

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellee,

-vs-

ULYSSES L. FEAGIN
Defendant-Appellant,

On Appeal from the Richland
County Court of Appeals, Fifth
Appellate District.

Court of Appeals Case No.
2021 CA 0064

22-0949

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT ULYSSES L. FEAGIN, II

ULYSSESS L. FEAGIN, II, #783-954
Belmont Correctional Institution
P.O. Box 540
St. Clairsville, Ohio 43950

DEFENDANT-APPELLANT, PRO SE

MICHAEL J. KEMERER
30 North Diamond Street
Mansfield, Ohio 44902

COUNSEL FOR APPELLEE, CITY OF MANSFIELD

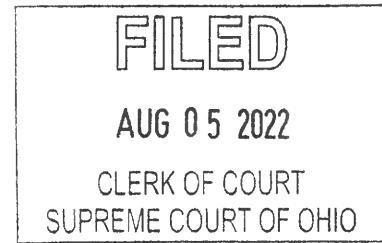
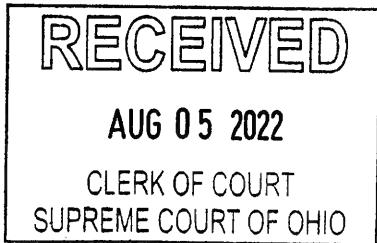


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**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT
GENERAL INTEREST AND INVOLVES A SUBSTANTIAL
CONSTITUTIONAL QUESTION**

This is a case that involves: (1) the trial court participating in a sham legal process by denying the appellant the opportunity to speak or address the court which denied fair due process; (2) the violation of Crim.R.11, Fed.R.Crim.P.11 where the trial court involuntarily entered a guilty plea, did not explain various pleas under Crim.R. 11(B) and/or charges or agreements; (3)the appellant was denied effective assistance of counsel guaranteed by the 6th 14th Amendment Section 10, 16 of the Ohio Constitution.(4)the violation of appellants speedy trial rights guaranteed under O.R.C. 2945.71-2945.73 18 U.S.C. 3161-3174, O.R.C. 2945.71 B1 2945.71 B2

STATEMENT OF THE CASE

Defendant-Appellant appeals his July 20, 2021 conviction for disorderly conduct by the Mansfield Municipal Court of Richland County, Ohio.

On July 20, 2021, appellant plead guilty to a reduced charge of disorderly conduct in violation of Mansfield Codified Ordinance 509.03(a), a minor misdemeanor. The remaining two charges were dismissed. By journal entry/ sentencing order filed same date, the trial court fined appellant 150.00 plus cost. Appellant filed a pro se appeal on October 19th2021.The judgment was affirmed on June 27th 2022.

STATEMENT OF FACTS

On August 18,2019, officers were dispatched to the scene of a domestic dispute. Upon their arrival, appellant fled the scene. Appellant was caught and charged with disorderly conduct/ intoxication in violation of Mansfield Codified Ordinances 509.03(b)(2), resisting arrest in violation of Mansfield Codified Ordinances 525.09(a), and obstructing official business in violation of Mansfield Codified Ordinances 525.07(a).

PROPOSITION OF LAWS

PROPOSITION OF LAW #1

DID THE TRIAL COURT AND GOVERNMENT ACTORS PARTICIPATE IN A SHAM LEGAL PROCESS. SHAM LEGAL PROCESS, R.C 2921.52:

Defense counsel, Judge, & Prosecutor conspired in a effort to secure a plea of guilty for charges against the appellant. Appellant deprived of Due Process & Equal Protection 14th Amendment U.S Constitution, Article1 Section16 Ohio Constitution. Where the trial court entered a plea of guilty not given by appellant.

Furthermore, Appellant was not given a opportunity to respond or address the court upon the involuntary plea being entered, what the Constitution does require is a opportunity granted at a meaningful time and in a meaningful manner." Within the limits of practicability " a state must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause. Therefore the trial court was in error by excepting a plea not given by the appellant. DUS participating in a Sham Legal Process in violation of R.C. 2921.52.

