

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

---

MERIT BRIEF  
OF PLAINTIFF-APPELLANT,  
STATE OF OHIO

---

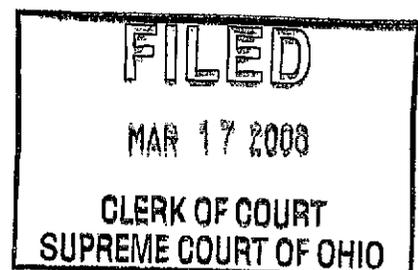
JOHN D. FERRERO  
PROSECUTING ATTORNEY,  
STARK COUNTY, OHIO

By: KATHLEEN O. TATARKSY  
Ohio Sup. Ct. Reg. No. 0017115  
(Counsel of Record)  
RENEE WATSON  
Counsel for Defendant-Appellee  
Ohio Sup. Ct. Reg. No. 0072906  
Assistant Prosecuting Attorney  
Appellate Division  
P.O. Box 20049  
Canton, Ohio 44701-0049  
(330) 451-7897  
FAX: (330) 451-7965

Counsel for Plaintiff-Appellant

JEAN MADDEN  
Ohio Sup. Ct. Reg. No. 0046672  
Stark County Public Defender  
200 W. Tuscarawas Street  
Suite 200  
Canton, Ohio 44702  
(330) 451-7200  
FAX: (330) 451-7227

Counsel for Defendant-Appellee



**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF FACTS .....	1
ARGUMENT	
<b>PROPOSITION OF LAW NO. 1:</b>	
<b>WHERE A CRIMINAL DEFENDANT IS AWARE OF PENDING CRIMINAL CHARGES AND FAILS TO ACCOMPANY HIS WRITTEN NOTICE UNDER R. C. 2941.401 WITH A CERTIFICATE OF THE WARDEN STATING THE FACTS OF HIS COMMITMENT, THE SPEEDY TRIAL TIME IS TOLLED WHILE HE IS IN PRISON .....</b>	
	7
CONCLUSION .....	19
PROOF OF SERVICE .....	21
APPENDIX	
	<u>App. Page</u>
Notice of Appeal to the Ohio Supreme Court (September 20, 2007) .....	1
Judgment Entry of the Court of Appeals for Stark County, Ohio [Fifth Appellate District] from which the appeal is taken (August 6, 2007) .....	4
Opinion relating to the Judgment being appealed (August 6, 2007) .....	5
Judgment Entry of the Stark County Court of Common Pleas No Contest Plea - Finding Guilty by Court and Sentence (February 23, 2007) .....	20
Judgment Entry of the Stark County Court of Common Pleas Denying Motion to Dismiss the Indictment (December 22, 2006) .....	25

Constitutional Provisions; Statutes

R.C. 2941.401 [Request by a prisoner for trial on pending charges] ..... 26

R.C. 2945.71 [Time within which hearing or trial must be held] ..... 27

R.C. 2963.30 [Interstate agreement on detainees] ..... 29

**TABLE OF AUTHORITIES**

Page

**CASES**

*Commonwealth v. Copson*, (2005) 444 Mass. 609, 830 N.E.2d 193 ..... 18

*Fex v. Michigan* (1993), 507 U.S. 43, 113 S.Ct. 1085,  
122 L.Ed.2d 406 ..... 13, 14, 18

*Seain v. Weimer* (1944), 143 Ohio St. 312, 55 N.E.2d 413 ..... 10

*State v. Broughton* (1991), 62 Ohio St. 3d 253, 581 N.E. 2d 541 ..... 7

*State v. Brown*, 84 Ohio App.3d 414, 616 N.E.2d 1179 ..... 12

*State v. Centafanti*, Stark App. No. 2007CA0044, 2007-Ohio-4036 ..... 5-6, 8, 15

*State v. Dillon*, 114 Ohio St.3d 154, 2007-Ohio-3617, 870 N.E.2d 1149 ..... 10, 16

*State v. Ferguson* (1987), 41 Ohio App.3d 306, 535 N.E.2d 708 ..... 16, 17

*State v. Gill*, Cuyahoga App. No. 82742, 2004-Ohio-1245 ..... 16

*State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969,  
804 N.E.2d 471 ..... 10, 12

*State v. Mourey*, 64 Ohio St.3d 482, 1992-Ohio-32, 597 N.E.2d 101 ..... 17, 18

*State v. Roberts*, Wood App. No. WD-04-028, 2004-Ohio-5509 ..... 11

*State v. Smith*, 140 Ohio App.3d 81, 2000-Ohio-1777, 746 N.E.2d 678 ..... 8

*Tripoli v. Ohio Liquor Control Commission* (1970), 21 Ohio App.2d 110,  
255 N.E.2d 294 ..... 13

**OTHER AUTHORITIES**

R.C. 1901.20(B) ..... 14

R.C. 2909.05(B)(1)(a) ..... 4

R.C. 2913.02 ..... 1

R.C. 2923.02 ..... 1

R.C. 2941.401 ..... 5-15, 18-19

R.C. 2945.71 ..... 7, 9, 14, 18

R.C. 2953.30 ..... 13

R.C. 2963.30 ..... 7, 9

R.C. 2963.63 ..... 16

## STATEMENT OF FACTS

On July 25, 2005, Detective Michael Yarian of the Alliance Police Department filed two separate criminal complaints against appellee, Douglas Centafanti, in the Alliance, Ohio Municipal Court. One complaint charged him with grand theft of a motor vehicle.<sup>1</sup> The other complaint charged him with attempted breaking and entering and obstructing official business.<sup>2</sup> The charges arose when Centafanti, on June 5, 2005, stole a van from Mount Union College and then kicked in the garage doors of Horizon Audio while attempting to enter the building. When the police arrived in response to the alarm, Centafanti fled the scene after being told to stop.<sup>3</sup> Centafanti was not arrested.

Rather, the complaints were filed and the Alliance Municipal Court Deputy Clerk determined there was probable cause to issue the complaints and, that same day, issued a warrant for Centafanti's arrest. Again, Centafanti was not arrested. Rather, on September 25, 2005, the court's docket on the grand theft charge indicates "no plea taken; defendant not available for prosecution." (Stipulation ¶4, JE9).<sup>4</sup>

The next entry on both court dockets is dated February 14, 2006 and bears the notation "[F]iled letter from Attorney James A. Jenkins. That letter is dated February 13, 2006 and

---

<sup>1</sup>R.C. 2913.02 (F4).

<sup>2</sup>R.C. 2923.02 (M1); R.C. 2921.31(M2).

<sup>3</sup>The facts are taken from the Stipulations of Fact entered into by the parties after appellee filed a motion to dismiss the indictment, *State v. Centafanti*, Stark County Common Pleas Court, Case No. 2006CR1409, Dec. 20, 2006, Joint Exhs. 4, 5, 6.

<sup>4</sup>The grand theft of motor vehicle charge was assigned Case No. 2005CRA00858. The other charges were assigned Case No. 2005 CRB 00859 and the docket contains no similar notation.

addressed to the Clerk of Courts, Criminal Division, Alliance Municipal Court. Bearing no case numbers, the letter stated:

February 13, 2006  
*By certified mail*

Re: Douglas Centafanti  
Born: 8/22/76  
Soc. Sec. #272-74-6310

To whom it may concern:

Please be advised that the captioned individual is currently incarcerated at the Northeast Ohio Correctional Center (C.C.A.) in Hubbard, Ohio as a result of his conviction in Case No. 4:00CR00468-001 in the federal court for the Northern District of Ohio, Eastern Division. He was sentenced to a six month jail term and has commenced serving his prison term per Judge Donald C. Nugent. Wherefore, Douglas Centafanti is available for final adjudication of any and all indictments, informations, probation violations and/or complaints which are or may now be pending against him in your jurisdiction, including any warrants for outstanding fines, costs or other sentences.

This notice of availability is given to your court and that of the prosecuting attorney pursuant to Ohio Revised Code §2945.71 and §2941.401.

Very truly yours,

JAMES A. JENKINS  
Stipulations ¶5-9

The identical letter was filed in each case.<sup>5</sup> While the letter indicated in a “cc” that it was sent to the Stark County and Municipal Prosecutors, there is no evidence in the record of their receipt of the letter. And nothing was pending in the Common Pleas Court at the time the letter

---

<sup>5</sup>Stipulation ¶7 indicated that Joint Exhibit 10 was addressed to the Stark County Clerk of Courts Criminal Division and was received by the Clerk of Courts of the Alliance Municipal Court.

was filed. Centafanti was unable to produce green cards or other indicia of certified mail receipt. (Stipulations ¶5-9). What is more, there is no evidence that Centafanti or his attorney notified the warden or superintendent having custody of him of his “notice of availability” request or, for that matter, that the warden or superintendent was aware of the Alliance Municipal Court criminal complaints. (Stipulation ¶10). Also significant, the letter was not accompanied by a certificate of the warden or superintendent having custody of Centafanti stating his term of commitment, the time served and remaining to be served, the amount of good time earned or parole eligibility. All that the letter said was that Centafanti was in a federal prison in Ohio serving a six month prison term as the result of a conviction in Case No. 4:00CR00468-001 imposed by Judge Donald Nugent. (Stipulations ¶10-12). And finally, the “notice of availability” did not request a final disposition of any pending charges.<sup>6</sup>

Centafanti served his federal prison term with no detainer lodged by the State of Ohio. (Stipulation ¶16).

On August 25, 2006, Centafanti was arrested on the warrants issued from the Alliance Municipal Court and was jailed at the Stark County Jail. On August 28, 2006, he appeared before the Hon. Robert Lavery of the Alliance Municipal Court, was appointed counsel and released from jail on his own personal recognizance. A preliminary hearing on the grand theft charge was held on August 30, 2006 and the felony case was bound over to the Stark County Grand Jury.

