

R.C. §2941.401 sets forth the duties of an inmate who invokes the rights and privileges of the statute. Here, Centafanti's attorney, by strategic choice or error, did not comply with the statute. The statute explicitly requires a "notice of availability" letter be accompanied by a certificate of the warden or superintendent having custody of the prisoner stating several important facts - the term of commitment, the time served, the time remaining to be served, parole eligibility and other matters. The purpose of such a certificate is obvious.

It is vital to allow the State to verify the facts and make a decision on whether to prosecute the defendant on the pending charges. Without such a completed certificate by the warden, an inmate may allege facts which may or may not be accurate. The warden's certificate is verification of facts relevant to the issue, as the state has no independent duty to attempt to locate and notify an incarcerated defendant of his speedy trial right. What is more, a warden only has a duty to inform a defendant of charges when the warden has knowledge of such charges.[4] There is nothing in the record here that indicates the warden knew of the charges or the state knew that Centafanti was incarcerated in a federal prison prior to his "notice of availability" letter.

Instead, the record indicates that Centafanti knew of the charges and did nothing to notify the warden of his intent to exercise a request under R.C. §2941.401 to trigger the certificate - a mandated accompaniment to his "notice of availability" letter.

Yet instead of recognizing the failure of Centafanti to comply with his statutory obligations, the Court of Appeals imposed a duty upon the State to assist the incarcerated Centafanti and his attorney by obtaining the appropriate certificate from the warden, contact the

---

[4]*State v. Hairston,* supra; *State v. Dillon*, supra.

attorney and tell him how to do his job or notify the warden of the pending charge - none of which are found in the statute. Meanwhile, the Court of Appeals does not explain when the 180 day time period begins to run - the date the attorney is notified, the date the warden knows of the charges, the date the necessary information is forwarded to the court. Finally, the Court of Appeals ignores the fact that Centafanti was incarcerated in a federal prison under federal jurisdiction where the powers of a state court are limited.

Failure to attach certificate of warden not substantial compliance with R.C. 2941.401.

The Court of Appeals found that Centafanti substantially complied with R.C. §2941.401 and that the trial court erred by denying his motion to dismiss the charges again him.[5]

The doctrine of substantial compliance has been invoked by the lower courts in finding that an incarcerated defendant has met the requirements of R.C. §2945.401 and 2963.63, Ohio's codification of the Interstate Agreement on Detainers. Yet, those cases have found that the inmate has taken every step that could reasonably be expected of him and because of a prison snafu - no fault of the inmate - strict compliance with the statute was not met. In *State v. Ferguson,*[6] for example, defendant tried to comply with the statute and a prison error sent the notice to the wrong party. In *State v. Gill*, the inmate complied with the statute by sending the notice to the warden. Due to an error in the warden's office, a second copy was not sent to the clerk of court's office. The warden's error was not imputed to the defendant and the court of appeals found that notice to the warden complied with the statute.[7] Here, Centafanti's error was

---

[5]*State v. Centafanti,* supra, ¶53.

[6]*State v. Ferguson* (1987), 41 Ohio App. 3d 306, 535 N.E.2d 708, appeal dismissed as improvidently allowed, 40 Ohio St. 3d 602, 530 N.E. 2d 1327. .

[7]*State v. Gill*, Cuyahoga App. No. 82742, 2004-Ohio-1245, unreported.

more than a prison snafu. Through his attorney, Centafanti, deliberately or negligently, disregarded the statute's requirement that his written request to trigger the speedy trial provisions of R.C. §2941.401 be accompanied by the crucial certification from the warden. As the Franklin County Court of Appeals noted in *State v. Ferguson* in discussing R.C. §2953.30, a defendant must do everything that is reasonably expected of him before he can invoke the provisions of a statute:

> There is first a burden on the defendant to substantially comply with the Interstate Agreement on Detainers request requirements by doing everything that could reasonably be expected. Once the defendant fulfills this burden, however, the burden is then placed upon the states to cooperate and bring the accused to trial within one hundred eighty days.
>
> *State v. Ferguson*, supra, Syllabus 2.