PROPOSITION OF LAW #2

IS THE TRIAL COURT IN VIOLATION OF CRIM.R 11.

A trial court must strictly comply with the CRIM.R. 11 C (2)(c) requirements that relate to the waiver of constitutional rights. Under the more stringent standard for constitutionally protected rights, a trial courts acceptance of a guilty plea will be affirmed only if the trial court engaged in meaningful dialogue with the defendant which in substance, explained the pertinent constitutional rights in a manner reasonably intelligible to that defendant.

CRIM.R.11 C 2(b) requires a trial court to inform a defendant of the effect of a guilty plea and to determine the defendant understands the effect aswell. The underlying purpose of CRIM.R 11 C is to convey certain information to a defendant so that he or she can make a voluntary and intelligent decision regarding whether to plead guilty.

CRIM.R.11 C (2)a does not require a trial court ask a defendant if his plea is voluntary and undertaken under his own free will, but rather to "determine," among other things, that the defendant is entering a plea voluntarily.

Guilty Pleas, Knowing & Intelligent Requirement

Acceptance of a plea of guilty by a trial court should be based on substance and not form. Many times guilty pleas are accepted by the trial judge merely going through motions and not making a

determination that defendant's plea is voluntarily made. Acceptance of a plea should be based on reality and not be a mere ritual. More like this Headnote

Fundamental Rights, Procedural Due Process

For a waiver of constitutional rights to be valid under the due process clause there must be an intentional relinquishment or abandonment of a known right or privilege. The waiver must be voluntarily, intelligently and knowingly made and defendant must understand the nature of the charges against him and the consequences of his plea of guilty. Otherwise, it is in violation of due process and is therefore void. The court has a duty to advise defendant of his constitutional rights and must make sure that he waives his constitutional rights before it accepts the plea of guilty. This protective duty imposes the serious and weighty responsibility on the trial judge of determining whether there was an intelligent and understanding waiver by the accused. More like this Headnote

Before a guilty plea is accepted the trial judge should make certain that the defendant's constitutional rights and privileges have been explained to him. Courts should use utmost caution not to accept a guilty plea unless made voluntarily and after a proper advice by the court to the defendant and with his full understanding of the consequences. *Machibroda v. United States, supra.*

The Fifth and Sixth Amendments of the United States Constitution guarantee an accused certain rights and privileges, including the privilege against self-incrimination, the right to trial by jury, the right to assistance of counsel, the right to confront witnesses against him, the right to be informed of the nature and cause of the accusation, and the right to compulsory process for obtaining witnesses in his favor. *State v. Griffey*, 29 Ohio App. 2d 246, 250-251, 281 N.E.2d 32, 35-36, 1972 Ohio App. LEXIS 423, *8, 58 Ohio Op. 2d 450 (Ohio Ct. App., Cuyahoga County March 30, 1972) Failure to comply with CRIM. R. 32 B is plain error CRIM.R. 52B, trial court erred by failing to comply with CRIM. R. 32 by not notifying appellant of his various rights.

PROPOSITION OF LAW #3

THE APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED UNDER THE U.S.C. 6TH 14TH AMENDMENT & ARTICLE 1 SECTION 10, 14 OHIO CONSTITUTION

Trial counsel was present in the courtroom while appellants hearing was held via video monitor through a cell phone held by a transport officer of (RCSO) Richland County Sheriff Office while incarcerated. The appellant was not present in the court room as referenced by the record submitted by the trial court.

Trial counsel did not object to the involuntary plea entered by the trial court nor did counsel object or address the trial courts failure to comply with CRIM. R. 11 or CRIM. R. 32.

As an officer of the court a lawyer not only represents clients but has a special responsibility for the quality of justice. In representing clients, a lawyer performs various function, as advisor a lawyer provides a client with informed understanding of a clients legal rights obligations and explains their practical implications.