On October 6, 2006, the Stark County Grand Jury indicted Centafanti on charges of

---

<sup>6</sup>Stipulation ¶11. “Neither Joint Exhibit 10 or 11, nor any other correspondence from defendant or his counsel, were accompanied by a certificate, letter, or other notification from a state or federal prison warden regarding defendant’s incarceration.”

Grand Theft of a Motor Vehicle and Attempt to Commit an Offense [Breaking and Entering]. The indictment also contained an felony additional charge - Vandalism.<sup>7</sup> The charges all stemmed from Centafanti's criminal conduct on June 5, 2005.

Centafanti pleaded not guilty to the charges in the indictment and the case proceeded to disposition before Judge John G. Haas of the Stark County Common Pleas Court. Prior to trial, Centafanti filed a motion to dismiss arguing that he exercised his "notice of availability" rights under R.C. 2945.71 and R.C. 2941.401 when Attorney Jenkins sent the letter to the Alliance Municipal Court on his behalf. Because he was not tried within 180 days of the "notice of availability" letter admittedly received by the Alliance Municipal Court Clerk of Courts on February 14, 2006, Centafanti claimed the trial court had no jurisdiction to proceed on the charges.

After receiving the stipulations of facts, the joint exhibits and hearing the arguments of the parties, the motion to dismiss was overruled by the trial court.<sup>8</sup>

Centafanti then pleaded no contest to the charges in the indictment and the trial court found him guilty. He was sentenced to nine months in prison on the grand theft, nine months in prison on vandalism and six months in jail on the charge of attempt to commit an offense

---

<sup>7</sup>R.C. 2909.05(B)(1)(a) [F5].

<sup>8</sup>*State v. Centafanti*, Stark County Common Pleas Court, Case No. 2006CR1409, December 22, 2006

The Court finds said motion not well-taken and overrules the motion to dismiss. The defendant did not comply with the provisions of the Ohio Revised Code which are applicable. Revised Code Section 2941.401.

It is therefore ordered that the motion to dismiss is hereby overruled.

[breaking and entering]. The trial court ordered the sentences to run concurrently and granted Centafanti a stay pending his appeal to the Fifth District Court of Appeals [Stark County].

On August 6, 2007, the Court of Appeals [Stark County] announced its decision reversing the judgment of the Court of Common Pleas of Stark County, Ohio and entered final judgment for Centafanti. *State v. Centafanti*, Stark App. No. 2007CA00044, 2007-Ohio-4036. Finding R.C. 2941.401 the applicable statute, the Court of Appeals found that Centafanti did not strictly follow the mandates of R.C. 2941.401 in that he did not provide a certificate of the warden or superintendent having custody of him. Nonetheless, the Court excused Centafanti from this statutory mandate because the required information arrived at the proper place:

For appellant [Centafanti] to have strictly followed the R.C. §2941.401 requirement, he should have given his written notice to the prison authorities, who should have forwarded it to the prosecutor and court along with a certificate of inmate status. However, it is clear that, although appellant did not strictly follow that path, the required information arrived at the proper place.

*State v. Centafanti*, Stark App. No. 2007CA00044, 2007-Ohio-4036 ¶41.

The Court of Appeals adopted a “substantial compliance” standard finding that as long as a defendant made an effort to notify the proper authorities of his availability to dispose of all pending charges, he is entitled to have his request acted upon, notwithstanding his failure, even with the assistance of counsel, to provide a warden’s certificate of inmate status. Rejecting the notion that the statute does not require the State to discover the whereabouts of an incarcerated defendant against whom criminal charges are pending, the court of appeals suggested there was clear evidence the State knew the location where Centafanti was incarcerated.

Unlike *Hairston*, in the case sub judice, there is clear evidence the State knew the location where appellant was incarcerated. In the instant case, appellant sent a letter to the appropriate prosecutor's office and court, notifying them of his location of imprisonment and demanding a final disposition.

*State v. Centafanti*, supra, ¶52.

The Court of Appeals then found that the State should have taken one of three actions. With no acknowledgment that Centafanti was in a prison under the jurisdiction of the Federal Bureau of Prisons, the Court of Appeals found the State could have communicated with the warden of the institution to obtain the appropriate certificate. If not that, the State could have contacted the attorney who filed the notice and told him to forward the necessary information. Or, finally, the State could have notified the warden or superintendent of the pending charge against the prisoner who could have, in turn, notified the prisoner.<sup>9</sup> What the State could not do, according to the Court of Appeals, was to avoid the application of R.C. §2941.401 altogether. The State had a duty, once the letter was received by the Alliance Municipal Court from Centafanti's attorney, to assist him in perfecting his "notice of availability."

---

<sup>9</sup>*State v. Centafanti*, supra, ¶52.

## ARGUMENT

### PROPOSITION OF LAW NO. 1:

**Where a criminal defendant is aware of pending criminal charges and fails to accompany his written notice under R. C. 2941.401 with a certificate of the warden stating the facts of his commitment, the speedy trial time is tolled while he is in prison.**

#### **A. Applicable Legal Principles**

Ohio has enacted two statutes designed to assist prisoners clear up outstanding criminal charges while imprisoned on an unrelated case. Interstate detainer cases, which involve prisoners who are confined in another state or a federal prison and have a detainer lodged against them are governed by R.C. 2963.30. Intrastate detainer cases, which involve prisoners who are confined in a state correctional institution and have a state charge pending against them are governed by R. C. 2941.401. Finally, criminal cases generally are governed by R. C. 2945.71, Ohio's speedy trial statute which provides that in the absence of waiver of the speedy trial period a felony trial must commence within 270 days after the person's arrest. While these statutes apply to different situations, they all reflect the same policy of assuring an accused the right to a speedy trial provided for in the Sixth Amendment to the United States Constitution and in Section 10, Article 1 of the Ohio Constitution.<sup>10</sup> What is more, the facts of each case may not readily fit the specific statutes. Here, Centafanti was imprisoned in Hubbard, Ohio in a federal prison. Yet, no detainer was lodged against him to invoke Article III of the IAD.<sup>11</sup>

---

<sup>10</sup>*State v. Broughton* (1991), 62 Ohio St. 3d 253, 256, 581 N.E. 2d 541, 544.

<sup>11</sup>Article III(a) of the IAD [R.C. 2963.30] states:

Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment

The Court of Appeals here applied R.C. 2941.401 saying “R.C. 2941.401 applies to defendants who are imprisoned within the State of Ohio. *State v. Smith*, 140 Ohio App.3d 81, 85-86, 2000-Ohio-1777, 746 N.E.2d 678, 682.”<sup>12</sup> Indeed, Centafanti’s “notice of availability” letter invoked the provisions of R.C. 2941.401.

R.C. 2941.401 is a method provided by the legislature for an accused serving a sentence on an unrelated crime in a correctional institution of this state to trigger the speedy trial rights provided by the Constitution and states in part:

When a person has entered upon a term of imprisonment in a correctional institution of this state, and when during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he shall be brought to trial within one hundred eighty days 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, except that for good cause shown in open court, with the prisoner or his counsel present, the court may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the warden or superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time served and remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the adult parole authority relating to the prisoner.

The written notice and request for final disposition shall be given or sent by the prisoner to the warden or superintendent having custody of him, who shall promptly forward it with the certificate to the appropriate prosecuting attorney and court by registered or certified mail, return receipt requested.

---

there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer’s jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint.....

<sup>12</sup>*State v. Centafanti*, supra, at ¶28.

The warden or superintendent having custody of the prisoner shall promptly inform him in writing of the source and contents of any untried indictment, information, or complaint against him, concerning which the warden or superintendent has knowledge, and of his right to make a request for final disposition thereof.

....

If the action is not brought to trial within the time provided, subject to continuance allowed pursuant to this section, no court any longer has jurisdiction thereof, the indictment, information, or complaint is void, and the court shall enter an order dismissing the action with prejudice.

R. C. 2941.401

The issue before this Court is whether the notice of availability letter sent by Centafanti's counsel to the Alliance Municipal Court triggered R.C. 2941.401 [request by a prisoner for trial on pending charges] and the speedy trial rights accorded to defendants generally under R.C. 2945.71.<sup>13</sup>

---

<sup>13</sup>Centafanti was not incarcerated in a correctional institution of this state. R. C. 2967.01 defines a state correctional institution as "any institution or facility that is operated by the department of rehabilitation and correction and that is used for the custody, care, or treatment of criminal, delinquent, or psychologically or psychiatrically disturbed offenders. Accordingly, a preliminary issue arises on whether the statute found relevant by the Court of Appeals - R. C. 2941.401 - is relevant at all. R. C. 2963.30 is Ohio's codification of the interstate agreement detainer (IAD) applicable to prisoners detained in prisons in other states and federal prisons. One of the central provision of the IAD is Article III which provides a procedure for a prisoner against whom a detainer has been filed to demand a speedy disposition of the charges giving rise to the detainer. The procedure for making such a request is similar to R. C. 2941.401. The State did not file a detainer against Centafanti and accordingly the IAD is not applicable here. Because the method for demanding a final disposition is almost identical, cases analyzing the IAD are, however, relevant.

