

IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

STATE OF OHIO,

Plaintiff-Appellant,

Vs.

DOUGLAS CENTAFANTI,

Defendant-Appellee.

CASE NO. 2007-1744

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

Court of Appeals
Case No. 2007CA00044

**MEMORANDUM IN OPPOSITION TO JURISDICTION
OF DEFENDANT-APPELLEE,
DOUGLAS CENTAFANTI**

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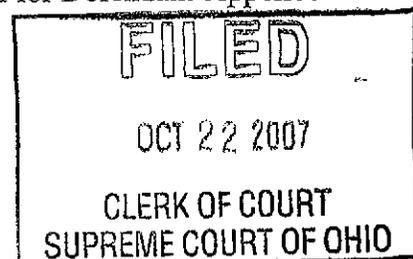


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**EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC
OR GREAT GENERAL INTEREST NOR A CASE THAT
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

The Fifth District Court of Appeals ruled that the Appellee caused notice of his availability pursuant to Revised Code 2941.401 to be delivered upon the prosecuting attorney and the court in which the matter was pending. Upon receipt of the notice, the state has a duty to bring the person to trial within one hundred eighty days. The notice contained the place of imprisonment and a request for final disposition of untried matters. Failure to bring the matter to trial within the time period provided divests the court of jurisdiction and the court shall dismiss with prejudice. Receipt of the notice and request triggers the duty of due diligence upon the prosecutor to timely bring the matter to trial.

R.C. 2901.13 requires reasonable diligence on the part of the prosecutor to commence the prosecution. It does not permit the prosecutor to benefit from a decision to ignore a prisoner's request for disposition and to pretend that the prisoner's whereabouts are unknown. The prisoner has a constitutional right to a speedy trial which, by its very nature imposes a duty upon the prosecution to exercise due diligence in examining a written notice asserting notice in compliance with R.C. 2941.401.

The Fifth District decision did not impose any greater burden or duty upon the prosecutor than is already required by law, that is to exercise reasonable diligence in the commencement of prosecution.

Furthermore, the Sixth Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment and Article I of the Ohio Constitution guarantee an accused the right to a speedy trial. Accordingly, no substantial

constitutional question is involved in this matter and the Appellee exercised his right to a speedy trial as guaranteed by law and the prosecutor ignored his request.

Accordingly, Defendant-Appellee requests that this Court deny jurisdiction.

SUPPLEMENT TO OF STATEMENT OF THE CASE AND FACTS

Upon the filing of the criminal complaints in the Alliance Municipal Court on July 25, 2005 against Appellee, warrants were issued for his arrest. No further evidence was submitted regarding attempts to serve the warrants upon Mr. Centafanti until his arrest on August 25, 2006.

Two letters from Attorney Jenkins were filed with the court, one on February 14 and one pm February 15, 2006. The letters advised the court, clerk of court, and prosecuting attorneys for the municipality and Stark County of the defendant's incarceration in Northeast Ohio Correctional Center, an Ohio state penal institution, the case number, the court of record and the judge who entered his conviction, the length of his sentence. It further advised that Mr. Centafanti was available for final adjudication of any and all indictments, informations and/or complaints pending against him.

Attorney Jenkins submitted an Affidavit setting forth service of the "Notice of Availability" to the court of record, Alliance Municipal Court, and the Alliance Prosecutor, among others. No evidence refuting this affidavit was presented.

Mr. Centafanti was arrested on the warrants mentioned above on August 25, 2006, at least one hundred ninety-one days after the second filing of the letter advising the court and prosecutor of his location and availability pursuant to R.C. 2941.401. Mr. Centafanti appeared for his arraignment in Alliance Municipal Court on August 28, 2006 and again for his preliminary hearing on August 30, 2006 when the matter was bound over to the Stark County Grand Jury. He was indicted on October 6, 2006, arraigned in Stark County Common Pleas Court on October 27, 2006 and the

matter was set for further proceedings. On December 22, 2006, the Common Pleas Court overruled the Motion to Dismiss for violations of the speedy trial portion of R.C. 2945.401. Mr. Centafanti entered a No Contest Plea to the charges on January 3, 2007, reserving for appeal the issues raised in the Motion to Dismiss.