The right to counsel guaranteed by the constitution contemplates the service of an attorney solely to the interest of his client. The premise of an adversarial system in which the defendant has an effective advocate for his side underlies and gives meaning to the 6th Amendment. Thus it is a substantive right of the accused to have the representation of counsel, not as a friend of the court or extended arm of the prosecution, but in the role of an adversary to the state advocating the position of the accused.

The longer the delay the greater the presumption or actual prejudice to the defendant, in terms of his ability to prepare for trial on the restrictions on his liberty" Taylor, 487 U.S at 340 Inordinate Delay, between public charge & trial wholly aside from possible prejudice to a defense on the merits, may seriously interfere with the defendants liberty, whether he is free on bail or not and may disrupt his employment, drain his financial resources, curtail his association subject him to public obloquy, and create anxiety in him, his family and his friends, Taylor, 487 U.S at 340-341.

PREAMBLE : A LAWYERS RESPONSIBILITIES

In all professional functions a lawyer should be competent, prompt, diligent and loyal. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by **OHIO RULES of PROFESSIONAL CONDUCT** or other law.

1.1 COMPETENCE

A lawyer shall provide competent representation to a client, competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

RULE 1.2 SCOPE of REPRESENTATION and ALLOCATION of AUTHORITY BETWEEN CLIENT & LAWYER

A lawyer shall abide by a clients decisions concerning the objectives of representation and, as required by RULE 1.4, shall consult with the client as to the means by which they are pursued.

RULE 1.3 DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 COMMUNICATION

- (1) Promptly inform the client of any decisions or circumstances with respect to which the client's informed consent is required by these rules.
- (2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished.
- (3) Keep the client reasonably informed about the status of the matter.
- (4) Comply as soon as practicable with the reasonable request for information from the client.
- (5) Consult with the client about any relevant limitation on the lawyers conduct when the lawyer knows that the client expects assistance not permitted by the **RULES of PROFESSIONAL CONDUCT** or other law.

COMMENT

- (1) Reasonable communication between the lawyer and the client is necessary for the client to participate effectively in the representation.

COMMUNICATION WITH CLIENT

- (2) If the rules require that particular decisions about the representation be made by the client, division (a) (1) requires that the lawyer promptly consult with and secure the clients consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take.

Division (a) (2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objective. In some situations depending on both the importance of the action under consideration and the feasibility of consulting with the client, this duty will require consultation prior to taking action.

Restatement Third, agency § 2.01 (An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act.)

Restatement Third, Agency § 16 (Counsel has a *duty* to proceed in a manner reasonably calculated to advance a client's lawful objectives, *as defined by the client after consultation*)
The lawyer's efforts in a representation must be for the benefit of the client (see Restatement Second, Agency § 387). **Individual clients define their objectives differently. *The client, not the lawyer, determines the goals to be pursued***, subject to the lawyer's duty not to do or assist an unlawful act (Restatement Third, agency § 94). The lawyer **must** keep the client informed and consult with the client as is reasonably appropriate *to learn the client's decisions* (see Restatement Third, agency § 20) and **must follow a client's instructions** (see Restatement Third, agency § 21(2)).

On a lawyer's decisions in the representation, see Restatement Third, agency §§ 22-24. Ordinarily the lawyer *may not act beyond the scope of contemplated representation* without additional authorization from the client (see § 27, Comment e). In pursuing a client's objectives, a lawyer *must use reasonable care* (see Restatement Third, agency § 52; see also Restatement Second, Agency § 379). The lawyer must be competent to handle the matter, having the appropriate knowledge, skills, time, and professional qualifications. The lawyer must use those capacities diligently, not letting the matter languish **but proceeding to perform the services called for by the client's objectives**, including appropriate factual research, legal analysis, and exercise of professional judgment. *Duties of loyalty*. The responsibilities *entailed in promoting the objectives of the client may be broadly classified as duties of loyalty*, but their fulfillment also requires skill in gathering and analyzing information *and acting appropriately*. In general, *they prohibit the lawyer from harming the client*. . Counsel violated. Restatement (Second) of Agency §25, 39, 112,118, 119 ,377 through 385; Restatement (Third) Agency of the Law Governing Lawyers, §2, 15,16, 19, 20,21, 22,23, 26, 27, 48, 49, 50, 51, 52, 94.