## **B. Discussion**

### **1. THE STATUTE - R. C. 2941.401 - IS CLEAR AND FREE FROM AMBIGUITY. ONLY A CHANGE OF LAW WILL CURE CENTAFANTI'S FAILURE TO COMPLY.**

Ohio courts are permitted to interpret a statute only when the words of the statute are ambiguous. Compliance with R.C. 2941.401 is mandatory. As this Court noted in interpreting R.C. 2941.401, the statute is not ambiguous, saying in *State v. Hairston*, “[I]f it is not ambiguous, then we need not interpret it, we must simply apply it.”<sup>14</sup> Similarly, in *State v. Dillon*, this Court found that the statute is unambiguous.<sup>15</sup> In rejecting the notion that a prisoner who knows about an untried indictment does not have to be notified in writing of the source and contents of any untried indictment known to the warden, this Court held that R.C. 2941.401 is unambiguous - a writing by the warden is required:

The issue presented in this case is whether an inmate’s awareness of a pending indictment and of his right to request trial on the pending charges satisfies the notification requirements of R. C. 2941.401. We hold that it does not. R. C. 2941.401 requires a warden or prison superintendent to notify a prisoner ‘in writing of the source and contents of any untried indictment’ and of his right’ to make a request for final disposition thereof.’

*State v. Dillon*, supra, at ¶1.

Because the statute - R.C. 2941.401 - is unambiguous, Centafanti was obligated to strictly comply with it. Absent strict compliance with the statute, the State was not obligated to bring Centafanti to trial within 180 days of receipt of the letter by the Clerk of the Alliance Municipal

---

<sup>14</sup>*State v. Hairston*, 101 Ohio St.3d 308 ¶13, 2004-Ohio-969, 804 N.E.2d 471 citing *Seain v. Weimer* (1944), 143 Ohio St. 312, 55 N.E.2d 413, Para 5 of the syllabus (holding that an unambiguous statute is to be applied not interpreted).

<sup>15</sup>*State v. Dillon*, 114 Ohio St.3d 154, 2007-Ohio-3617, 870 N.E.2d 1149.

Court. This decision of the Court of Appeals [Fifth District] must therefore be reversed.

**a. Notice of availability letter of February 13, 2006 not accompanied by certificate of warden.**

It is undisputed that the notice of availability letter of February 13, 2006, upon which Centafanti now relies was not accompanied by a certificate of the warden or superintendent having custody of him during his term of imprisonment on unrelated charges. R.C. 2941.401 sets forth the defendant's duties and responsibilities to afford him the statute's benefits. Glaring among those duties is the requirement that the request be accompanied by a warden's certificate stating the term of commitment, the time served and remaining to be served, amount of good time earned, parole eligibility and any decisions of the adult parole authority relating to the prisoner. Here, Centafanti's attorney, by strategic choice or error, did not comply with this portion of the statute.

The purpose of such a certificate is obvious. A third person, the warden, provides facts upon which the prosecutor can rely to make decisions on whether to continue the prosecution of the defendant on the pending charges. If the defendant was serving a lengthy prison sentence, perhaps a prosecutor would decide to save the state's resources and dismiss lower level charges. Without such a completed certificate by the warden, however, the prosecutor cannot make that decision. And the assertions of an inmate are not sufficient as an inmate may allege facts which may or may not be accurate.

The certificate of the warden serves the legitimate, reasonable purpose of providing an independent source of information on the defendant. A certificate of inmate status completed by the warden is required under R.C. 2941.401 informing the prosecutor of the inmate's status and

it is incumbent upon the prisoner, desiring to exercise his 2941.401 rights to provide it. *State v. Roberts*, Wood App. No. WD-04-028, 2004-Ohio-5509, ¶8 (holding that statutory 180 day period for bringing prisoner to trial under speedy trial statute did not begin to run until defendant's completed "certificate of inmate status form" was received. *State v. Brown*, 84 Ohio App.3d 414, 616 N.E.2d 1179, juris. motion overruled 66 Ohio St. 3d 1467 (holding that court was not obligated to bring defendant to trial within 180 days where defendant failed to comply with other requirements of statute including failure to file certificate by warden or superintendent having custody of him).

Because Centafanti's "notice of availability" request, ironically written by his duly licensed attorney, failed to attach a certificate of the warden as mandated by R.C. 2941.401, it triggered no speedy trial rights.

**b. Notice of availability letter of February 13, 2006 contained no request for final disposition as required under R. C. 2941.401.**

Centafanti's letter of February 13, 2006 states in relevant part: "Wherefore, Douglas Centafanti is available for final adjudication of any and all indictment, informations, probations violations and /or complaints." (Joint Exhibit 10, 11). The letter does not contain a request by Centafanti that any charges pending against him be disposed of, either by trial or dismissal. As this Court noted in *State v. Hairston*, R.C. 2941.401 places a duty on an incarcerated defendant to provide in his written notice that "a request for a final disposition [to] be made of the matter."

<sup>16</sup> While this defect alone may seem of small consequence, it again demonstrates a failure to comply with the mandates of R.C. 2941.401. The letter was prepared by a duly licensed attorney

---

<sup>16</sup>*State v. Hairston*, supra, at ¶26.

presumed to know the law. Yet, it fails to demand disposition of pending charges and was not sent to the warden or superintendent having custody of Centafanti.

**c. No evidence that prosecutor received notice of availability letter.**

In order to invoke the speedy trial provisions of R.C. 2941.401 and R.C. 2953.30 (IAD), a prisoner must deliver 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. R.C. 2941.401. The 180 day time period does not commence until the prisoner's request for final disposition is actually delivered to the court and the prosecuting officer. See *Fex v. Michigan* (1993), 507 U.S. 43, 113 S.Ct. 1085, 1091, 122 L.Ed. 2d 406, 415-416 (holding that the 180 time period in Article III(a) of the IAD "does not commence until the prisoner's request for final disposition of the charges against him has actually been delivered to the court and prosecuting officer....").

The record reveals that on or about February 14, 2006, the letters were received by the Alliance Municipal court and noted on the dockets. The record, however, does not demonstrate that the prosecutors received the notice of availability letter. Centafanti could not produce certified mail receipts showing dates of delivery, a green card or other indicia of certified mail. All that Centafanti was able to generate was an affidavit signed by the attorney stating "To the best of my knowledge, these Notices were properly delivered to those parties listed above." (Stipulations ¶8,9).

When an item is sent by certified mail, return receipt requested, and a signed receipt is returned to the sender, a prima facie case of delivery to the addressee is established. *Tripoli v. Ohio Liquor Control Commission* (1970), 21 Ohio App.2d 110, 112, 255 N.E.2d 294, 296. Here,

Centafanti produced no credible evidence that the prosecutors, either the Alliance City Prosecutor or the Stark County Prosecutor, received his notice of availability letter. The *Fex* rule requires that the prisoner wishing to exercise his speedy trial rights on untried complaints demonstrate that the request was actually delivered to the prosecuting attorney. This is particularly true here where Centafanti seeks to circumvent the role of the prison warden or superintendent. Again, this conduct demonstrates, by strategic choice or negligence that Centafanti did not comply with the statute.

**2. DUTIES IMPOSED ON STATE BY COURT OF APPEALS NOT CONTEMPLATED BY R. C. 2941.401 AND R. C. 2945.71.**

Instead of recognizing Centafanti's multiple failures to comply with his statutory obligations, the Court of Appeals imposed a duty of due diligence upon the State's prosecutors to examine every written notice that comes across their desks purporting to trigger R.C. 2941.401 and supply the missing information - information that the statute clearly directs the inmate to provide. Even then, the State's prosecutors must assume this duty when they do not receive a request and it is only filed in the municipal court where the felony charge rests pending a preliminary hearing.<sup>17</sup> What is more, this duty is assumed, according to the Court of Appeals, even if the inmate is represented by an attorney and incarcerated in a federal prison.

After making the erroneous assumption that the letter was received by the prosecutor's

---

<sup>17</sup>See R.C. 1901.20(B):

The municipal court has jurisdiction to hear felony cases committed within its territory. In all felony cases, the court may conduct preliminary hearings and other necessary hearings prior to the indictment of the defendant or prior to the court's finding that there is probable and reasonable cause to hold or recognize the defendant to appear before a court of common pleas and may discharge, recognize, or commit the defendant.

office and that it demanded a final disposition, the Court of Appeals found that the State should have taken one of three actions. First, the State could have communicated with the warden of the institution to obtain the appropriate certificate. Second, the State could have contacted the attorney who sent the letter and told him to forward the necessary information. Or finally, the State could have notified the warden or superintendent of the pending charge against the prisoner who could have, in turn, notified the inmate.<sup>18</sup> In other words, the State had a duty, once the letter was received by the Alliance Municipal Court from Centafanti's counsel, to assist him in perfecting a demand for speedy disposition of the pending charges under R.C. 2941.401.

This burden is simply not one contemplated by the legislature when it enacted R.C. 2941.401, particularly where the inmate is incarcerated in a federal prison and represented by an attorney presumed competent to know the law. Meanwhile, the Court of Appeals does not explain when the 180 day time period begins to run - the date the attorney is notified, the date the warden knows of the charges, or the date the necessary information is forwarded to the court.

**3. WHERE CENTAFANTI CIRCUMVENTED THE STATUTE BY FAILING TO ATTACH THE CERTIFICATE OF THE WARDEN, THE DOCTRINE OF SUBSTANTIAL COMPLIANCE DOES NOT APPLY.**

The Court of Appeals found that Centafanti substantially complied with the requirements of R.C. 2941.401 and therefore the trial court abused its discretion in denying his motion to dismiss saying “[A]ccordingly, we find that appellant substantial complied with R.C. 2941.401, and that the court erred by denying his motion to dismiss the charges against him. We emphasis that this is not a case where a defendant simply made a blanket demand; rather appellant was represented by counsel who filed a specific request in the appropriate court where the untried

---

<sup>18</sup>*State v. Centafanti*, supra, ¶52.

indictment was pending.”<sup>19</sup> The Court of Appeals erred in finding that substantial compliance excused Centafanti’s failure to comply with an unambiguous statute.

