

IN THE SUPREME COURT OF OHIO

CASE NO. 21-1412

TERRELL MARTIN ,

Appellant,

: On Appeal from the Seventh Appellate
District of Mahoning County, Ohio
September 10, 2021 Judgment Entry.

:
: Court of Appeals Case. 20-MA-0044

V.

STATE OF OHIO,

Appellee.

**APPELLANT TERRELL MARTIN MEMORANDUM
IN SUPPORT OF JURISDICTION**

Terrell Martin #A772355 pro se
Belmont Correctional Institution
P.O. Box 540
St. Clairsville, Ohio 43950

Appellant,

v.

State of Ohio
Assistant Prosecuting Attorney
Ralph M. Rivera
21 West Boardman Street 6th Floor
Youngstown, Ohio 44503

Appellee.

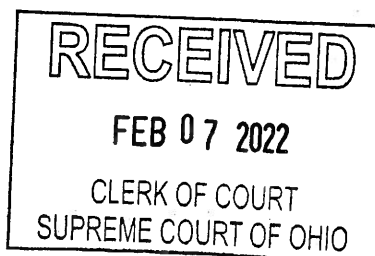
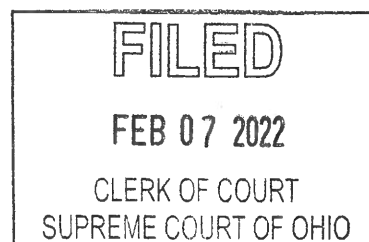


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This case involves issues that needs to be heard, Ohio lower courts have construed the triple count speedy trial statue, by conferring solely to enact over the legislature of Ohio Constitution rights of speedy trial.

Thus depriving rights of a criminal defendant fundamental right of the United States and Ohio Constitutions, under the Sixth Amendment to the U.S. Constitution, and Ohio Const. art. I, § 10.

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Opinion of the Richland County Court of Appeals Seventh Appellate District
(September 10, 2021)sent with notice of appeal

Judgement Entry of the Richland County Court of Appeals Seventh Appellate District
(September 10, 2021)sent with notice of appeal

**EXPLANATION OF WHY THIS CASE IS A CASE OF
PUBLICOR GREAT GENERAL INTEREST AND
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

In this present case the Ohio lower courts have manipulated and construed unlawfully the statute of §2945.71(E) by overriding it with the term of “Solely” as to legislate the triple count provision set in the revised code. Thus depriving fundamental rights of defendant(s) Sixth Amendment to the U.S. Constitution, and Ohio Const. Art. I, § 10.

Plaintiff and lower courts misuse the mandate applied to the latest statute and misapply MacDonald, 48 –Ohio-St.2d 66; for its argument and reason to justify against the mandates and legislation of §2945.71 of the speedy trial.

It seems the Ohio lower courts is unaware of the change, and when the change in legislation have been made. The change was January 1, 1974, the lower court(s) still uses the old speedy trial enactments to reason the today's speedy trial statute.

The former legislation of Ohio §2945.71, stated that, no person shall be detained in jail without a trial for a continuous period of more than two terms after his arrest and commitment on an indictment or information, or if he was in jail in the time the indictment or information was found, more than two terms after the term at which the indictment or information was presented.

The present revised statute that is legislated under §2945.71, (C)(2) A person against whom a charge of felony is pending shall be brought to trial within two hundred seventy days after the person's arrest.

In §2945.71, (E) for purposes of computing time under divisions (a), (b), (c)(2), and (d) of this section each day during which the accused is held in lieu of bail on the pending charge, shall be counted as three days. This section is not for computing time under division (c)(1). Under §2945.71, (F); this section **“Shall” not be modified in “Anyway”**.

So it is apparent that the latter section of the present Ohio- R.C. §2945.71 (e) and not the former R.C. §2945.71 is applicable to the appellant. "see" Also State v. Ladd (1978) 56 Ohio St. 2d. 197; where Former Supreme Court Judge William B. Brown J, recognized that the courts made an unconstitutional decision in the MacDonald case, at:

[205]: The meaning of R. C. 2945.71 is clear. An accused must receive triple credit, for purposes of the 270-day speedy trial deadline, for each day that he is held in jail in lieu of bail on "the pending charge"; i. e., the pending felony charge (R. C. 2945.71[C]) subject to the 270-day deadline. The statute does not distinguish between persons held in jail in lieu of bail on one or more than one pending charge. (The word "a" in the phrase "a charge of felony" does not indicate number because "a" means "any" including "any one of many.") The majority cannot look to the language of the statute itself to justify its holding. Precedent does not support the majority's holding either. The main authority relied on by the majority opinion, State v. MacDonald (1976), 48 Ohio St. 2d 66, is inapposite. That case interprets the current speedy trial provisions, and paragraph one of its syllabus

Unlawful Decision of the State:

Ohio Court(s) has modified the legislation and without justification or vote from the legislator parties that enact the law.