Proposition of law #4

The trial court denied appellant his statutory and constitutional rights to a speedy trial under the U.S.C. 3161-3174 & R.C. 2945.71-73

The trial court submitted documents or record indicating that a time waiver was signed on OCT 2, 2019 and made reference to a additional waiver that was not signed by appellant on Oct 26 2019.

Appellant had no knowledge of a pro se unlimited speedy trial waiver being signed, he was not informed of effects or explained the circumstances and likely consequences prior to signing the documents, which is why the waiver on Oct 24 was not signed by the appellant. Therefore the waiver on OCT 2 , nor OCT 24 was made knowingly, voluntarily or intelligently waived by the appellant.

An accused may waive his constitutional right to a speedy trial provided that such a waiver is knowingly and voluntarily made.

A Waiver is valid only when it reflects an intentional relinquishment or abandonment of a know right or privilege. Waiver of constitutional rights not only must be voluntary but must be knowing intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences. The waiver of any rights substantive or procedural must be both knowing and clear.

Criminal Process, Speedy Trial

The right to a speedy trial guaranteed the accused by U.S. Const. amend. VI is "fundamental" and is imposed by the Due Process Clause of the U.S. Const. amend. XIV on the states. More like this Headnote Barker v. Wingo, 407 U.S. 514, 515, 92 S. Ct. 2182, 2184, 33 L. Ed. 2d 101, 108, 1972 U.S. LEXIS 34, *1 (U.S. June 22, 1972)

Section 10 of Article I of the Constitution of Ohio provides, in pertinent part:

"* * * In any trial, in any court, the party accused shall * * * have * * * a speedy public trial * * *."

The provisions of R. C. 2945.71 and 2945.73 implement that constitutional guarantee; they are mandatory and must be strictly complied with by the state. State v. Gray (1964), 1 Ohio St. 2d 21, 203 N. E. 2d 319; State v. Cross (1971), 26 Ohio St. 2d 270, 271 N. E. 2d 264.

State v. Pudlock, 44 Ohio St. 2d 104, 105-106, 338 N.E.2d 524, 525, 1975 Ohio LEXIS 592, *4, 73 Ohio Op. 2d 357 (Ohio December 3, 1975)

Criminal Process, Speedy Trial

U.S. Const. art. I, § 10 provides in part that in any trial, in any court, the party accused shall have a speedy public trial. The provisions of Ohio Rev. Code Ann. §§ 2945.71, 2945.73 implement that constitutional guarantee; they are mandatory and must be strictly complied with by the State. More like this Headnote

State v. Pudlock, 44 Ohio St. 2d 104, 104, 338 N.E.2d 524, 524, 1975 Ohio LEXIS 592, *1, 73 Ohio Op. 2d 357 (Ohio December 3, 1975)

Speedy Trial, Statutory Right

As applicable to first-degree misdemeanors, Ohio Rev. Code Ann. § 2945.71(B)(2) states that a person against whom a charge of misdemeanor, other than a minor misdemeanor, is pending in a court of record shall be brought to trial within 90 days after his arrest or the service of summons, if the offense charged is a misdemeanor of the first or second degree. Ohio Rev. Code Ann. § 2945.73(B) provides further that upon motion made at or prior to the commencement of trial, a person charged with an

offense shall be discharged if he is not brought to trial within the time required by Ohio Rev. Code Ann. §§ 2945.71, 2945.72. The provisions of Ohio Rev. Code Ann. § 2945.72 allow for extension of the time within which the accused must be brought to trial. Section 2945.72(H) extends the time for the period of any reasonable continuance granted other than upon the accused's own motion. More like this