The doctrine of substantial compliance cannot apply unless a prisoner has taken every step that could reasonably be expected of him and because of a prison snafu - no fault of the inmate - strict compliance with the statute was not met. Cases in the lower courts interpreting both R.C. 2945.401 and its interstate counterpart, R.C. 2963.63 are instructive. In *State v. Ferguson*, for example, defendant tried to comply with the statute and a prison error sent the notice to the wrong party.<sup>20</sup> In *State v. Gill*, the inmate complied with the statute by sending the notice to the warden. Due to an error in the warden’s office, a second copy was not sent to the clerk of court’s office. The warden’s error was not imputed to the defendant and the court of appeals found that notice to the warden complied with the statute.<sup>21</sup> Here, Centafanti’s failure to comply with the statute was more than a prison snafu. Through his attorney, Centafanti, deliberately or negligently, disregarded the statute’s requirements in several respects. Most important, he failed to accompany his letter with the crucial certification from the warden. But also significant, he cannot prove that the prosecuting attorney received his letter or that it contained a request for disposition. As the Franklin County Court of Appeals noted in *State v. Ferguson* in discussing R. C. 2953.30 [IAD], a defendant must do everything that is reasonably expected of him before he can invoke the provisions of a prisoner speedy trial statute:

---

<sup>19</sup>*State v. Centafanti*, supra, at ¶53.

<sup>20</sup>*State v. Ferguson* (1987), 41 Ohio App.3d 306, 535 N.E.2d 708, appeal dismissed as improvidently allowed, 40 Ohio State 3d 602, 530 N.E. 2d 1327.

<sup>21</sup>*State v. Gill*, Cuyahoga App. No. 82742, 2004-Ohio-1245.

Thus, we believe there is first a burden on the defendant to substantially comply with the Interstate Agreement on Detainers request requirement by doing everything that could reasonably be expected. Once the defendant fulfills this burden, however, the burden is then placed upon the states to cooperate and bring the accused to trial within one hundred eighty days.

*State v. Ferguson*, supra, at 311.

This Court, in *State v. Mourey*, 64 Ohio St.3d 482, 1992-Ohio-32, 597 N.E.2d 101, discussed the doctrine of substantial compliance vis a vis the requirements of the IAD statute. In *Mourey*, defendant, imprisoned in California, filled out a form entitled "Inter-State Agreement on Detainers Penal Code Section 1389." The form contained information on his place of imprisonment, his request for a final disposition, his name, inmate number, the crime he was convicted of in California, the court that sentenced him, the date and term of sentence and that a hold was filed with the warden of the California prison. The form was sent via certified mail and received by the Franklin County Prosecutor's Office. The defendant was not brought to trial within 180 days. After the defendant's motion to dismiss for speedy trial was dismissed by the trial court, defendant was found guilty of trafficking in cocaine. On appeal, the court of appeals reversed finding that the defendant substantially complied with the IAD request requirements. After accepting the State's appeal, this Court affirmed the finding of the Franklin County Court of Appeals. In finding that a substantial compliance standard was proper, this Court said:

Upon a careful review of the record, we believe defendant did everything reasonably required of him that was within his control when he 'caused to be delivered' his IAD request form to the California prison officials. We therefore embrace the substantial-compliance standard as being closer to effectuating the purposes of the IAD, because a strict interpretation of the agreement tends to hold the prisoner accountable for measures and duties that are totally beyond his or her control.

*State v. Mourey*, 64 Ohio St.3d at 487.<sup>22</sup>

Even if, then, this Court accepts a substantial compliance standard for 2945.401 requests, Centafanti did not do everything that he could to comply with the statute. At the very least, when Centafanti chose to usurp the role of the warden, he was required to provide the State with all the information required in a certificate of inmate status. This includes a request for final disposition stating the term of commitment, the time served and remaining to be served, the amount of good time earned if any, the time of parole eligibility and any decisions of the adult parole authority relating to the prisoner. R.C. 2941.401. The information and certificate is not “mere ritual” as noted by the Supreme Court of Massachusetts in *Commonwealth v. Copson*.<sup>23</sup> The information is critical to enable the State to decide on an appropriate course of action with respect to untried charges.

Because Centafanti did not comply with R.C. 2941.401 or even substantially comply, the charges against Centafanti fall within Ohio’s general speedy trial statute. R.C. 2945.71 provides that a defendant must be brought to trial on felony charges within 270 days after the person’s arrest. Since Centafanti was arrested on the charges on August 25, 2006, his speedy trial rights commenced on that date and were not violated.

---

<sup>22</sup>c.f. *Fex v. Michigan*, supra at 52, 113 S. Ct. 1085 (holding that 180 day period commences when request is received by prosecuting attorney).

<sup>23</sup>*Commonwealth v. Copson*, (2005) 444 Mass. 609, 830 N.E. 2d 193, 194.

## CONCLUSION

Centafanti was incarcerated in a prison in Hubbard, Ohio under the jurisdiction of the Federal Bureau of Prisons at the time his counsel sent a “notice of availability” letter to the Alliance Municipal Court. The Court of Appeals [Fifth District] applied R.C. 2941.401 and held that Centafanti substantially complied with the statute when an attorney, on Centafanti’s behalf, sent a notice of availability letter to the Alliance, Ohio Municipal Court where an untried complaint was pending.

R.C. 2941.401 provides an incarcerated defendant a chance to have all pending charges resolved, preventing the state from delaying prosecution until after he is released from his prison term. To receive the benefit of the statute, however, the defendant must comply with the statute’s requirements. Compliance includes notifying the court and prosecuting attorney, accompanied by a certificate by a warden or superintendent setting forth information crucial to ensure that the State has all the information it needs to make an informed decision. A defendant like Centafanti cannot avoid prosecution by simply failing to comply with the statute and then claiming that the trial court loses jurisdiction on pending felony charges because he met some of the requirements of an unambiguous statute.

Neither the case law nor the speedy trial statutes require the decision reached by the Court of Appeals. The State of Ohio respectfully requests that this Court reverse the judgment of the Stark County Court of Appeals, Fifth District, and reinstate the conviction and sentence of Centafanti.

**JOHN D. FERRERO,  
PROSECUTING ATTORNEY,  
STARK COUNTY, OHIO**

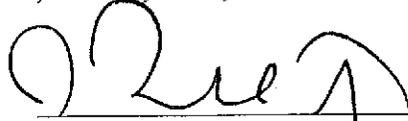
By: 

Kathleen O. Tatarsky  
Sup. Ct. Reg. No. 0017115  
Assistant Prosecuting Attorney  
Appellate Section  
110 Central Plaza South Suite 510  
Canton, Ohio 44702-1413  
(330) 451-7897  
FAX: (330) 451-7120

Counsel for Appellee

**PROOF OF SERVICE**

A copy of the foregoing Merit Brief of Plaintiff-Appellant was sent by ordinary U. S. Mail, this 17<sup>th</sup> day of March, 2008 to Jean A. Madden, Stark County Public Defender's Office, 200 West Tuscarawas Street, Suite 200, Canton, Ohio, 44702.



---

Kathleen O. Tatarsky  
Ohio Sup. Ct. Reg. No. 0017115  
Assistant Prosecuting Attorney  
Appellate Division  
110 Central Plaza, South - Suite 510  
Canton, Ohio 44701-1413  
(330) 451-7897  
FAX: (330) 451-7120

Counsel for Plaintiff-Appellee

IN THE SUPREME COURT OF OHIO  
COLUMBUS, OHIO

STATE OF OHIO,

Plaintiff-Appellant

-vs-

DOUGLAS CENTAFANTI

Defendant-Appellee

Case No.

07-1744

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

Court of Appeals

Case No. 2007CA00044

---

NOTICE OF APPEAL OF APPELLANT  
STATE OF OHIO

---

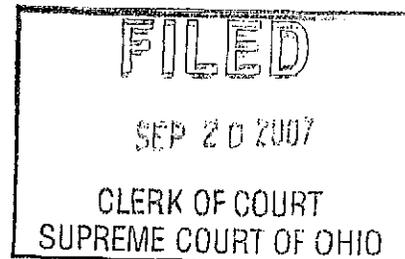
JOHN D. FERRERO  
PROSECUTING ATTORNEY,  
STARK COUNTY, OHIO

By: KATHLEEN O. TATARKSY  
Ohio Sup. Ct. Reg. No. 0017115  
Assistant Prosecuting Attorney  
Appellate Division  
110 Central Plaza South, Suite 510  
Canton, Ohio 44702-1413  
(330) 451-7897  
FAX: (330) 451-7965

Counsel for Plaintiff-Appellant

JEAN MADDEN  
Ohio Sup. Ct. Reg. No. 0046672  
Stark County Public Defender  
200 W. Tuscarawas Street  
Suite 200  
Canton, Ohio 44702  
(330) 451-7200

Counsel for Defendant-Appellee



000001

**NOTICE OF APPEAL OF APPELLANT STATE OF OHIO**

The State of Ohio, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Court of Appeals for Stark County, Fifth Appellate District, entered in the Court of Appeals Case No. 2007CA00044 on August 6, 2007.

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,  
JOHN D. FERRERO  
STARK COUNTY PROSECUTING ATTORNEY

BY: 

KATHLEEN O. TATARSKY  
Ohio Sup. Ct. Reg. No. 0017115  
Assistant Prosecuting Attorney  
Appellate Division  
110 Central Plaza South, Suite 510  
Canton, Ohio 44702-1413  
(330) 451-7897  
FAX: (330) 451-7965  
E-mail: kotatarsky@co.stark.oh.us

Counsel for Plaintiff-Appellant

000002

**PROOF OF SERVICE**

A copy of the foregoing NOTICE OF APPEAL was sent by ordinary U.S. mail this 19th day of September, 2007, to JEAN A. MADDEN, Stark County Public Defender, 200 West Tuscarawas Street, Suite 200, Canton, Ohio 44702.