The Court of Appeals failed to distinguish the substantial compliance line of cases from the case here, where there is no evidence that Centafanti or his attorney made any attempt whatsoever to obtain the required certification from the warden. Instead, the Court of Appeals placed an additional burden on the prosecutor that is not contemplated by the legislature.

The decision of the Court of Appeals [Fifth District] should be reversed and the State's proposition of law should be accepted.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The State, appellant herein, requests that this Court grant jurisdiction and allow this case so that the important issues presented in this case will be reviewed on the merits.

JOHN D. FERRERO
PROSECUTING ATTORNEY,
STARK COUNTY, OHIO

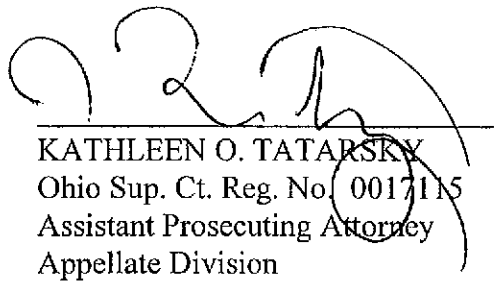
By: 

KATHLEEN O. TATARSKY
Ohio Sup. Ct. Reg. No. 0017115
Assistant Prosecuting Attorney
Appellate Division
110 Central Plaza S.
Canton, Ohio 44702-1413
(330) 451-7897
FAX: (330) 451-7965

Counsel for Plaintiff-Appellant

PROOF OF SERVICE

A copy of the foregoing MEMORANDUM IN SUPPORT OF JURISDICTION was sent by ordinary U.S. mail this 19th day of September, 2007, to Jean A. Madden, Stark County Public Defender's Office, 200 West Tuscarawas Street, Suite 200, Canton, Ohio, Canton, Ohio 44702.



KATHLEEN O. TATARSKY
Ohio Sup. Ct. Reg. No. 0017115
Assistant Prosecuting Attorney
Appellate Division
110 Central Plaza S.
Canton, Ohio 44702-1413
(330) 451-7897
FAX: (330) 451-7965

Counsel for Plaintiff-Appellant

B

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
STATE OF OHIO	:	Hon: W. Scott Gwin, P.J.
	:	Hon: Sheila G. Farmer, J.
Plaintiff-Appellee	:	Hon: Patricia A. Delaney, J.
	:	
-vs-	:	
	:	Case No. 2007-CA-00044
DOUGLAS CENTAFANTI	:	
	:	
Defendant-Appellant	:	OPINION

CHARACTER OF PROCEEDING: Criminal appeal from the Stark County Court of Common Pleas, Case No. 2006-CR-1409

H

JUDGMENT: Reversed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellee

JOHN D. FERRERO
PROSECUTING ATTORNEY
BY: KATHLEEN O. TATARSKY
110 Central Plaza South, Ste. 510
Canton, OH 44702

For Defendant-Appellant

JEAN A. MADDEN
Stark County Public Defender
200 W. Tuscarawas Street, Ste. 200
Canton, OH 44702

6

Gwin, P.J.

{¶1} Defendant-appellant Douglas Centafanti appeals his conviction on one count of Grand Theft of a Motor Vehicle, a felony of the fourth degree in violation of R.C. 2913.02(A) (1), one count of Vandalism, a felony of the fifth degree in violation of R.C. 2909.05(B) and one count of Attempt to Commit Breaking and Entering, a misdemeanor of the first degree in violation of R.C. 2911.13(A). Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} The case at bar was decided upon the parties stipulation to the following facts and Joint Exhibits in the trial court.

{¶3} Mount Union College filed charges against defendant on July, 25, 2005, in the Alliance Municipal Court. The Court found probable cause, assigned two case numbers to the charges and issued a warrant for defendant's arrest in each case. Joint Exhibits 1, 2, and 3.

{¶4} In Alliance Municipal Court Case, No. 2005-CRA-00858, appellant was charged with one count of Grand Theft of a Motor Vehicle, a fourth degree felony. Joint Exhibit 4.