Headnote

State v. Pudlock, 44 Ohio St. 2d 104, 104, 338 N.E.2d 524, 524, 1975 Ohio LEXIS 592, *1, 73 Ohio Op. 2d 357 (Ohio December 3, 1975)

Criminal Process, Speedy Trial

If a criminal defendant waives his right to a speedy trial, the waiver must be done knowingly, voluntarily, and intelligently. Courts indulge every reasonable presumption against waiver of fundamental constitutional rights and do not presume acquiescence in the loss of fundamental rights. A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. Moreover, the provisions of Ohio Rev. Code § 2945.71 implement the constitutional guarantee of a speedy trial found in the Constitution of Ohio, and thus are mandatory and must be strictly complied with by the State. Therefore, for a waiver to be entered into knowingly, it is elementary that the defendant understands the nature of the charges against him, as well as know exactly what is being waived and the extent of the waiver. Waivers of constitutional rights not only must be voluntary but also must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences. More like this Headnote

State v. Adams, 43 Ohio St. 3d 67, 67, 538 N.E.2d 1025, 1026, 1989 Ohio LEXIS 82, *1 (Ohio May 17, 1989)

Preliminary Proceedings, Speedy Trial

When the total trial delay is sufficient to trigger the Barker inquiry, a court must consider whether the delay before trial was uncommonly long, whether the government or the criminal defendant is more to blame for that delay, whether, in due course, the defendant asserted his right to a speedy trial, and whether he suffered prejudice as the delay's result. More like this Headnote

State v. Skorvanek, 2009-Ohio-3924, P1, 2009 Ohio App. LEXIS 3355, *1, 2009 WL 2424114 (Ohio Ct. App., Lorain County August 10, 2009)

Waiver, Admission of Evidence

A defendant cannot waive her rights to a speedy trial indirectly. More like this Headnote

City of Akron v. Robinson, 2002-Ohio-1503, P1, 2002 Ohio App. LEXIS 1515, *1 (Ohio Ct. App., Summit County April 3, 2002)

OHIO C.P SUPERINTENDANT R. 8 B

All criminal cases shall be tried within 6 months of the date of arraignment on an indictment or information. Any failure, and the reason therefore, to comply with the time limits specified in this rule shall be reported immediately to the chief justice of the Supreme Court by the administrative judge of the division in which such failure occurs.

The authority of this Court to the superintend all courts of this State is set out in Section 5 A 1 Article IV of the Ohio Constitution. These rules of superintendence are designed (1) to expedite the disposition of both the criminal and civil cases in the trial courts of this state, while at the same time safeguarding the inalienable rights of litigants to the just processing of their causes and (2) to serve that public interest which mandates the prompt disposition of all cases before this court.

The case was filed to the judge on 10-02-2019 and waiver in question was also filed on the same day there is no record of colloquy between the court and appellant as to the waiver of rights to a speedy trial thus making it unknowingly and involuntarily. There was a public defender added to the case on 10-7-2019, attorney filing was made 10-24-2019. The case was assigned to attorney J MAYER, attorney C MAYER handled the disposition. I had no contact with either attorney regarding this matter after my initial meeting until 2021.

There were numerous continuances granted by the court, multiple dispositions scheduled and continued over the course of 23 months.

Criminal law -- Right to speedy trial -- R. C. 2945.71 and 2945.73 -- Provisions mandatory -- Defendant entitled to discharge, when -- Defendant's failure to demand trial -- Does not affect duty of state --

State v. Cross, 26 Ohio St. 2d 270, 270, 271 N.E.2d 264, 265, 1971 Ohio LEXIS 495, *1-2, 55 Ohio Op. 2d 495 (Ohio June 23, 1971)

Restatement Third, agency § 2.01 (An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act.)

