

IN THE SUPREME COURT OF OHIO

STATE OF OHIO : Supreme Court #: 2007-1759  
: :  
PLAINTIFF-APPELLANT, : On Appeal from the Crawford  
: County Court of Appeals, Third  
Vs. : Appellate District  
: :  
SCOTT MASTERS : Court of Appeals Case #: 3-06-0020  
: :  
DEFENDANT-APPELLEE. :

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MEMORANDUM IN OPPOSITION TO CLAIM JURISDICTION OF APPELLANT STATE  
OF OHIO FILED BY APPELLEE SCOTT MASTERS

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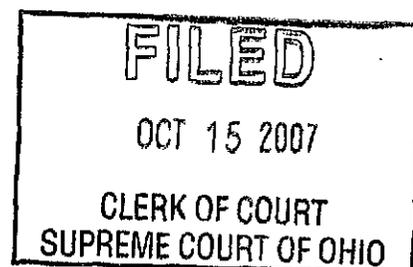


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**EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION AND THUS JURISDICTION SHOULD NOT BE GRANTED**

Contra to what the State argues, there was never a waiver of Defendant's right to a speedy trial of unlimited duration filed by the Defendant-Appellee. Contra to what State of Ohio argues the Third District Court of Appeals has not improperly rewritten the requirements involving Ohio's Speedy Trial Statute. Furthermore, the Court of the Appeals of the Third Appellate District has ruled that there is no conflict and denied the State's application to certify said conflict per its Journal Entry of September 25, 2007.

The Third District Court of Appeals has in fact reversed the trial conviction of the Appellee for felonious assault as the trial court violated the Appellee's right to a speedy trial.

The State of Ohio completely ignores the full opinion filed by the Court of Appeals and completely ignores the Judgment Entries filed by the trial court on February 15, 2006 and May 4, 2006 which is counter intuitive to the State's position that there was a waiver of Defendant's speedy trial of unlimited duration. Thus in fact there was no such waiver of unlimited duration and therefore all the arguments and cases cited by the State at the Appellant Court level and in its Memorandum in Support of Jurisdiction herein are not relevant or on point with the facts of this case. Therefore, there is nothing in this case that involved public or great general interest nor a substantial constitutional question.

**STATEMENT OF THE CASE AND FACTS**

The Defendant-Appellee, Scott Masters, was indicted on May 9, 2005 and was arraigned on May 13, 2005. The case was scheduled for jury trial on January 12, 2006 however on January 5, 2006 (237 days after arraignment) the Defendant-Appellee filed a motion to continue the case with the prosecutors consent in the effort to afford the parties more time to negotiate a settlement of the issues. In said motion there was the following language: "time is waived herein". The Trial Court granted the continuance and filed a judgment on February 15, 2006 setting the matter for trial on May 4, 2006. Said Entry further required that the Defendant would be required to file a waiver of his right to a speedy trial should the Defendant desire to continue the trial date of May 4, 2006. The Trial Court via the assignment commissioner without any explanation or

reason, took the trial date of May 4, 2006 out without motion of either party and with out any further time waiver by the Defendant contra the Trial Court's Entry of February 15, 2006. On May 4, 2006 the Trial Court via Entry set a new Trial date scheduling the case for trial on September 7, 2006 and again the Trial Court required that should the Defendant desire any further continuances the Defendant would again have to waive his right to a speedy trial. Thus, the Trial Court on February 15, 2006 and May 4, 2006 never treated the motion of January 5, 2006 to contain a time waiver of right to speedy trial of unlimited duration. This was noted and confirmed in the Appellant Court's Opinion on pages 9-12. Thus there has never been a waiver of a right to a speedy trial of unlimited duration as State suggests.

On June 27, 2006, (54 days after May 4, 2006) the Defendant-Appellee filed a Motion to Dismiss for want of a speedy trial as the time assigned to the state excluding the time from January 5, 2006 to May 4, 2006 would have been 291 days. The Trial Court overruled this however the Appellant Court also noted that regardless of the fact that there was no waiver of a right to a speedy trial of unlimited duration thus dispensing with the need by the Defendant to reassert such right via objection to the trail date of September, the Appellate Court went on in essence to point out in It's opinion that the trial Court " at the very least" should have been on notice that as of June 27,2006 the Defendant desired to have his right to a speedy trial and yet the Trial Court did nothing and allowed the Trial date of September 7, 2006 to remain. Thus an additional amount of time assignable to the State would have been 72 days or 363 days total. Thus the Appellate Court in essence found two reasons why the Trial Court erred: 1) there never was a waiver of the Defendant's right to a speedy trial of unlimited duration and therefore as of June 27, 2006 291 days had expired, 21 days beyond the speedy trial statute and 2) at the very least the trial should have been on notice as of June 27, 2006 the Defendant wanted his speedy trial rights yet nothing was done nor any explanation was given why the trial date remained for September 7, 2006 some 72 days after motion or at the very least a total of 36 days beyond the speedy trial statute.

**ARGUMENT IN RESPONSE TO THE STATE'S SUPPORT OF PROPOSITION OF  
LAW**

The State relies on the case of State vs. O'Brien (1987), 34 Ohio St. 3d 7, 9 and the case of Barker vs. Wingo (1972), 407 U.S. 514 which requires that if in fact the Defendant had

waived his right to a speedy trial of unlimited duration the Defendant must then revoke that waiver and demand his right to a speedy trial via objection and demand a jury trial in order for his right to a speedy trial to exist. Logic would indicate that if in fact there was never a waiver of unlimited duration filed by the Defendant then the requirement to revoke it and demand a trial would not be necessary to insure such right remained. In this particular case the Trial Court did not treat the waiver filed on January 5, 2006 as a waiver of Defendant's right to a speedy trial of unlimited duration but one of limited duration by requiring the Defendant to make such a waiver again post the first waiver. The appellate Court noted that the time waiver in the January motion was only for the time it would reasonably take to negotiate the settlement, in other words the time would have tolled until negotiations stopped or was not approved by the trial Court. Obviously the word "herein" was treated by the trial Court only as a tolling of time from January 5, 2006 to May 4, 2006 in light of its post January 5, 2006 judgments. Since no further waiver was filed as required by the trial Court and the Trial Court sua sponte took the jury trial out of assignment without explanation the Trial Court violated the Defendant's right to a speedy trial. Thus there is no inconsistency between jurisdictions nor did the Appellate Court rewrite this Court's previous ruling in the State vs. O'Brien (supra). Therefore there is no question of great public interest or constitutional question. Thus jurisdiction should be summarily denied.

Respectfully Submitted,



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Counsel for Defendant-Appellee

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing was served via Ordinary U.S. Mail, postage pre-paid, this 11<sup>th</sup> day of October 2007 upon Appellant's Counsel Clifford Murphy, at the address listed in the cover page.



PATRICK T. MURPHY