---

KATHLEEN R. TATARSKY  
Ohio Sup. Ct. Reg. No. 0017115  
Assistant Prosecuting Attorney  
Appellate Division  
110 Central Plaza South, Suite 510  
Canton, Ohio 44701-0049  
(330) 451-7897  
(330) 451-7965

FAX:

Counsel for Plaintiff-Appellant

000003

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

NANCY S. REINBOLD  
CLERK OF COURT OF APPEALS  
STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

07 AUG -6 PM 2:47

STATE OF OHIO

Plaintiff-Appellee

-vs-

DOUGLAS CENTAFANTI

Defendant-Appellant

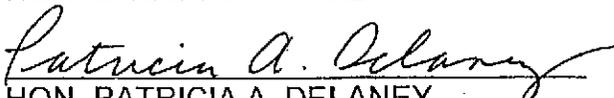
JUDGMENT ENTRY

CASE NO. 2007-CA-00044

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio, is reversed and final judgment is entered for appellant. Costs to appellee.

  
HON. W. SCOTT GWIN

  
HON. SHEILA G. FARMER

  
HON. PATRICIA A. DELANEY

000004

B

RECEIVED  
AUG 09 2007  
By \_\_\_\_\_

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

NANCY S. REINHOLD  
CLERK OF COURT OF APPEALS  
STARK COUNTY, OHIO

07 AUG -6 PM 2:47

STATE OF OHIO

Plaintiff-Appellee

-vs-

DOUGLAS CENTAFANTI

Defendant-Appellant

JUDGES:

Hon: W. Scott Gwin, P.J.

Hon: Sheila G. Farmer, J.

Hon: Patricia A. Delaney, J.

Case No. 2007-CA-00044

OPINION

CHARACTER OF PROCEEDING:

Criminal appeal from the Stark County  
Court of Common Pleas, Case No. 2006-  
CR-1409

JUDGMENT:

Reversed

(H)

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JOHN D. FERRERO  
PROSECUTING ATTORNEY  
BY: KATHLEEN O. TATARSKY  
110 Central Plaza South, Ste. 510  
Canton, OH 44702

JEAN A. MADDEN  
Stark County Public Defender  
200 W. Tuscarawas Street, Ste. 200  
Canton, OH 44702

A TRUE COPY TESTED  
BY \_\_\_\_\_ CLERK  
8-7-07

000005

6

*Gwin, P.J.*

{¶1} Defendant-appellant Douglas Centafanti appeals his conviction on one count of Grand Theft of a Motor Vehicle, a felony of the fourth degree in violation of R.C. 2913.02(A) (1), one count of Vandalism, a felony of the fifth degree in violation of R.C. 2909.05(B) and one count of Attempt to Commit Breaking and Entering, a misdemeanor of the first degree in violation of R.C. 2911.13(A). Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} The case at bar was decided upon the parties stipulation to the following facts and Joint Exhibits in the trial court.

{¶3} Mount Union College filed charges against defendant on July, 25, 2005, in the Alliance Municipal Court. The Court found probable cause, assigned two case numbers to the charges and issued a warrant for defendant's arrest in each case. Joint Exhibits 1, 2, and 3.

{¶4} In Alliance Municipal Court Case, No. 2005-CRA-00858, appellant was charged with one count of Grand Theft of a Motor Vehicle, a fourth degree felony. Joint Exhibit 4.

{¶5} In Alliance Municipal Court Case No. 2005-CRB-00859, appellant was charged with Attempted Breaking and Entering, a first degree misdemeanor, and Obstructing Official Business, a second degree misdemeanor. Joint Exhibits 5 and 6 respectively. Copies of the dockets in each case are attached as Joint Exhibits 7 and 8 respectively.

000006

{¶6} On September 13, 2005, in Case No. 2005-CRA-00858, the Alliance Municipal Court filed a judgment entry indicating that appellant was unavailable for prosecution. A copy of the judgment entry is attached as Joint Exhibit No. 9.

{¶7} On February 13, 2006, James A. Jenkins, an attorney from Cleveland, Ohio, wrote letters on appellant's behalf. The letters explained that appellant was in federal custody, on a six month term, for parole violations. The letters listed appellant's federal case number and the institution. The letters also indicated that appellant was available for prosecution. Copies of the letters were filed in the Alliance Municipal Court and are attached as Joint Exhibit 10 and 11.

{¶8} Joint Exhibits 10 and 11 were sent to and received by the Alliance Municipal Clerk of Court Criminal Division.

{¶9} Joint Exhibit 11 is a letter that contains the same body as Joint Exhibit 10 but was addressed to the Clerk of Courts Criminal Division, Stark County Common Pleas Court. This letter was received by the Alliance Municipal Court Clerk of Courts.

{¶10} James Jenkins does not have certified mailing cards to verify that the letters were received by the addressee or the copied recipients.

{¶11} Joint Exhibits 10 and 11 each contain a notation that copies of the letters were sent to the Stark County Prosecutor's Office, but the county prosecutor's office has no record of receiving these letters.

{¶12} Joint Exhibits 10 and 11 do not indicate that they were sent to the warden or superintendent having custody of defendant.

{¶13} Neither Joint Exhibit 10 or 11, nor any other correspondence from appellant or his counsel, were accompanied by a certificate, letter, or other notification from a state or federal prison warden regarding appellant's incarceration.

{¶14} Neither a state or federal prison warden independently provided any representative from the State of Ohio with a certificate, letter, or other notification, indicating that appellant was incarcerated.

{¶15} On February 14, 2006, the Alliance Municipal Clerk filed Exhibits 10 and 11 in both Alliance Municipal Court Case No. 2005-CRA-00858 and Alliance Municipal Court Case No. 2005CRB-00859.

{¶16} On February 15, 2006, the Alliance Municipal Clerk filed duplicates of Exhibits 10 and 11 in both Alliance Municipal Court Case No. 2005-CRA-00858 and Alliance Municipal Court Case No. 2005-CRB-00859.

{¶17} On March 28, 2006, in Case No. 2005-CRB-00859, the Alliance Municipal Court filed a judgment entry indicating that appellant was unavailable for prosecution. A copy of the judgment entry is attached as Joint Exhibit No. 12.

{¶18} Appellant was arrested on August 25, 2006. The arrest occurred after appellant had served his federal prison time.

{¶19} A preliminary hearing was held in the Alliance Municipal Court on August 30, 2006, and the municipal Court bound over appellant's cases to the Stark County Grand Jury.

{¶20} The Stark County Grand Jury returned an indictment against appellant on October 10, 2006, which charged appellant with one count of Grand Theft of a Motor Vehicle (fourth degree felony), R.C. §2913.02(A) (1), one count of Vandalism (fifth

degree felony 5), R.C. §2909.05(B) (1) (a), and one count of Attempt to Commit Breaking and Entering (first degree misdemeanor), R.C. §§2911.13(A) and 2923.02(A).

{¶21} On November 15, 2006, a Motion to Dismiss was filed in the Stark County Common Pleas Court on behalf of appellant for failure to bring him to trial within 180 days of the date of receipt of his availability for final adjudication, pursuant to R.C. 2941.01. A Memorandum in Support of the Motion was filed on December 20, 2006 as well as the State's Response to the Motion. The trial court denied the Motion by Judgment Entry on December 22, 2006. On January 10, 2007, appellant entered a plea of No Contest to the charges contained in the Indictment, was found guilty by the Court and sentenced to a total term of incarceration in a state penal institution of nine (9) months.

{¶22} A stay of execution was granted by the trial court in this matter.

{¶23} Appellant now appeals, assigning as error:

{¶24} "I. THE TRIAL COURT ERRED IN OVERRULING DEFENDANT DOUGLAS CENTAFANTI'S MOTION TO DISMISS FOR FAILURE TO BRING THE MATTER TO TRIAL WITHIN 180 DAYS OF THE DATE HE CAUSED NOTICE OF HIS AVAILABILITY TO BE SERVED UPON THE COURT, THE PROSECUTING ATTORNEY AND THE CLERK OF COURT. (Exh. \* \* \*)."

I.

{¶25} In the sole assignment of error, appellant argues the trial court erred in denying his motion to dismiss the indictment based upon a violation of his right to a speedy trial. We agree.

{¶26} Specifically, appellant maintains his right to a speedy trial was violated by the State's failure to bring him to trial within 180 days of the date he caused notice of

availability pursuant to R.C. 2941.401 to be served upon the court and the prosecuting attorney.

{¶27} "We begin by noting our lengthy history of Sixth Amendment jurisprudence, including the application of R.C. 2945.71. 'The right to a speedy trial is a fundamental right guaranteed by the Sixth Amendment to the United States Constitution, made obligatory on the states by the Fourteenth Amendment. Section 10, Article I of the Ohio Constitution guarantees an accused this same right. *State v. MacDonald* (1976), 48 Ohio St.2d 66, 68, 2 O.O.3d 219, 220, 357 N.E.2d 40, 42. Although the United States Supreme Court declined to establish the exact number of days within which a trial must be held, it recognized that states may prescribe a reasonable period of time consistent with constitutional requirements. *Barker v. Wingo* (1972), 407 U.S. 514, 523, 92 S.Ct. 2182, 2188, 33 L.Ed.2d 101, 113.'" *State v. Parker*, 113 Ohio St.3d 207, 2007-Ohio-1534 at ¶11. [Quoting *State v. Hughes* (1999), 86 Ohio St.3d 424, 425, 715 N.E.2d 540.].