. See Restatement Third, agency § 1.03 (A person manifests assent or intention through written or spoken words or other conduct.)

A manifestation of the principal's assent to the agent is an element of the definition of a relationship of agency in § 1.01. Actual authority as defined in § 2.01 requires a manifestation from the principal to the agent. The scope of actual authority, addressed in § 2.02, is based upon, although not wholly defined by, the principal's manifestation to the agent. A manifestation of assent by the principal is requisite to creating actual authority under § 3.01.

Restatement Third, Agency § 16 (Counsel has a duty to proceed in a manner reasonably calculated to advance a client's lawful objectives, as defined by the client after consultation) The lawyer's efforts in a representation must be for the benefit of the client (see Restatement Second, Agency § 387). Individual clients define their objectives differently. The client, not the lawyer, determines the goals to be pursued, subject to the lawyer's duty not to do or assist an unlawful act (Restatement Third, agency § 94). The lawyer must keep the client informed and consult with the client as is reasonably appropriate to learn

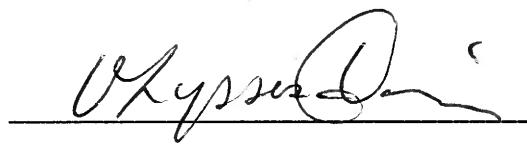
the client's decisions (see Restatement Third, agency § 20) and must follow a client's instructions (see Restatement Third, agency § 21(2)). On a lawyer's decisions in the representation, see Restatement Third, agency §§ 22-24. Ordinarily the lawyer may not act beyond the scope of contemplated representation without additional authorization from the client (see § 27, Comment e). In pursuing a client's objectives, a lawyer must use reasonable care (see Restatement Third, agency § 52; see also Restatement Second, Agency § 379). The lawyer must use those capacities diligently, not letting the matter languish but proceeding to perform the services called for by the client's objectives, including appropriate factual research, legal analysis, and exercise of professional judgment. Duties of loyalty. The responsibilities entailed in promoting the objectives of the client may be broadly classified as duties of loyalty, but their fulfillment also requires skill in gathering and analyzing information and acting appropriately. In general, they prohibit the lawyer from harming the client. Common sense dictates that a litigant cannot be held constructively responsible for the conduct of an attorney who is not operating as his agent in any meaningful sense of that word." Counsel violated. Restatement (Second) of Agency §25, 39, 112,118, 119 ,377 through 385; Restatement (Third) Agency of the Law Governing Lawyers, §2, 15,16, 19, 20,21, 22,23, 26, 27, 48, 49, 50, 51, 52, 94.

See Bennecke v. Ins. Co., 105 U.S. 355, 360, 26 L. Ed. 990, 992, 1881 *9-10, (The ratification of an act of an agent previously unauthorized must, in order to bind the principal, be with a full knowledge of all the material facts. If the material facts be either suppressed or unknown, the ratification is treated as invalid, because founded on mistake or fraud.)

See e.g., Baldayaque v. United States, 338 F.3d 145 (Jacobs, J., concurring) ("When an 'agent acts in a manner completely adverse to the principal's interest,' the 'principal is not charged with [the] agent's misdeeds' "); Nat'l Union Fire Ins. Co. v. Bonnanzio, 91 F.3d 296, 303 (2d Cir. 1996)

CONCLUSION

This case raises a substantial constitutional question, involves a felony and is one of public or great general interest. Review should be granted in this case.