{¶5} In Alliance Municipal Court Case No. 2005-CRB-00859, appellant was charged with Attempted Breaking and Entering, a first degree misdemeanor, and Obstructing Official Business, a second degree misdemeanor. Joint Exhibits 5 and 6 respectively. Copies of the dockets in each case are attached as Joint Exhibits 7 and 8 respectively.

{¶6} On September 13, 2005, in Case No. 2005-CRA-00858, the Alliance Municipal Court filed a judgment entry indicating that appellant was unavailable for prosecution. A copy of the judgment entry is attached as Joint Exhibit No. 9.

{¶7} On February 13, 2006, James A. Jenkins, an attorney from Cleveland, Ohio, wrote letters on appellant's behalf. The letters explained that appellant was in federal custody, on a six month term, for parole violations. The letters listed appellant's federal case number and the institution. The letters also indicated that appellant was available for prosecution. Copies of the letters were filed in the Alliance Municipal Court and are attached as Joint Exhibit 10 and 11.

{¶8} Joint Exhibits 10 and 11 were sent to and received by the Alliance Municipal Clerk of Court Criminal Division.

{¶9} Joint Exhibit 11 is a letter that contains the same body as Joint Exhibit 10 but was addressed to the Clerk of Courts Criminal Division, Stark County Common Pleas Court. This letter was received by the Alliance Municipal Court Clerk of Courts.

{¶10} James Jenkins does not have certified mailing cards to verify that the letters were received by the addressee or the copied recipients.

{¶11} Joint Exhibits 10 and 11 each contain a notation that copies of the letters were sent to the Stark County Prosecutor's Office, but the county prosecutor's office has no record of receiving these letters.

{¶12} Joint Exhibits 10 and 11 do not indicate that they were sent to the warden or superintendent having custody of defendant.

{¶13} Neither Joint Exhibit 10 or 11, nor any other correspondence from appellant or his counsel, were accompanied by a certificate, letter, or other notification from a state or federal prison warden regarding appellant's incarceration.

{¶14} Neither a state or federal prison warden independently provided any representative from the State of Ohio with a certificate, letter, or other notification, indicating that appellant was incarcerated.

{¶15} On February 14, 2006, the Alliance Municipal Clerk filed Exhibits 10 and 11 in both Alliance Municipal Court Case No. 2005-CRA-00858 and Alliance Municipal Court Case No. 2005CRB-00859.

{¶16} On February 15, 2006, the Alliance Municipal Clerk filed duplicates of Exhibits 10 and 11 in both Alliance Municipal Court Case No. 2005-CRA-00858 and Alliance Municipal Court Case No. 2005-CRB-00859.

{¶17} On March 28, 2006, in Case No. 2005-CRB-00859, the Alliance Municipal Court filed a judgment entry indicating that appellant was unavailable for prosecution. A copy of the judgment entry is attached as Joint Exhibit No. 12.

{¶18} Appellant was arrested on August 25, 2006. The arrest occurred after appellant had served his federal prison time.

{¶19} A preliminary hearing was held in the Alliance Municipal Court on August 30, 2006, and the municipal Court bound over appellant's cases to the Stark County Grand Jury.

{¶20} The Stark County Grand Jury returned an indictment against appellant on October 10, 2006, which charged appellant with one count of Grand Theft of a Motor Vehicle (fourth degree felony), R.C. §2913.02(A) (1), one count of Vandalism (fifth

degree felony 5), R.C. §2909.05(B) (1) (a), and one count of Attempt to Commit Breaking and Entering (first degree misdemeanor), R.C. §§2911.13(A) and 2923.02(A).

{¶21} On November 15, 2006, a Motion to Dismiss was filed in the Stark County Common Pleas Court on behalf of appellant for failure to bring him to trial within 180 days of the date of receipt of his availability for final adjudication, pursuant to R.C. 2941 01. A Memorandum in Support of the Motion was filed on December 20, 2006 as well as the State's Response to the Motion. The trial court denied the Motion by Judgment Entry on December 22, 2006. On January 10, 2007, appellant entered a plea of No Contest to the charges contained in the Indictment, was found guilty by the Court and sentenced to a total term of incarceration in a state penal institution of nine (9) months.

