

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JAMES KENNETH BISHOP,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case Nos. 21 JE 0018 & 21 JE 0019

Criminal Appeal from the
Court of Common Pleas of Jefferson County, Ohio
Case No. 17 CR 143

BEFORE:

Gene Donofrio, Cheryl L. Waite, David A. D'Apolito, Judges.

JUDGMENT:

Affirmed

Atty. Jane M. Hanlin, Jefferson County Prosecutor, Jefferson County Justice Center,
16001 State Route 7, Steubenville, Ohio 43952, for Plaintiff-Appellee and

James Bishop, (PRO SE), A704375, Richmond Correctional Institute, P.O. Box 8107,
Mansfield, Ohio 44901, for Defendant-Appellant.

Dated:
May 5, 2022

Donofrio, J.

{¶1} Defendant-Appellant, James Bishop, appeals from a Jefferson County Common Pleas Court judgment awarding him four additional days of jail-time credit but overruling his motion to dismiss the charges against him and discharge him based on speedy trial grounds.

{¶2} Appellant was arrested on September 25, 2017, in West Virginia. West Virginia authorities learned of a warrant for appellant's arrest from Jefferson County, Ohio for charges of burglary, theft, safe cracking, and receiving stolen property. Appellant was transported to Ohio on September 29, 2017. A Jefferson County Grand Jury subsequently indicted appellant on charges of theft, a fourth-degree felony in violation of R.C. 2913.02(A)(1)(B)(2); receiving stolen property, a fifth-degree felony in violation of R.C. 2913.51(A)(C); burglary, a second-degree felony in violation of R.C. 2911.12(A)(1)(D); and safe cracking, a fourth-degree felony in violation of R.C. 2911.31(A)(B). In January 2018, a jury convicted appellant. The trial court sentenced him to an aggregate sentence of nine and one half years. The court credited appellant with 110 days served as of January 17, 2018. Jail-time credit for the time he was in jail in West Virginia was not discussed at the time. The trial court gave appellant credit from September 29, 2017.

{¶3} Appellant filed a direct appeal with this court arguing his sentence was disproportionate to other defendants who committed similar crimes and that the trial court's imposition of consecutive sentences was contrary to law. *State v. Bishop*, 7th Dist. Jefferson No. 18 JE 0005, 2019-Ohio-2720. Finding no error, this court affirmed. *Id.* This court subsequently denied appellant's application for reopening. *State v. Bishop*, 7th Dist. Jefferson No. 18 JE 0005, 2019-Ohio-4963.

{¶4} On January 14, 2020, appellant filed a pro se motion for jail-time credit arguing that in addition to the time the trial court credited him, he was also entitled to four days of credit for the time he served in jail in Preston County, West Virginia, where he was held on this case beginning September 25, 2017. The trial court overruled the motion on January 26, 2020. Appellant did not appeal from this decision.

{¶15} On February 10, 2020, appellant filed another pro se motion for jail-time credit raising the same argument but this time requesting a hearing. The trial court overruled appellant's motion on February 11, 2020.

{¶16} On March 2, 2020, appellant filed another motion asking the trial court to reconsider its February 11, 2020 judgment. The trial court overruled appellant's motion the same day. It stated that it had overruled appellant's February 10 motion because appellant had failed to submit a copy of his waiver of extradition and that the waiver was what "starts the clock" on jail-time credit. The court then stated that the waiver of extradition was signed on September 27, 2017. This led the court to believe appellant received two days more than he was entitled to because the court was under the mistaken belief that appellant sought credit for the four days between September 21 and 25, 2017, instead of September 25 and 29, 2017. Appellant filed an appeal from this judgment.

{¶17} On appeal, this court found that appellant was entitled to jail-time credit for the four days he was held in jail in West Virginia. *State v. Bishop*, 7th Dist. Jefferson No. 20 JE 0006, 2021-Ohio-2356. We reversed the trial court's judgment and remanded the matter for further proceedings as to jail-time credit. *Id.* at ¶ 35. We instructed the trial court to provide plaintiff-appellee, the State of Ohio, an opportunity to respond to the motion should it wish to verify the period of qualifying West Virginia incarceration. *Id.*

{¶18} On remand, the trial court held a hearing on July 19, 2021. Appellant and the state agreed that appellant was entitled to four additional days of jail-time credit from September 25 to September 29, 2017. Additionally, at the hearing, appellant called the court's attention to a motion to discharge on speedy trial grounds that he had just filed. Appellant argued that he was entitled to dismissal of the charges on speedy trial grounds due to the additional four days of jail-time credit he was entitled to. The trial court rejected this argument and overruled appellant's motion finding that appellant's speedy trial time did not start until he was brought to Ohio.