ULYSSES L. FEAGIN II, #783-954

Belmont Correctional Institution

P.O. BOX 540

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DEFENDANT-APPELLANT, PRO SE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum in Support of Jurisdiction of Appellant ULYSSES L. FEAGIN II, has been served by U.S. mail postage prepaid to MICHAEL J. KEMERER, Prosecuting Attorney at 30 North Diamond Street, Mansfield, Ohio this 25th day of July, 2022

04517249 Fifth District 9

COURT OF APPEALS
RICHLAND COUNTY OHIO
FILEDCOURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

2022 JUN 27 P 12:40

LINDA H. FRARY
CLERK OF COURTS

CITY OF MANSFIELD

JUDGES:

Plaintiff-Appellee

Hon. Earle E. Wise, Jr., P.J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

-vs-

ULYSSES L. FEAGIN, II

Case No. 2021 CA 0064

Defendant-Appellant

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Mansfield Municipal
Court, Case No. 2019CRB06474

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

RULE 58(B) NOTICE
THIS JUDGMENT WAS ENTERED ON THE
COURT'S JOURNAL
ON 6-27-22
BY B. Dalton
Richland County Clerk of Courts
Deputy Clerk

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Richland County, Case No. 2021 CA 0064

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Wise, Earle, P.J.

{¶ 1} Defendant-Appellant, Ulysses L. Feagin, II, appeals his July 20, 2021 conviction for disorderly conduct by the Mansfield Municipal Court of Richland County, Ohio. Plaintiff-Appellee is city of Mansfield.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On August 18, 2019, officers were dispatched to the scene of a domestic dispute. Upon their arrival, appellant fled the scene. Appellant was caught and charged with disorderly conduct/intoxication in violation of Mansfield Codified Ordinances 509.03(b)(2), resisting arrest in violation of Mansfield Codified Ordinances 525.09(a), and obstructing official business in violation of Mansfield Codified Ordinances 525.07(a).

{¶ 3} On October 2, and 24, 2019, appellant signed unlimited speedy trial waivers.

{¶ 4} On July 20, 2021, appellant pled guilty to a reduced charge of disorderly conduct in violation of Mansfield Codified Ordinance 509.03(a), a minor misdemeanor. The remaining two charges were dismissed. By journal entry/sentencing order filed same date, the trial court fined appellant \$150.00 plus costs.

{¶ 5} Appellant filed a pro se appeal and this matter is now before this court for consideration. Assignments of error are as follows:

¶

{¶ 6} "TRIAL COURT PARTICIPATED IN SHAM LEGAL PROCESS, IN WHICH I WAS DENIED OPPORTUNITY TO SPEAK OR ADDRESS COURT DENIED DUE PROCESS."

Richland County, Case No. 2021 CA 0064

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II

{¶ 7} "VIOLATION OF CRIM.R. 11, FED.R.CRIM. P 11 BY TRIAL COURT. THE TRIAL COURT INVOLUNTARILY ENTERED A GUILTY PLEA, DID NOT EXPLAIN VARIOUS PLEAS CRIM R. 11(B) AND/OR CHARGES OR AGREEMENTS."

III

{¶ 8} "INEFFECTIVE UNCONSTITUTIONAL ASSISTANCE OF COUNSEL WHICH IS GUARANTEED ME BY 6TH-14TH AMENDMENT SECTION 10,16 ARTICLE 1 OF OHIO CONSTITUTION."

IV

{¶ 9} "VIOLATION OF STATUTORY AND CONSTITUTIONAL RIGHTS TO A SPEEDY TRIAL, UNDER O.R.C. 2945.11-2945.73 AND 18 U.S.C. 3161-3174, ORC 2945.71 B1 2945.71 B2."

I, II

{¶ 10} In his first assignment of error, appellant claims he was denied due process.

{¶ 11} In his second assignment of error, appellant claims a violation of his Crim.R. 11 rights.

{¶ 12} We disagree with appellant's arguments.

{¶ 13} Appellant argues he was never given a meaningful opportunity to be heard. He also argues he pled no contest, but the trial court "entered a plea of guilty without my consent or voluntarily given by me." Further, appellant argues the trial court failed to explain "various pleas Crim.R. 11(B) and/or charges or agreements."

{¶ 14} Appellant failed to file a transcript of the plea hearing. By judgment entry filed April 18, 2022, this court permitted appellant to supplement the record with a transcript on or before May 27, 2022. Appellant failed to do so.