{¶22} A stay of execution was granted by the trial court in this matter.

{¶23} Appellant now appeals, assigning as error:

{¶24} "I. THE TRIAL COURT ERRED IN OVERRULING DEFENDANT DOUGLAS CENTAFANTI'S MOTION TO DISMISS FOR FAILURE TO BRING THE MATTER TO TRIAL WITHIN 180 DAYS OF THE DATE HE CAUSED NOTICE OF HIS AVAILABILITY TO BE SERVED UPON THE COURT, THE PROSECUTING ATTORNEY AND THE CLERK OF COURT. (Exh. * * *)."

I.

{¶25} In the sole assignment of error, appellant argues the trial court erred in denying his motion to dismiss the indictment based upon a violation of his right to a speedy trial. We agree.

{¶26} Specifically, appellant maintains his right to a speedy trial was violated by the State's failure to bring him to trial within 180 days of the date he caused notice of

availability pursuant to R.C. 2941.401 to be served upon the court and the prosecuting attorney.

{¶27} "We begin by noting our lengthy history of Sixth Amendment jurisprudence, including the application of R.C. 2945.71. 'The 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. MacDonald* (1976), 48 Ohio St.2d 66, 68, 2 O.O.3d 219, 220, 357 N.E.2d 40, 42. Although the United States Supreme Court declined to establish the exact number of days within which a trial must be held, it recognized that states may prescribe a reasonable period of time consistent with constitutional requirements. *Barker v. Wingo* (1972), 407 U.S. 514, 523, 92 S.Ct. 2182, 2188, 33 L.Ed.2d 101, 113.'" *State v. Parker*, 113 Ohio St.3d 207, 2007-Ohio-1534 at ¶11. [Quoting *State v. Hughes* (1999), 86 Ohio St.3d 424, 425, 715 N.E.2d 540.].

{¶28} In Ohio, the right to a speedy trial has been implemented by statutes that impose a duty on the state to bring a defendant who has not waived his rights to a speedy trial to trial within the time specified by the particular statute. R.C. 2945.71 *et seq.* applies to defendants generally. R.C. 2941.401 applies to defendants who are imprisoned within the State of Ohio. *State v. Smith*, 140 Ohio App.3d 81, 85-86, 2000-Ohio-1777, 746 N.E.2d 678, 682.

{¶29} As Chief Justice Moyer wrote in *Brecksville v. Cook* (1996), 75 Ohio St.3d 53, 55-56, 661 N.E.2d 706:

{¶30} "Ohio's speedy trial statute was implemented to incorporate the constitutional protection of the right to a speedy trial provided for in the Sixth Amendment to the United States Constitution and in Section 10, Article I of the Ohio Constitution. *State v. Broughton* (1991), 62 Ohio St.3d 253, 256, 581 N.E.2d 541, 544; see *Columbus v. Bonner* (1981), 2 Ohio App.3d 34, 36, 2 OBR 37, 39, 440 N.E.2d 606, 608. The constitutional guarantee of a speedy trial was originally considered necessary to prevent oppressive pretrial incarceration, to minimize the anxiety of the accused, and to limit the possibility that the defense will be impaired. *State ex rel. Jones v. Cuyahoga Cty. Ct. of Common Pleas* (1978), 55 Ohio St.2d 130, 131, 9 O.O.3d 108, 109, 378 N.E.2d 471, 472.

{¶31} "Section 10, Article I of the Ohio Constitution guarantees to the party accused in any court 'a speedy public trial by an impartial jury.' 'Throughout the long history of litigation involving application of the speedy trial statutes, this court has repeatedly announced that the trial courts are to strictly enforce the legislative mandates evident in these statutes. This court's announced position of strict enforcement has been grounded in the conclusion that the speedy trial statutes implement the constitutional guarantee of a public speedy trial.' (Citations omitted.) *State v. Pachay* (1980), 64 Ohio St.2d 218, 221, 18 O.O.3d 427, 429, 416 N.E.2d 589, 591.