{¶19} Appellant filed two timely notices of appeal on August 3, 2021. This court consolidated the two appeals.

{¶10} Still proceeding pro se, appellant now raises four assignments of error. Because each of appellant's assignments of error argues that the trial court erred in not

granting his motion to dismiss on speedy trial grounds, we will address the assignments of error together.

{¶11} Appellant's first assignment of error states:

TRIAL COURT ERRORED [sic.] IN CONTRAVENTION TO THE OHIO AND FEDERAL REV. CODE AND CASE LAW, WHEN THEY DEPRIVED DEFENDANT OF HIS UNITED STATES CONSTITUTIONAL RIGHTS OF THE 6TH AND 14TH AMENDMENT, SPEEDY TRIAL AND DUE PROCESS RIGHTS."

{¶12} Appellant's second assignment of error states:

THE TRIAL COURT ERRORED [sic.] WHEN THE COURT DENIED THE MOTION TO DISMISS CHARGES VERBALLY MADE BY BISHOP ON JULY 19, 2021, AFTER BISHOP HAS ESTABLISHED A PRIMA FACIE CASE, BEFORE THE STATE ANSWERED THE MOTION[.]

{¶13} Appellant's third assignment of error states:

THE TRIAL COURT ERRORED [sic.] WHEN THEY CLAIMED THAT BISHOP WAS ASKING FOR THE 4 ADDITIONAL DAYS GRANTED FOR JAIL TIME CREDIT TO BE COUNTED TOWARDS HIS SPEEDY TRIAL TIME.

{¶14} Appellant's fourth assignment of error states:

THE TRIAL COURT DID ERROR WHEN THEY CLAIMED THAT WHILE WAITING EXTRADITION THE TIME DOES NOT COUNT TOWARD THE 90 DAY SPEEDY TRIAL LIMIT.

{¶15} Appellant argues that the trial court should have granted his motion to discharge him because the state did not bring him to trial within the applicable 90-day speedy trial time. He claims his trial date was 102 days after he was arrested.

{¶16} After this court affirmed appellant's conviction and sentence in his direct appeal, he filed an application to reopen the appeal. We denied his application. *Bishop*,

2019-Ohio-4963. Later, in his appeal from the trial court’s judgment denying his motion for jail-time credit, this court referred to that application for reopening and pointed out:

Among the nine proposed assignments of error in Appellant's application for reopening, he alleged a speedy trial violation even though the issue was not raised in the trial court. In rejecting the argument, this court used September 29, 2017 as the date of arrest, which was the date reflected in the record, and concluded he was timely tried on day 90. *Id.* at ¶ 26, 29 (reduced from 270 days due to triple time with an instance of tolling on the request for discovery and a bill of particulars). Notably (as to the earlier date presented in the jail time credit motion), speedy trial time is tolled by “Any period during which the accused is unavailable for hearing or trial, * * * by reason of his confinement in another state, or by reason of the pendency of extradition proceedings, provided that the prosecution exercises reasonable diligence to secure his availability * * *.” R.C. 2945.72(A). See also *State v. Helms*, 7th Dist. Mahoning No. 14 MA 96, 2015-Ohio-1708, 2015 WL 1976359, ¶ 24-25 (arrival in Ohio after extradition proceedings was the arrest date for purposes of speedy trial time). Speedy trial is distinct from jail time credit.

Bishop, 2021-Ohio-2356, ¶ 6, fn. 1. Thus, this court has already determined that appellant was tried within the 90-day speedy-trial time limit.

{¶17} Moreover, the first time appellant raised a speedy trial issue was in his application to reopen. The issue of speedy trial cannot be raised for the first time on appeal. *State v. Paige*, 7th Dist. Mahoning No. 17 MA 0033, 2019-Ohio-1088, ¶ 68.

{¶18} Finally, even if we were to reach the merits of appellant’s argument, his claim would still fail. Pursuant to R.C. 2945.72(A), the speedy trial time is tolled for any time “during which the accused is unavailable for hearing or trial * * * by reason of his confinement in another state, or by reason of the pendency of extradition proceedings, provided that the prosecution exercises reasonable diligence to secure his availability.” R.C. 2945.72(A). This court has found that when the state does not unreasonably delay extradition, arrest in another state on an Ohio warrant and confinement awaiting

extradition does not count toward the speedy trial clock and the time is tolled until the defendant arrives in Ohio. *State v. Helms*, 7th Dist. Mahoning No. 14 MA 96, 2015-Ohio-1708, ¶ 24.

{¶19} Accordingly, appellants' four assignments of error are without merit and are overruled.

{¶20} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Jefferson County, Ohio, is affirmed. Costs to be waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.