{¶28} In Ohio, the right to a speedy trial has been implemented by statutes that impose a duty on the state to bring a defendant who has not waived his rights to a speedy trial to trial within the time specified by the particular statute. R.C. 2945.71 *et seq.* applies to defendants generally. R.C. 2941.401 applies to defendants who are imprisoned within the State of Ohio. *State v. Smith*, 140 Ohio App.3d 81, 85-86, 2000-Ohio-1777, 746 N.E.2d 678, 682.

{¶29} As Chief Justice Moyer wrote in *Brecksville v. Cook* (1996), 75 Ohio St.3d 53, 55-56, 661 N.E.2d 706:

{¶30} "Ohio's speedy trial statute was implemented to incorporate the constitutional protection of the right to a speedy trial provided for in the Sixth Amendment to the United States Constitution and in Section 10, Article I of the Ohio Constitution. *State v. Broughton* (1991), 62 Ohio St.3d 253, 256, 581 N.E.2d 541, 544; see *Columbus v. Bonner* (1981), 2 Ohio App.3d 34, 36, 2 OBR 37, 39, 440 N.E.2d 606, 608. The constitutional guarantee of a speedy trial was originally considered necessary to prevent oppressive pretrial incarceration, to minimize the anxiety of the accused, and to limit the possibility that the defense will be impaired. *State ex rel. Jones v. Cuyahoga Cty. Ct. of Common Pleas* (1978), 55 Ohio St.2d 130, 131, 9 O.O.3d 108, 109, 378 N.E.2d 471, 472.

{¶31} "Section 10, Article I of the Ohio Constitution guarantees to the party accused in any court 'a speedy public trial by an impartial jury.' 'Throughout the long history of litigation involving application of the speedy trial statutes, this court has repeatedly announced that the trial courts are to strictly enforce the legislative mandates evident in these statutes. This court's announced position of strict enforcement has been grounded in the conclusion that the speedy trial statutes implement the constitutional guarantee of a public speedy trial.' (Citations omitted.) *State v. Pachay* (1980), 64 Ohio St.2d 218, 221, 18 O.O.3d 427, 429, 416 N.E.2d 589, 591.

{¶32} "We have long held that the statutory speedy-trial limitations are mandatory and that the state must strictly comply with them. *Hughes*, 86 Ohio St.3d at 427, 715 N.E.2d 540. Further, 'the fundamental right to a speedy trial cannot be sacrificed for judicial economy or presumed legislative goals.' *Id.*" *State v. Parker*, supra 2007-Ohio-1534 at ¶12-15.

{¶33} R.C. 2941.401 governs the speedy trial rights of an imprisoned defendant, and it reads, in pertinent part,

{¶34} "When a person has entered upon a term of imprisonment in a correctional institution of this state, and \* \* \* there is pending in this state any untried indictment \* \* \* against the prisoner, he shall be brought to trial within one hundred eighty days after he causes to be delivered to the prosecuting attorney and the appropriate court \* \* \* written notice of the place of his imprisonment and a request for a final disposition to be made of the matter \* \* \*. The request of the prisoner shall be accompanied by a certificate of the warden or superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time served and remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the adult parole authority relating to the prisoner.

{¶35} "The written notice and request for final disposition shall be given or sent by the prisoner to the warden or superintendent having custody of him, who shall promptly forward it with the certificate to the appropriate prosecuting attorney and court by registered or certified mail, return receipt requested.

\* \*

{¶36} "If the action is not brought to trial within the time provided \* \* \* no court any longer has jurisdiction thereof, the indictment \* \* \* is void, and the court shall enter an order dismissing the action with prejudice."

{¶37} The Ohio Supreme Court has held that, pursuant to R.C. 2941.401, the initial duty is placed on 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*, 101 Ohio St.3d 308, 804 N.E.2d 471, 2004-Ohio-969. "In its plainest language, R.C. 2941.401 grants an incarcerated defendant a chance to have all pending charges resolved in a timely manner, thereby preventing the state from delaying prosecution until after the defendant has been released from his prison term." *Id.* at 311, 804 N.E.2d 471.

{¶38} "An inmate's 'notification of availability and request for final disposition' can take several forms, depending on the circumstances of the inmate. Inmates are sometimes in halfway houses or municipal jail facilities where a warden or superintendent may or may not be present as contemplated in R.C. 2941.401. At times, inmates take it upon themselves to notify the court and prosecutor directly, outside the prescribed method in R.C. 2941.401. See *State v. Drowell* (1991), 61 Ohio Misc.2d 623, 581 N.E.2d 1183. Even where the prescribed method is used, variations in notification still occur. See *State v. Fox* (Oct. 22, 1992), Cuyahoga App. No. 63100 and *State v. Fox* (Dec. 17, 1998), Cuyahoga App. No. 74641." *State v. Gill*, 8<sup>th</sup> Dist. No. 82742, 2004-Ohio-1245 at ¶10. (Footnotes omitted).

{¶39} In *State v. Drowell* (1991), 61 Ohio Misc.2d 623, 581 N.E.2d 1183, the inmate, on his own, did actually serve both the prosecutor and the court, but the warden never forwarded the appropriate certificate. The court held: "\* \* \* the failure of the warden of the institution having custody of defendant to forward the appropriate certificate when defendant filed the subject request is not grounds to deny said motion." *Id.* (concluding an official's failure to send the certificate of inmate status should not

vitiating an inmate's right to a speedy trial once requested, citing *State v. Ferguson* (1987), 41 Ohio App.3d 306, 311, 535 N.E.2d 708).

{¶40} The *Ferguson* decision referenced the Supreme Court of Ohio ruling in *Daugherty v. Solicitor for Highland Cty.* (1971), 25 Ohio St.2d 192, 267 N.E.2d 431, where the court held that a federal penitentiary inmate's letters to the appropriate Ohio prosecutor and judge requesting either a trial or dismissal of an Ohio charge, although informal, constituted a general request for a speedy trial. The court stated that "[w]here an inmate in a penal institution has made a diligent, good-faith effort to call to the attention of the proper authorities in another state that he desires a charge pending against him in that state disposed of, by trial or dismissal, he is entitled to have such request acted upon. The failure of the authorities to do so constitutes the denial of a speedy trial". *Daugherty*, 25 Ohio St.2d at 193, 267 N.E.2d 431.

{¶41} For appellant to have strictly followed the R.C. 2941.401 requirements, he should have given his written notice to the prison authorities, who should have forwarded it to the prosecutor and court along with a certificate of inmate status. However, it is clear that, although appellant did not strictly follow that path, the required information arrived at the proper place.

{¶42} "While in general, the one hundred eighty day time requirement of R.C. 2941.401 does not begin to run until an inmate demands a speedy resolution of a pending charge, this is premised on the prosecutor exercising reasonable diligence in properly notifying the inmate concerning the indictment. The state cannot avoid the application of R.C. 2941.401 by neglecting to inform the custodial warden or superintendent of the source and content of an untried indictment. [*State v. Carter* (June

30, 1981), Franklin App. No. 80AP-434]. Equally, the state cannot rely upon the prisoner's failure to make demand for speedy disposition, but must count the time as having commenced upon the first triggering of the state's duty to give notice of the right to make demand for speedy disposition. *Fitch*, supra, at 162. If a prosecutor has not exercised reasonable diligence in notifying an inmate of pending charges, the proper remedy is a motion to dismiss for denial of a speedy trial. *Id.*" *State v. Rollins* (Nov. 17, 1992), 10<sup>th</sup> Dist. No. 92 AP-273.

{¶43} "We hold that appellant's actions substantially complied with the requirements set forth in R.C. 2941.401. See *State v. Gill*, Cuyahoga App. No. 82742, 2004-Ohio-1245 (holding that substantial compliance is the appropriate standard under R.C. 2941.401 "in those instances where documents actually reach a location, regardless if mailed by the inmate or institution \* \* \* "). See, also, *State v. Quinones*, Cuyahoga App. No. 86959, 2006-Ohio-4096 (holding that substantial compliance is the proper standard under R.C. 2963.30, the interstate agreement on detainers, which is the speedy trial statute that applies to defendants in out-of-state prisons, including federal penitentiaries).

{¶44} "Substantial compliance requires the defendant to do 'everything that could be reasonably expected.' *State v. Ferguson* (1987), 41 Ohio App.3d 306, 311, 535 N.E.2d 708. 'The key to determining when the 180-day period begins \* \* \* is delivery upon the receiving state and its court. \* \* \* What is important is there be documentary evidence of the date of delivery to the officials of the receiving state.' *State v. Pierce*, Cuyahoga App. No. 79376, 2002-Ohio-652. See, also, *Daugherty v. Solicitor for Highland County* (1971), 25 Ohio St.2d 192, 193, 267 N.E.2d 431 (holding that

'[w]here an inmate in a penal institution has made a diligent, good-faith effort to call to the attention of the proper authorities in another state that he desires a charge pending against him in that state disposed of, by trial or dismissal, he is entitled to have such request acted upon. The failure of the authorities to do so constitutes the denial of a speedy trial.' (Relying on *Smith v. Hooy* (1969), 393 U.S. 374, 89 S.Ct. 575, 21 L.Ed.2d 607.)" *State v. Antos*, 8<sup>th</sup> Dist. No. 88091, 2007-Ohio-415 at ¶ 11-13.

{¶45} The State cites and relies upon the Ohio Supreme Court decision in *State v. Hairston* (2004), 101 Ohio St.3d 308, 804 N.E.2d 471, in urging us to uphold the trial court's order denying appellant's motion to dismiss. The question on appeal in *Hairston* was whether R.C. 2941.401 places a duty of reasonable diligence on the state to discover the whereabouts of an incarcerated defendant against whom charges are pending.

