

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 DEFENDANT-APPELLEE,
DOUGLAS CENTAFANTI**

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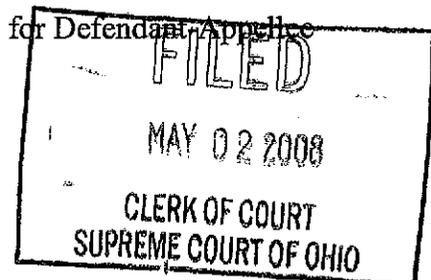


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SUPPLEMENTAL STATEMENT OF FACTS

The incident that gave rise to the charges against Mr. Centafanti occurred on or about June 5, 2005 in the City of Alliance, Stark County, Ohio. Criminal complaints were filed in the Alliance Municipal Court on July 25, 2005 charging Mr. Centafanti with Grand Theft of a Motor Vehicle, Case Number 2005CRA00858, in violation of R.C. 2913.02, a felony of the fourth degree, Attempted Breaking and Entering, in violation of R.C. 2923.02, a first degree misdemeanor and Obstructing Official Business, in violation of R.C. 2921.31, a misdemeanor of the second degree, both misdemeanors in Case Number 2005CRB00859. Warrants were issued for his arrest. No further evidence was submitted regarding attempts to serve the warrants upon Mr. Centafanti until his arrest on August 25, 2006.

On September 13, 2005, the municipal court filed a judgment entry stating "defendant unavailable" in Case 2005CRA00858.

Two letters from Attorney Jenkins were filed with the court, one on February 14 and one on February 15, 2006. The letters advised the court, clerk of court, and prosecuting attorneys for the municipality of Alliance and Stark County of the defendant's incarceration in Northeast Ohio Correctional Center, a private penal institution located within the State of Ohio; the case number and the court of record of his conviction, and the judge who entered his conviction and the sentence imposed by that judge. It further advised the court, clerks of court and prosecuting attorneys that Mr. Centafanti was available for final adjudication of any and all indictments, informations and/or complaints or outstanding warrants pending against him. On March 28, 2006, the

court, again, noted for the record in Case Number 2005CRB00859 “defendant not available for prosecution”. There is no record of any proceedings instituted as a result of the notices filed on behalf of Mr. Centafanti.

Mr. Centafanti was arrested on the warrants mentioned above on August 25, 2006, at least one hundred ninety-one days after the second filing of the notice advising the court and prosecutor of his location and availability pursuant to R.C. 2941.401. Mr. Centafanti was brought before the court for his arraignment in Alliance Municipal Court on August 28, 2006 and again for his preliminary hearing on August 30, 2006 when the matter was bound over to the Stark County Grand Jury. He was indicted on October 6, 2006, arraigned in Stark County Common Pleas Court on October 27, 2006 and the matter was set for further proceedings. On December 22, 2006, the Common Pleas Court overruled the Motion to Dismiss for violations of the speedy trial portion of R.C. 2945.401. Mr. Centafanti entered a No Contest Plea to the charges on January 3, 2007, reserving for appeal the issues raised in the Motion to Dismiss.

Attorney James A. Jenkins submitted an Affidavit setting forth service of the “Notice of Availability” to the court of record - Alliance Municipal Court, the Alliance Prosecutor, the Stark County Prosecutor, the Alliance Clerk of Court, and the Stark County Clerk of Court and his client, Mr. Centafanti. No objection or evidence refuting this affidavit was presented.

The Court of Appeals did not reject the notion that the statute does not require the State to discover the whereabouts of an incarcerated defendant. The undisputed evidence before the court indicated that the prosecutor had been advised of the location of the defendant and chose to do nothing in response to that information other than to wait until

Mr. Centafanti was arrested some one hundred ninety days later. Furthermore, nothing appears in the record to indicate that Mr. Centafanti was aware of the charges or that a warrant had been issued until fifty-one days after the incident which formed the basis for the charges filed in the Alliance Municipal Court.

ANSWER TO ARGUMENT

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.

The purpose of R.C. 2963.30, Interstate Agreement on Detainers and R.C. 2941.401, Request by a Prisoner for Trial on Pending Charges, is to “encourage the expeditious and orderly disposition” of charges against a prisoner. R.C. 2963.30 applies to persons who are incarcerated in a penal or correctional institution of a party state who has any untried indictment, information or complaint pending in any other party state. R.C. 2941.401 applies to a person who has entered upon a term of imprisonment in a correctional institution of this state and has any untried indictment, information or complaint pending against him in this State. The Interstate Agreement on Detainers requires that a detainer be filed against the subject prisoner, while the intrastate statute has no such requirement. However, R.C. 2940.401 requires the warden or superintendent having custody of the prisoner to promptly notify him 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.* (emphasis added).

In the instant case, no evidence of a detainer against Mr. Centafanti was presented. Furthermore, he was a prisoner incarcerated in a private prison facility in the State of Ohio, placed there by an order of sentence of an Ohio federal court. R.C. 2941.401, the statute regarding prisoners in a correctional institution of this state is more

applicable to Mr. Centafanti's situation. It would have been impossible for a warden or superintendent at the institution to notify Mr. Centafanti of the source and contents of the untried complaints in Alliance Municipal Court when said warden or superintendent had no knowledge of their existence. However, it should not be permissible, under the law, to permit law enforcement or a prosecutor to circumvent the rights of a prisoner to request trial on pending charges by not filing a detainer or serving notice of the outstanding warrant or complaint upon an accused.