The Court of Appeals did not reject the notion that the statute does not require the State to discover the whereabouts of an incarcerated defendant. The unrefuted evidence before the court indicated that the prosecutor had been advised of the location of the defendant.

**ARGUMENT IN OPPOSITION
TO APPELLANT'S PROPOSITIONS OF LAW**

R.C. 2945.401 provides for a defendant incarcerated in a penal institution in the State of Ohio to request final disposition of any untried indictments, complaints or information. The statute further sets forth a time frame within which the prisoner must be brought to trial 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. Upon receipt by the court and the prosecuting attorney of a prisoner's request for disposition, the state has one hundred and eighty days to bring the matter to trial.

Revised Code 2941.401 is the intrastate equivalent of the Interstate Agreement on Detainers as codified in Ohio pursuant to R.C. 2963.30. Fex v. Michigan, (1993) 113 S.Ct. 1085 sets forth the strict requirement that the 180 day time period commences upon receipt of the disposition request by the court and the prosecution. When an inmate in a penal institution has made a good-faith effort to call to the attention of the proper authorities that he desires a charge pending against him disposed, he is entitled to have such request acted upon. The failure of the authorities to do so constitutes the denial of a speedy trial. State v. Holt, (1992) 83 O.App. 3d 676, citing Smith v. Hooey, (1969) 393 U.S. 374. The initial duty is upon 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, (2004) 101 O.S. 3d 308. The purpose is to allow an incarcerated defendant an opportunity to have all pending charges resolved in a timely manner, preventing the state from delaying prosecution until after the defendant has been released from his prison term. Id. at 311. In the instant case, Mr. Centafanti notified the court and the prosecution of his location and his desire to resolve all pending charges. The record discloses that neither the court nor the prosecutor took any action on the letter. Mr. Centafanti substantially complied with the statute by sending his request and his location to the appropriate authorities thereby triggering the commencement of the 180-day time period within which the state needed to bring the defendant to trial.

In State v. Pierce, (2002) 2002 WL 337737, 2-02-Ohio-652 (Ohio App. 8 Dist. Feb 15, 2002) (No. 79376), Appeal not allowed by State v. Pierce, (2002) 96 O.S. 3d 1438, the court ruled that the defendant substantially complied with the requirements, thus commencing the running of the 180-day speedy trial period where defendant's attorney notified the court and the prosecuting attorney of the defendant's place of imprisonment. The information provided to the court and the prosecutor was sufficient to enable the prosecutor to verify the facts and make a decision on whether to prosecute the defendant on the pending charges, as the State has stated is the vital purpose.

Constitution guarantees of a speedy trial are applicable to unjustifiable delay in commencing prosecution as well as to unjustifiable delays after indictment. State v. Meeker, (1971) 26 O.S.2d 9. The U. S. Supreme Court, in Fex, supra., has stated that the time period set forth commences upon the delivery or receipt of the request for disposition, in this case receipt occurred February 15, 2006, at the latest as indicated by the filing by the court of the notice of availability.

CONCLUSION

For the reasons set forth, there exists no matter of great public or general interest nor is there a substantial constitutional question present in this matter. The prisoner caused notice of his availability for disposition of untried complaints to be delivered to the appropriate court and prosecutor contained the information necessary to comply. The prosecution did nothing until defendant was arrested and brought before the court in excess of the one hundred eighty days set forth in the statute. Therefore, appellee respectfully requests that this Court deny jurisdiction in this matter.

Respectfully submitted,



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COUNSEL FOR APPELLEE

PROOF OF SERVICE

A copy of the foregoing Memorandum in Opposition to Jurisdiction was duly served by personal service upon Kathleen O. Tatarsky at the Stark County Prosecuting Attorney's Office, 5th Floor, 110 Central Plaza South, Canton, Ohio 44702, this 19th day of October, 2007.



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