The facts are unquestionable as to the appellant arguments, first when the state unlawfully mandated the former §2945.71, as held in State v. MacDonald, 48-ohio- St. 2d 66 at; HN4 ... [*70], In interpreting R. C. 2945.71, settled Ohio case law has required the defendant's detention in jail to be *solely* because of the pending charge. State v. Gray, (1964), 1 Ohio St. 2d 21; State, ex rel. Hodges, v. Coller , (1969), 19 Ohio St. 2d 164; and State v. Fairbanks ,(1972), 32 Ohio

St. 2d 34. These cases, however, construed the former speedy-trial statutes, and not the 1974 version.

When the court used old case law R. C. 2945.71 to support their interpretation of the new revised version; doing so; the lower courts unlawfully enacted the old version, and by the lower court actions, it modifies and alter the present speedy trial statute.

For the last forty something years, defendants awaiting trial; on more than one indictment; demines the full protection of Ohio present speedy trial statute.

Due to the court[s] assumption in State v. Ladd, supra; that MacDonald represented a situation beyond the contemplation of the General Assembly at the time the other statue was enacted.

Such assumption is irreconcilable to the General Assembly decision on enacting the present speedy trial statute, because it is only; in the power of the General Assembly to legislate. So for Ohio court[s] to say that Americans legislatures is not competent to write the laws and use that reason to disregard them is an act of unsettled law of the Ohio speedy trial statutes.

State v. MacDonald, stated that “ The objective of former R. C. 2945.71 is substantially the same as that of present R. C. 2945.71(D). Both seek to insure that defendant are not held in jail for undue periods of time while awaiting trial. We see no justification for altering prior case law since the basic objective of the former statute has been preserved. This language has altered the enactment of the legislator of Ohio triple count, speedy trial statute. And this is why this cause is before this court seeking jurisdiction to settle the unsettled law and to have the settlement applied fairly to appellant

In support of its position on these issues, appellant presents the following arguments.

MEMORANDUM IN SUPPORT

STATEMENT OF THE CASE AND FACTS:

On March 1, 2017, Terrell Martin was arrested. On March 9, 2017 Mr. Martin was indicted on five charges: count one, aggravated murder, in violation of R.C. 2903.01(A); count two, aggravated burglary, a felony of the first degree, in violation of R.C. 2911.11(A)(1) and (B); count three, [**2] kidnapping, a felony of the first degree, in violation of R.C. 2905.01(B)(1) and (2); count four, having weapons while under disability, a felony of the third degree, in violation of R.C. 2923.13(A)(2) and (B); and count five, tampering with evidence, a felony of the third degree, in violation of R.C. 2921.12(A)(1) and (B).

The first three counts contained accompanying firearm specifications in violation of R.C. 2941.145(A). Appellant was appointed counsel, entered a not guilty plea at his arraignment, and was found competent to stand trial.

On March 13, 2020, the trial court sentenced Appellant to 15 years to life on count one and three years on the accompanying firearm specification (both firearm specifications merged); 11 years on count two; and 36 months on count five. The court ordered counts one, two, and five to run concurrently to each other but consecutively to the firearm specification for a total of 18 years to life in prison.

On September 10, 2021 the Court of Appeals of the Seventh District affirmed the appeal, and now appellant timely files in this court

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: TERRELL MARTIN WAS DENIED HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS AND A SPEEDY TRIAL.

The court's interpretation of R.C. 2945.71 denies a defendant due process of law and renders the statute unconstitutional, "See" appellant Amended Merit Brief in the Court of Appeals of Mahoning County, Ohio Case No. 20-MA-0044 filed December, 14, 2020. Page 9

The appellant court looked past the McDonald argument and went into the tolling of the speedy trial yet used prior cases to support the reason to affirm, See attached Journal Entry of the appeals court, Lexus Nexus *State v. Martin*, 2021-Ohio-3163, 2021 Ohio App. LEXIS 3092 ** | 2021 WL 4171696.