{¶46} In *Hairston*, the Franklin County Prosecuting Attorney charged Hairston by information with aggravated robbery, kidnapping and two counts of robbery. On October 6, 2000, the prosecutor dismissed those charges, anticipating a possible indictment. On October 18, 2000, the grand jury indicted Hairston on the same charges, and filed them on October 25, 2000.

{¶47} Because of the charges in the information, Hairston's parole officer held an on-site parole revocation hearing and revoked his parole on October 24, 2000. A summons sent to Hairston's home, while he remained in the county jail, came back unserved. On October 31, 2000, Hairston was returned to the custody of the Ohio Department of Rehabilitation and Correction.

{¶48} On June 12, 2001, the records supervisor at the Pickaway Correctional Institution delivered a detainer to Hairston advising him of the four charges from the October 2000 indictment.

{¶49} The Supreme Court concluded Hairston never caused the requisite notice of imprisonment and request for final disposition to be delivered to either the prosecuting attorney or the court; therefore, he never triggered the process to cause him to be brought to trial within 180 days of his notice and request. The Court further concluded the facts revealed the warden did not have knowledge of any of the charges pending against him, and the statute does not require a duty of reasonable diligence for the State to discover the whereabouts of an incarcerated defendant against whom criminal charges are pending.

{¶50} The Supreme Court held:

{¶51} "In its plainest language, R.C. 2941.401 grants an incarcerated defendant a chance to have all pending charges resolved in a timely manner, thereby preventing the state from delaying prosecution until after the defendant has been released from his prison term. It does not, however, allow a defendant to avoid prosecution simply because the state failed to locate him. The facts here demonstrate that Hairston knew of his arrest, knew he had been apprehended in the bar, and knew that the police had removed from his waistband the money taken from the blue bag during the robbery. He also knew that the prosecutor had charged him by information; despite this, he waited until June 2001 to seek to enforce R.C. 2941 .401."

{¶52} Unlike *Hairston*, in the case sub judice, there is clear evidence the State knew the location where appellant was incarcerated. In the instant case, appellant sent

a letter to the appropriate prosecutor's office and court, notifying them of his location of imprisonment and demanding a final disposition. The record reflects that the court took no action on this letter. Appellant's notification was filed by the clerk of courts in both Alliance Municipal Court Case No. 2005-CRA-00858 and Alliance Municipal Court Case No. 2005-CRB-00859 on February 15, 2006. The next activity that occurred on the case was on March 28, 2006 in Case No. 2005-CRB-00859 where the Alliance Municipal Court, without explanation, filed a Judgment Entry indicating that the appellant was unavailable for prosecution. There is nothing in the record evidencing whether the Alliance City Prosecutor received a copy of appellant's letter; however appellant submitted the affidavit of his attorney wherein he noted that certified copies of the notice were sent to both the Alliance Municipal Court and the Alliance City prosecutor's office. Although appellant's attorney was unable to locate the return receipts for said letters the record contains no evidence to refute receipt by the court and the Alliance City prosecutor's office. All the State needed to do was communicate with the warden of the institution where appellant was incarcerated to obtain the appropriate certificate. In the alternative, the State could have contacted the attorney who filed the notice on appellant's behalf who could then have forwarded any necessary information to the court. Finally, the State could have notified the warden or superintendent having custody of the prisoner of the pending charge. The warden or superintendent is, in turn, required to inform the prisoner in writing of the pending charge and his right to make a request for final disposition thereof. Appellant could then have requested the appropriate certificate be forwarded the prosecutor. The State cannot avoid the application of R.C. 2941.401 by neglecting to inform the custodial warden or

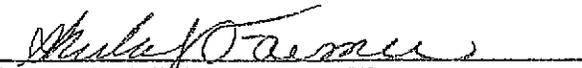
superintendent of the source and content of an untried indictment when the State is aware of the defendant's location and the source and content of the untried indictment and the defendant has made a demand for speedy disposition of the same. *State v. Rollins*, supra.

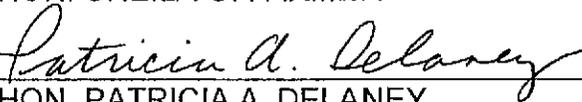
{¶53} Accordingly, we find that appellant substantially complied with R.C. 2941.401, and that the court erred by denying his motion to dismiss the charges against him. We emphasize that this is not a case where a defendant simply made a blanket demand; rather appellant was represented by counsel who filed a specific request in the appropriate court where the untried indictment was pending.

{¶54} Appellant's sole assignment of error is sustained, and this case is reversed and final judgment is entered for appellant.

By: Gwin, P.J.,  
Farmer, J., and  
Delaney, J., concur

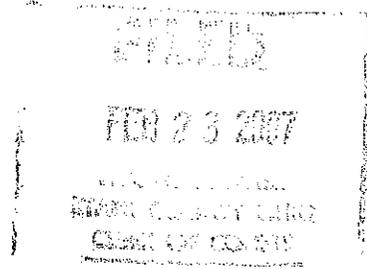
  
HON. W. SCOTT GWIN

  
HON. SHEILA G. FARMER

  
HON. PATRICIA A. DELANEY

WSG:clw 0720

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO



STATE OF OHIO,

CASE NO. 2006CR1409

Plaintiff,

JUDGE JOHN G. HAAS

vs.

JUDGMENT ENTRY

DOUGLAS P. CENTAFANTI, JR.,

NO CONTEST PLEA - FINDING

GUILTY BY COURT AND SENTENCE

Defendant.

NUNC PRO TUNC (as of 1/10/07)

This day, January 3, 2007, the defendant, DOUGLAS P. CENTAFANTI, JR., came into open Court, and accompanied by his counsel, Jean Madden, Esq., and the defendant having heretofore entered a plea of not guilty of the crimes of Grand Theft of a Motor Vehicle, 1 Ct. [R.C. 2913.02(A)(1)](F4), Vandalism, 1 Ct. [R.C. 2909.05(B)(1)(a)](F5) and Attempt to Commit an Offense (Breaking and Entering), 1 Ct. [R.C. 2923.02(A)](M1) as charged in the Indictment, informed the Court that he consulted with his attorney and that his attorney had fully informed him as to the nature of the charges and the elements constituting the crimes under the statutes pertaining to them including the penalties and the right to a trial by jury and that the defendant desired to withdraw his former plea of not guilty and thereupon the Court inquired of the defendant as to whether or not he desired to plead

further, to which inquiry the defendant entered a plea of no contest.

The Court, upon consideration and determination of the State's evidence and being fully advised in the premises, finds the defendant guilty of the charges of Grand Theft of a Motor Vehicle, 1 Ct. [R.C. 2913.02(A)(1)](F4), Vandalism, 1 Ct. [R.C. 2909.05(B)(1)(a)](F5) and Attempt to Commit an Offense (Breaking and Entering), 1 Ct. [R.C. 2923.02(A)](M1) as contained in the Indictment. A written Plea of No Contest is hereby attached and made a part of this Judgment Entry. Thereupon the Prosecuting Attorney moved that sentence be pronounced against said defendant.

Whereupon the Court was duly informed in the premises on the part of the State of Ohio, by the Prosecuting Attorney, and on the part of the defendant, by the defendant and his counsel, and thereafter the Court asked the defendant whether he had anything to say as to why judgment should not be pronounced against him, and the defendant, after consulting with his counsel, said that he had nothing further to say except that which he had already said, and showing no good and sufficient reason why sentence should not be pronounced, the Court thereupon pronounced sentence.

The Court has considered the record, oral statements, any victim impact statement and pre-sentence report prepared, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors Ohio Revised Code Section 2929.12.

000021

The Court finds that the defendant has been convicted of Grand Theft, 1 Ct., a violation of R.C. 2913.02(A)(1), a felony of the fourth (4th) degree subject to division (B) of section 2929.13 of the Ohio Revised Code.

The Court finds that the defendant has been convicted of Vandalism, 1 Ct., a violation of R.C. 2909.05(B)(1)(a), a felony of the fifth (5<sup>th</sup>) degree subject to division (B) of section 2929.13 of the Ohio Revised Code and Attempt to Commit an Offense (Breaking and Entering), 1 Ct. [R.C. 2923.02(A)] - Misdemeanor of the first degree.

The Court finds that defendant has been convicted of or plead guilty to a felony and/or a misdemeanor as listed in division (D) of R.C. 2901.07 and hereby ORDERS that a sample of defendant's DNA be collected pursuant to Ohio Revised Code Section 2901.07.

For reasons stated on the record, and after consideration of the factors under Revised Code 2929.12, the Court also finds that prison is consistent with the purposes of Revised Code section 2929.11 and the defendant is not amenable to an available community control sanction.

IT IS THEREFORE ORDERED that the defendant shall serve a prison term of nine (9) months on the charge of Grand Theft of a Motor Vehicle, 1 Ct. [R.C. 2913.02(A)(1)] (F4), and

IT IS FURTHER ORDERED that the defendant shall serve a prison term of nine (9) months on the charge of Vandalism, 1 Ct. [R.C. 2909.05(B)(1)(a)] (F5), and

IT IS FURTHER ORDERED that the defendant shall serve a period of six (6) months in the Stark County Jail on the charge of Attempt to Commit an Offense (Breaking and Entering), 1 Ct. [R.C. 2923.02 (A)] (M1), and

IT IS FURTHER ORDERED that the defendant shall serve the above sentences concurrently, and

IT IS FURTHER ORDERED that the defendant shall pay restitution to Mt. Union College for \$450.00 and to Horizon Auto for \$4,080.00, and

The Court has further notified the defendant that post release control is optional in this case up to a maximum of three (3) years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Revised Code Section 2967.28. The defendant is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and any prison term for violation of that post release control.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant's sentence be stayed pending timely appeal of this Court's decision overruling defendant's motion to dismiss, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this defendant is entitled to jail time credit which will be calculated by the Sheriff and the number of days inserted in a certified copy of an order which shall be forwarded to the institution at a later date, and

000023

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant pay the costs of this prosecution for which execution is hereby awarded.