{¶32} "We have long held that the statutory speedy-trial limitations are mandatory and that the state must strictly comply with them. *Hughes*, 86 Ohio St.3d at 427, 715 N.E.2d 540. Further, 'the fundamental right to a speedy trial cannot be sacrificed for judicial economy or presumed legislative goals.' Id." *State v. Parker*, supra 2007-Ohio-1534 at ¶12-15.

{¶33} R.C. 2941.401 governs the speedy trial rights of an imprisoned defendant, and it reads, in pertinent part,

{¶34} "When a person has entered upon a term of imprisonment in a correctional institution of this state, and * * * there is pending in this state any untried indictment * * * 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 * * * written notice of the place of his imprisonment and a request for a final disposition to be made of the matter * * *. 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.

{¶35} "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.

* *

{¶36} "If the action is not brought to trial within the time provided * * * no court any longer has jurisdiction thereof, the indictment * * * is void, and the court shall enter an order dismissing the action with prejudice."

{¶37} The Ohio Supreme Court has held that, pursuant to R.C. 2941.401, the initial duty is placed on the defendant to notify the prosecutor and the court of his place

of incarceration and to request final disposition of outstanding charges. *State v. Hairston,* 101 Ohio St.3d 308, 804 N.E.2d 471, 2004-Ohio-969. "In its plainest language, R.C. 2941.401 grants an incarcerated defendant a chance to have all pending charges resolved in a timely manner, thereby preventing the state from delaying prosecution until after the defendant has been released from his prison term." Id. at 311, 804 N.E.2d 471.

{¶38} "An inmate's 'notification of availability and request for final disposition' can take several forms, depending on the circumstances of the inmate. Inmates are sometimes in halfway houses or municipal jail facilities where a warden or superintendent may or may not be present as contemplated in R.C. 2941.401. At times, inmates take it upon themselves to notify the court and prosecutor directly, outside the prescribed method in R.C. 2941.401. See *State v. Drowell* (1991), 61 Ohio Misc.2d 623, 581 N.E.2d 1183. Even where the prescribed method is used, variations in notification still occur. See *State v. Fox* (Oct. 22, 1992), Cuyahoga App. No. 63100 and *State v. Fox* (Dec. 17, 1998), Cuyahoga App. No. 74641." *State v. Gill*, 8th Dist. No. 82742, 2004-Ohio-1245 at ¶10. (Footnotes omitted).

{¶39} In *State v. Drowell* (1991), 61 Ohio Misc.2d 623, 581 N.E.2d 1183, the inmate, on his own, did actually serve both the prosecutor and the court, but the warden never forwarded the appropriate certificate. The court held: "* * * the failure of the warden of the institution having custody of defendant to forward the appropriate certificate when defendant filed the subject request is not grounds to deny said motion." Id. (concluding an official's failure to send the certificate of inmate status should not

vitiate an inmate's right to a speedy trial once requested, citing *State v. Ferguson* (1987), 41 Ohio App.3d 306, 311, 535 N.E.2d 708).

{¶40} The *Ferguson* decision referenced the Supreme Court of Ohio ruling in *Daugherty v. Solicitor for Highland Cty.* (1971), 25 Ohio St.2d 192, 267 N.E.2d 431, where the court held that a federal penitentiary inmate's letters to the appropriate Ohio prosecutor and judge requesting either a trial or dismissal of an Ohio charge, although informal, constituted a general request for a speedy trial. The court stated that "[w]here an inmate in a penal institution has made a diligent, good-faith effort to call to the attention of the proper authorities in another state that he desires a charge pending against him in that state disposed of, by trial or dismissal, he is entitled to have such request acted upon. The failure of the authorities to do so constitutes the denial of a speedy trial". *Daugherty,* 25 Ohio St.2d at 193, 267 N.E.2d 431.