The constitutional right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution." *State v. Kutkut*, 8th Dist. Cuyahoga No. 98479, 2013-Ohio-1442, ¶ 10, citing *State v. Carmon*, 8th Dist. Cuyahoga No. 75377, 1999 Ohio App.LEXIS 5458, *3, 1999 WL 1044603 (Nov. 18, 1999)." "The statutory time requirements of R.C. 2945.71 to 2945.73 are not relevant to a determination of whether a defendant's constitutional right to a speedy trial has been violated by an unjustified delay in prosecution." *Id.*, quoting *Carmon* at *4.

Instead, courts should employ the balancing test of the factors enunciated by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514, 530-533, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). The factors to be weighed include: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his speedy trial right; and (4) prejudice to the defendant. *Kutkut* ¶ 10, citing *Carmon* at *4-5. No single factor is regarded " * * * as either a necessary or sufficient condition to the finding of a deprivation to the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant." *Barker* at 533.

The court of appeals erroneously interpreted the statute, and by so doing; the court miscalculated Mr. Martin's credit days. By not granting him the triple count provision, the lower courts violated his speedy trial right under the Sixth Amendment of the United States Constitution, and violated Mr. Martin's constitutional right under the Ohio Constitution as set forth under R.C. 2945.71 through 2945.73 as to the triple count provision. Being that the days owed to Martin under this provision is a total of 1,074 days which he should be credited. This includes; the tolling periods under R.C. 2945.71 through 2945.73 as to the triple count provision of the Ohio speedy trial legislature.

Wherefore, this court is requested to determine if the lower court applied the wrong standard for reason to deny the appellant his speedy trial right, and unreasonably affirmed appellant's appeal.

Proposition of Law No. 2: TERRELL MARTIN WAS DENIED HIS CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL.

1. Appellant spent a total of 1100 days in jail pending trial. Should counsel's failure to respond to the state's discovery request be found to toll the speedy trial clock so as to deny appellant his right to a speedy trial, counsel's failure has prejudiced appellant and that prejudice constitutes ineffective assistance of counsel. "See" appellant's Amended Merit Brief in the Court of Appeals of Mahoning County, Ohio Case No. 20-MA-0044 filed December 14, 2020. Page 25-27 online docket.

2. Trial Counsel was ineffective for failing to object to the trial court's failure to record all proceedings. "See" appellant's Amended Merit Brief in the Court of Appeals of Mahoning County, Ohio Case No. 20-MA-0044 filed December 14, 2020. Page 27-28 online docket.

The Appeals Court determined this ground as meritless because it found that proposition 1 is merit less. "See" *State v. Martin*, 2021-Ohio-3163 at [*P43]. In this case, as addressed in his first assignment of error, Appellant fails to establish that the motion to dismiss based on speedy trial grounds should have been granted. Appellant's arguments do not amount to ineffective assistance of counsel. [**19] [*P44] In *State v. Miller*, 9th Dist. Medina No. 07CA0037-M, 2008-Ohio-1002, our Sister Court considered and rejected the same issue that Appellant makes here.

The *Miller* court opined that to conclude that counsel was ineffective for not filing a response to a reciprocal discovery request, and thereby toll the time limit under [*State v.* *Palmer*, [112 Ohio St.3d 457, 2007-Ohio-374, 860 N.E.2d 1011]] required an underlying presumption that neither the State nor the trial court would have realized the defendant's speedy trial rights were about to be violated and taken action. *Id.* "(W)e decline to presume," the court ruled, "that (the defendant's) speedy trial rights would have been violated but for his counsel's failure to respond to discovery." *Id.* at ¶ 15 (Emphasis sic.) *State v. Saultz*, 4th Dist. Ross No. 09CA3133, 2011-Ohio-2018, ¶ 20, quoting *Miller* at ¶ 14-15.

However, under the Ohio Constitution Art.1 Section 10, and under Federal 6th Amendment of the United States Constitution, the appeal court interrupted his grounds in an unreasonable determination of law and contrary to the facts of statues, and thus appellant request this court to interpret the right standards of law to insure that fairness is applied.

CONCLUSION

Appellant request this court to jurisdiction on the issue[s] and propositions of law presented.

Respectfully submitted,



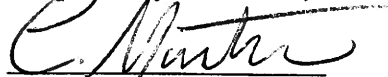
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CERTIFICATE OF SERVICE

I, Terrell Martin, certify that a copy of the forgoing motion was sent by First Class mail, Pre Paid, by the U.S. postal service to Assistant/Prosecutor's. A copy was placed in the prison mail box on this 24 day of JAN. 2022,

A copy was also sent to all adjoining parties stated above in such styled case.

Respectfully submitted,



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