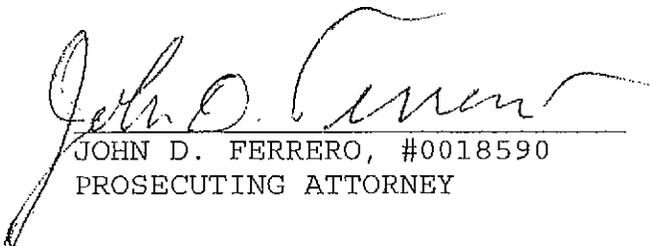
The Court, pursuant to Ohio Revised Code Section 120.36, hereby ORDERS that if the defendant requested or was provided representation by the Stark County Public Defender there is hereby assessed a \$25.00 non-refundable application fee.

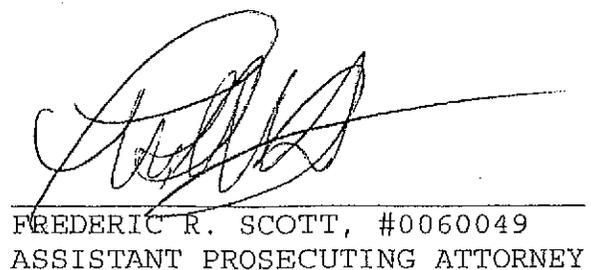
IT IS FURTHER ORDERED that the Court shall not approve placement into IPP/Boot Camp or any related program, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any law enforcement agency having custody of evidence in this case may dispose of said evidence pursuant to Ohio Revised Code Section 2933.41 after the appropriate time period has passed and provided no appeals are pending in the above captioned case.

APPROVED BY:

\_\_\_\_\_  
JUDGE

  
\_\_\_\_\_  
JOHN D. FERRERO, #0018590  
PROSECUTING ATTORNEY

  
\_\_\_\_\_  
FREDERIC R. SCOTT, #0060049  
ASSISTANT PROSECUTING ATTORNEY

000024

*AS*

**IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO**

STATE OF OHIO,

Plaintiff(s)

-vs-

DOUGLAS P. CENTAFANTI,

Defendant(s)

**FILED**  
**DEC 22 2006**  
PHIL G. GRAYBIS  
STARK COUNTY OHIO  
CLERK OF COURTS

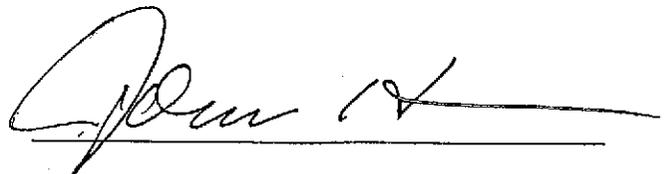
Case No. 2006CR1409

**JUDGE HAAS**

**JUDGMENT ENTRY**

This matter came on for consideration on the motion to dismiss the indictment filed by the defendant, the stipulation of the facts between the parties, and the legal arguments presented by both parties. The Court finds said motion not well taken and overrules the motion to dismiss. The defendant did not comply with the provisions of the Ohio Revised Code which are applicable. Revised Code Section 2941.401.

It is therefore ordered that the motion to dismiss is hereby overruled.



John G. Haas, Judge

Copies to:

Atty. Fred Scott, Prosecutors Office

Atty. Jean Madden

000025

**➔2941.401 Request by a prisoner for trial on pending charges**

When a person has entered upon a term of imprisonment in a correctional institution of this state, and when during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he shall be brought to trial within one hundred eighty days 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, except that for good cause shown in open court, with the prisoner or his counsel present, the court may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the warden or superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time served and remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the adult parole authority relating to the prisoner.

The written notice and request for final disposition shall be given or sent by the prisoner to the warden or superintendent having custody of him, who shall promptly forward it with the certificate to the appropriate prosecuting attorney and court by registered or certified mail, return receipt requested.

The warden or superintendent having custody of the prisoner shall promptly inform him in writing of the source and contents of any untried indictment, information, or complaint against him, concerning which the warden or superintendent has knowledge, and of his right to make a request for final disposition thereof.

Escape from custody by the prisoner, subsequent to his execution of the request for final disposition, voids the request.

If the action is not brought to trial within the time provided, subject to continuance allowed pursuant to this section, no court any longer has jurisdiction thereof, the indictment, information, or complaint is void, and the court shall enter an order dismissing the action with prejudice.

This section does not apply to any person adjudged to be mentally ill or who is under sentence of life imprisonment or death, or to any prisoner under sentence of death.

(1994 H 571, eff. 10-6-94; 1969 S 355, eff. 11-18-69)

**HISTORICAL AND STATUTORY NOTES**

**Amendment Note:** 1994 H 571 deleted "penal or" before "correctional" in the first paragraph.

000026

## R.C. § 2945.71

Baldwin's Ohio Revised Code Annotated Currentness

Title XXIX. Crimes--Procedure

Chapter 2945. Trial (Refs &amp; Annos)

Schedule of Trial and Hearings

**→2945.71 Time within which hearing or trial must be held**

(A) Subject to division (D) of this section, a person against whom a charge is pending in a court not of record, or against whom a charge of minor misdemeanor is pending in a court of record, shall be brought to trial within thirty days after the person's arrest or the service of summons.

(B) Subject to division (D) of this section, 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 as follows:

(1) Within forty-five days after the person's arrest or the service of summons, if the offense charged is a misdemeanor of the third or fourth degree, or other misdemeanor for which the maximum penalty is imprisonment for not more than sixty days;

(2) Within ninety days after the person's arrest or the service of summons, if the offense charged is a misdemeanor of the first or second degree, or other misdemeanor for which the maximum penalty is imprisonment for more than sixty days.

(C) A person against whom a charge of felony is pending:

(1) Notwithstanding any provisions to the contrary in Criminal Rule 5(B), shall be accorded a preliminary hearing within fifteen consecutive days after the person's arrest if the accused is not held in jail in lieu of bail on the pending charge or within ten consecutive days after the person's arrest if the accused is held in jail in lieu of bail on the pending charge;

(2) Shall be brought to trial within two hundred seventy days after the person's arrest.

(D) A person against whom one or more charges of different degrees, whether felonies, misdemeanors, or combinations of felonies and misdemeanors, all of which arose out of the same act or transaction, are pending shall be brought to trial on all of the charges within the time period required for the highest degree of offense charged, as determined under divisions (A), (B), and (C) of this section.

(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 jail in lieu of bail on the pending charge shall be counted as three days. This division does not apply for purposes of computing time under division (C)(1) of this section.

(F) This section shall not be construed to modify in any way section 2941.401 or sections 2963.30 to 2963.35 of the Revised Code.

(1999 S 49, eff. 10-29-99; 1981 S 119, eff. 3-17-82; 1980 S 288; 1975 S 83; 1973 H 716; 1972 H

000027

511)

UNCODIFIED LAW

1981 S 119, § 3, eff. 3-17-82, reads: The provisions of Sections 1 and 2 of this act apply in relation to all persons who commit any felony offense on or after the effective date of this act and to all persons who commit any felony offense prior to the effective date of this act who are not arrested in relation to the offense until a time on or after the effective date of this act.

HISTORICAL AND STATUTORY NOTES

**Ed. Note:** Former

000028

## R.C. § 2963.30

Baldwin's Ohio Revised Code Annotated CurrentnessTitle XXIX. Crimes--Procedure (Refs & Annos)Chapter 2963. Extradition (Refs & Annos)

Interstate Agreement on Detainers

➔**2963.30 Interstate agreement on detainers**

The Interstate Agreement on Detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein, in the form substantially as follows:

THE INTERSTATE AGREEMENT  
ON DETAINERS

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trials of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(a) "State" shall mean a state of the United States: the United States of America: a territory or possession of the United States: the District of Columbia: the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending

000029

in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request or final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other officials having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

#### Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint

000030

is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

#### Article V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary

000031

custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction, except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner, the provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

#### Article VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

000032

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill, or who is under sentence of death.

#### Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

#### Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

#### Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any agreement, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(1969 S 356, eff. 11-18-69)

#### COMPARATIVE LAWS

Ala.--Code 1975, § 15-9-81.  
 Alaska--AS 33.35.010 to 33.35.040.  
 Ariz.--A.R.S. § 31-481, 31-482.  
 Ark.--A.C.A. § 16-95-101 to 16-95-107.  
 Cal.--West's Ann.Cal.Penal Code, § 1389 to 1389.8.  
 Colo.--West's C.R.S.A. § 24-60-501 to 24-60-507.  
 Conn.--C.G.S.A. § 54-186 to 54-192.  
 Del.--11 Del.C. § 2540 to 2550.  
 Fla.--West's F.S.A. § 941.45 to 941.50.  
 Ga.--O.C.G.A. § 42-6-20 to 42-6-25.  
 Hawaii--HRS § 834-1 to 834-6.  
 Idaho--I.C. § 19-5001 to 19-5008.  
 Ill.--730 ILCS 5/3-8-9.  
 Iowa--I.C.A. § 821.1 to 821.8.  
 Kan.--K.S.A. 22-4401 to 22-4408.  
 Ky.--Baldwin's KRS 440.450 to 440.550.

000033