04517249 Fifth District 9

Richland County, Case No. 2021 CA 0064

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{¶ 15} Absent the transcript, we are unable to review the Crim.R. 11 exchange between the trial court and appellant and appellant's plea. In *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980), the Supreme Court of Ohio held the following:

The duty to provide a transcript for appellate review falls upon the appellant. This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record. See *State v. Skaggs*, 53 Ohio St.2d 162 (1978). This principle is recognized in App.R. 9(B), which provides, in part, that " * * * the appellant shall in writing order from the reporter a complete transcript or a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. * * *." When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm. (Footnote omitted.)

{¶ 16} The trial court's August 19, 2021 journal entry/sentencing order states the following:

This case came before the court on 07/20/2021. Defendant was present in court with counsel present and entered pleas to the charges listed below. Defendant was advised of the maximum penalties involved, right to

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counsel, right to have counsel appointed if indigent, right to trial by jury, right to confrontation and the right to compulsory process. Defendant knowingly waived these rights. Plea was accepted.

{¶ 17} The journal entry indicates appellant pled guilty to a reduced charge of disorderly conduct in violation of Mansfield Codified Ordinance 509.03(a).

{¶ 18} Upon review, we find the record before this court establishes appellant was heard by the trial court and received due process, was subject to a Crim.R. 11 colloquy and knowingly waived his rights, and entered a plea of guilty to the charge.

{¶ 19} Assignments of Error I and II are denied.

III, IV

{¶ 20} In his third assignment of error, appellant claims he was denied effective assistance of trial counsel.

{¶ 21} In his fourth assignment of error, appellant claims he was denied his statutory and constitutional rights to a speedy trial.

{¶ 22} We disagree with appellant's arguments.

{¶ 23} Appellant argues his counsel was ineffective for failing to object "when involuntary guilty plea was entered." Again, without the benefit of a transcript, we must "presume the validity of the lower court's proceedings, and affirm." *Knapp, supra*.

{¶ 24} Appellant further argues his counsel was ineffective for failing to move for dismissal with prejudice because the case had nearly reached its second calendar year and he never signed a waiver. A review of the record belies this argument.

{¶ 25} Appellant signed a pro se unlimited speedy trial waiver on October 2, 2019. Appellant again waived his speedy trial rights through his counsel on October 24, 2019.

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This waiver was also unlimited. "[T]he speedy trial time period does not run when the defendant knowingly and voluntarily waives their speedy trial rights." *State v. Hopings*, 6th Dist. Lucas No. L-20-1075, 2022-Ohio-1532, ¶ 57, citing *State v. Blackburn*, 118 Ohio St.3d 163, 2008-Ohio-1823, 887 N.E.2d 319, ¶ 17-22. Defense counsel moving for a dismissal on speedy trial rights would have been futile given the waivers.

{¶ 26} Upon review, we do not find any ineffective assistance of counsel nor violations of appellant's speedy trial rights.

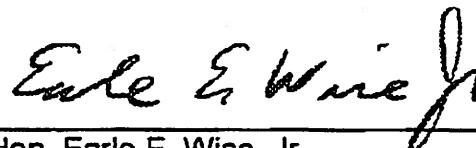
{¶ 27} Assignments of Error III and IV are denied.

{¶ 28} The judgment of the Mansfield Municipal Court of Richland County, Ohio is hereby affirmed.

By Wise, Earle, P.J.

Wise, John, J. and

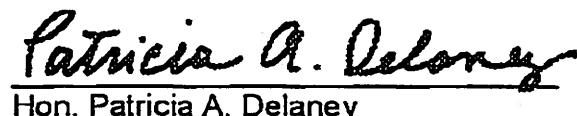
Delaney, J. concur.



Hon. Earle E. Wise, Jr.



Hon. John W. Wise



Hon. Patricia A. Delaney

EEW/db