{¶41} For appellant to have strictly followed the R.C. 2941.401 requirements, he should have given his written notice to the prison authorities, who should have forwarded it to the prosecutor and court along with a certificate of inmate status. However, it is clear that, although appellant did not strictly follow that path, the required information arrived at the proper place.

{¶42} "While in general, the one hundred eighty day time requirement of R.C. 2941.401 does not begin to run until an inmate demands a speedy resolution of a pending charge, this is premised on the prosecutor exercising reasonable diligence in properly notifying the inmate concerning the indictment. The state cannot avoid the application of R.C. 2941.401 by neglecting to inform the custodial warden or superintendent of the source and content of an untried indictment. [*State v. Carter* (June

30, 1981), Franklin App. No. 80AP-434]. Equally, the state cannot rely upon the prisoner's failure to make demand for speedy disposition, but must count the time as having commenced upon the first triggering of the state's duty to give notice of the right to make demand for speedy disposition. *Fitch,* supra, at 162. If a prosecutor has not exercised reasonable diligence in notifying an inmate of pending charges, the proper remedy is a motion to dismiss for denial of a speedy trial. Id." *State v. Rollins* (Nov. 17, 1992), 10th Dist. No. 92 AP-273.

{¶43} "We hold that appellant's actions substantially complied with the requirements set forth in R.C. 2941.401. See *State v. Gill,* Cuyahoga App. No. 82742, 2004-Ohio-1245 (holding that substantial compliance is the appropriate standard under R.C. 2941.401 "in those instances where documents actually reach a location, regardless if mailed by the inmate or institution * * * "). See, also, *State v. Quinones,* Cuyahoga App. No. 86959, 2006-Ohio-4096 (holding that substantial compliance is the proper standard under R.C. 2963.30, the interstate agreement on detainers, which is the speedy trial statute that applies to defendants in out-of-state prisons, including federal penitentiaries).

{¶44} "Substantial compliance requires the defendant to do 'everything that could be reasonably expected.' *State v. Ferguson* (1987), 41 Ohio App.3d 306, 311, 535 N.E.2d 708. 'The key to determining when the 180-day period begins * * * is delivery upon the receiving state and its court. * * * What is important is there be documentary evidence of the date of delivery to the officials of the receiving state.' *State v. Pierce,* Cuyahoga App. No. 79376, 2002-Ohio-652. See, also, *Daugherty v. Solicitor for Highland County* (1971), 25 Ohio St.2d 192, 193, 267 N.E.2d 431 (holding that

'[w]here an inmate in a penal institution has made a diligent, good-faith effort to call to the attention of the proper authorities in another state that he desires a charge pending against him in that state disposed of, by trial or dismissal, he is entitled to have such request acted upon. The failure of the authorities to do so constitutes the denial of a speedy trial.' (Relying on *Smith v. Hooey* (1969), 393 U.S. 374, 89 S.Ct. 575, 21 L.Ed.2d 607.)" *State v. Antos*, 8th Dist. No. 88091, 2007-Ohio-415 at ¶ 11-13.

{¶45} The State cites and relies upon the Ohio Supreme Court decision in *State v. Hairston* (2004), 101 Ohio St.3d 308, 804 N.E.2d 471, in urging us to uphold the trial court's order denying appellant's motion to dismiss. The question on appeal in *Hairston* was whether R.C. 2941.401 places a duty of reasonable diligence on the state to discover the whereabouts of an incarcerated defendant against whom charges are pending.

{¶46} In *Hairston,* the Franklin County Prosecuting Attorney charged Hairston by information with aggravated robbery, kidnapping and two counts of robbery. On October 6, 2000, the prosecutor dismissed those charges, anticipating a possible indictment. On October 18, 2000, the grand jury indicted Hairston on the same charges, and filed them on October 25, 2000.

{¶47} Because of the charges in the information, Hairston's parole officer held an on-site parole revocation hearing and revoked his parole on October 24, 2000. A summons sent to Hairston's home, while he remained in the county jail, came back unserved. On October 31, 2000, Hairston was returned to the custody of the Ohio Department of Rehabilitation and Correction.

{¶48} On June 12, 2001, the records supervisor at the Pickaway Correctional Institution delivered a detainer to Hairston advising him of the four charges from the October 2000 indictment.

{¶49} The Supreme Court concluded Hairston never caused the requisite notice of imprisonment and request for final disposition to be delivered to either the prosecuting attorney or the court; therefore, he never triggered the process to cause him to be brought to trial within 180 days of his notice and request. The Court further concluded the facts revealed the warden did not have knowledge of any of the charges pending against him, and the statute does not require a duty of reasonable diligence for the State to discover the whereabouts of an incarcerated defendant against whom criminal charges are pending.

{¶50} The Supreme Court held:

{¶51} "In its plainest language, R.C. 2941.401 grants an incarcerated defendant a chance to have all pending charges resolved in a timely manner, thereby preventing the state from delaying prosecution until after the defendant has been released from his prison term. It does not, however, allow a defendant to avoid prosecution simply because the state failed to locate him. The facts here demonstrate that Hairston knew of his arrest, knew he had been apprehended in the bar, and knew that the police had removed from his waistband the money taken from the blue bag during the robbery. He also knew that the prosecutor had charged him by information; despite this, he waited until June 2001 to seek to enforce R.C. 2941 .401."

{¶52} Unlike *Hairston,* in the case sub judice, there is clear evidence the State knew the location where appellant was incarcerated. In the instant case, appellant sent

a letter to the appropriate prosecutor's office and court, notifying them of his location of imprisonment and demanding a final disposition. The record reflects that the court took no action on this letter. Appellant's notification was filed by the clerk of courts in both Alliance Municipal Court Case No. 2005-CRA-00858 and Alliance Municipal Court Case No. 2005-CRB-00859 on February 15, 2006. The next activity that occurred on the case was on March 28, 2006 in Case No. 2005-CRB-00859 where the Alliance Municipal Court, without explanation, filed a Judgment Entry indicating that the appellant was unavailable for prosecution. There is nothing in the record evidencing whether the Alliance City Prosecutor received a copy of appellant's letter; however appellant submitted the affidavit of his attorney wherein he noted that certified copies of the notice were sent to both the Alliance Municipal Court and the Alliance City prosecutor's office. Although appellant's attorney was unable to locate the return receipts for said letters the record contains no evidence to refute receipt by the court and the Alliance City prosecutor's office. All the State needed to do was communicate with the warden of the institution where appellant was incarcerated to obtain the appropriate certificate. In the alternative, the State could have contacted the attorney who filed the notice on appellant's behalf who could then have forwarded any necessary information to the court. Finally, the State could have notified the warden or superintendent having custody of the prisoner of the pending charge. The warden or superintendent is, in turn, required to inform the prisoner in writing of the pending charge and his right to make a request for final disposition thereof. Appellant could then have requested the appropriate certificate be forwarded the prosecutor. The State cannot avoid the application of R.C. 2941.401 by neglecting to inform the custodial warden or

superintendent of the source and content of an untried indictment when the State is aware of the defendant's location and the source and content of the untried indictment and the defendant has made a demand for speedy disposition of the same. *State v. Rollins*, supra.

{¶53} Accordingly, we find that appellant substantially complied with R.C. 2941.401, and that the court erred by denying his motion to dismiss the charges against him. We emphasis that this is not a case where a defendant simply made a blanket demand; rather appellant was represented by counsel who filed a specific request in the appropriate court where the untried indictment was pending.

{¶54} Appellant's sole assignment of error is sustained, and this case is reversed and final judgment is entered for appellant.

By: Gwin, P.J.,

Farmer, J., and

Delaney, J., concur

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. PATRICIA A. DELANEY

WSG:clw 0720

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
DOUGLAS CENTAFANTI	:	
Defendant-Appellant	:	CASE NO. 2007-CA-00044

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio, is reversed and final judgment is entered for appellant. Costs to appellee.

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. PATRICIA A. DELANEY