Mr. Centafanti may have been aware of the possibility that charges may have been filed in the Alliance Municipal Court, thereby triggering his letter requesting resolution of any pending complaints or outstanding warrants pending within that court's jurisdiction. Having received no response from his notice and request, it is logical for Mr. Centafanti to believe that no charges were filed. The charges and a warrant were filed almost seven months prior to the filing of the notice of availability and request for resolution. No attempts were made to serve the defendant for over a year, despite being aware of his location. Had Mr. Centafanti sent a request to the warden or superintendent having custody of him for final disposition of the untried complaint and outstanding warrant, he would, certainly, have been advised that said warden or superintendent had no knowledge of their existence. Had the institution known of a detainer or warrant, they would not have released Mr. Centafanti at the end of his sentence without notice to the authorities who had issued the process. The defendant used the means available to him to attempt to resolve any matters pending against him by causing notice of his incarceration, his place of imprisonment and the length of that sentence to the appropriate

authorities, i.e. the court, the clerk of court and the prosecuting attorney for the Alliance Municipal Court.

As set forth in *State v. Drowell*, (1991) 61 Ohio Misc.2d 623, the failure of the warden to forward the appropriate certificate is not grounds to deny an inmate's speedy trial rights when the inmate has caused notice to his request to be sent to the prosecutor and the court. Like *State v. Antos*, Cuyahoga App. No. 88091, 2007-Ohio-415, the prosecutor did not refute receipt of the letter on behalf of Mr. Centafanti and the record so acknowledges receipt, yet the court took no action on the letter. The information required and necessary to act upon Mr. Centafanti's request for final resolution was received by the proper persons with sufficient time to enable him to be brought before the court to answer to the charges. It was not within Mr. Centafanti's ability to do more. He made a diligent, good faith effort to notify the appropriate authorities of his desire to resolve any charges filed and pending against him. The purpose of R.C. 2941.401 is to prevent the State of Ohio from delaying prosecution until after a defendant has been released from his or her prison term. See *State v. Hairston*, 101 Ohio St.3d 308. If the State were permitted to delay prosecution until after release, a defendant may lose any ability to negotiate a sentence which would take into account their current incarceration, or may hinder the person's ability to be tried on fresh recollections and the capability of preparing an adequate defense.

This court has consistently held that the state must make a reasonable effort to contact an incarcerated defendant after indictment. Although the statute does not explicitly impose an affirmative duty on the state to notify a defendant of the charges against him or her, "the statute would have no meaning if the state could circumvent its

requirement by not sending notice of an indictment to the warden of the institution where the accused is imprisoned.” *State v. Floyd*, Cuyahoga App. No. 33929, 1979 Ohio App. LEXIS 10194. Allowing a prosecutor to turn a blind eye to a prisoner’s request for trial circumvents the clear intent of the law.

R.C. 2901.13 requires reasonable diligence on the part of the prosecutor to commence the prosecution. It does not permit the prosecutor to benefit from a conscious decision to ignore a prisoner’s request for disposition and to pretend that the prisoner’s whereabouts are unknown. The prisoner has a constitutional right to a speedy trial.

It cannot be the intent of the legislature in enacting R.C. 2941.401 to require a warden or superintendent to provide notice to a prisoner of an untried complaint of which they have no knowledge. That would be ludicrous. Appellant argues that Mr. Centafanti was obligated to strictly comply with an impossibility, yet holding that the prosecution has no comparable obligation of due diligence in notifying the warden of the untried complaint once they received notice of Mr. Centafanti’s incarceration. The State wishes to be able to avoid Mr. Centafanti’s rights by simply ignoring their duty to inform the appropriate persons.

The State further wishes to argue that, while R.C. 2963.60 is the proper statute covering Mr. Centafanti because he was in federal custody, but that statute requires a detainer, which was never filed in this matter. Yet they also want to argue that the IAD is relevant, but ignore the case law that holds the “substantial compliance” is the proper standard under R.C. 2963.60 by stating that “strict compliance” is the standard to be used here, under R.C. 2941.401. While strict compliance is required of the accused, there is no comparable requirement of the State. The State proposes that the purpose of the

warden's certificate is to enable them to decide whether or not to pursue prosecution of the untried complaint. The notice of the length of Mr. Centafanti's sentence also provided the prosecution with the same information they seem to want in order to determine whether or not to proceed with their case. Due diligence would require that the prosecution contact the warden of the institution of the prisoner's incarceration to ascertain any additional information they desired, over and above that which they had received in the notice. The State had sufficient information in the letter to verify the location and sentence being served by Mr. Centafanti.

The State also complains that Mr. Centafanti requested final adjudication, not final disposition. In this case, Mr. Centafanti had not been arrested or served with any complaints against his actions of June 5, 2005. Therefore, he was seeking adjudication of untried complaints or outstanding warrants, the existence of which he was not certain even existed. It is splitting hairs to require the word "disposition" and not "adjudication" since the goal is to locate and resolve charges which may have even been filed.

The State further wishes to alleviate their inherent duties by saying that they should not be required to review every written notice that requests resolution of outstanding charges that they receive. Whether it be the municipal prosecutor or the county prosecutor, the office charged with the duty of commencing prosecution has the duty of due diligence to investigate requests under R.C. 2941.401. The proper authority to have, initially, insured compliance with the law was the City of Alliance, the prosecutor who was originally involved with the commencement of this action. The proper authorities to act upon Mr. Centafanti's request are the same authorities who, undisputedly, received the notice. The county prosecutor did not have jurisdiction of the

charges as they had not, at the time of Mr. Centafanti's request, been bound over to the grand jury for determination to issue an indictment. The Alliance court filed the action on behalf of the State of Ohio and as such, had the duty of due diligence of acting upon the request for resolution of the charges pursuant to Mr. Centafanti's request.

Mr. Centafanti did everything that was within his control to resolve the outstanding charges filed against him. He could not file a detainer, he could not impart knowledge to the warden or superintendent of the untried complaint and warrant for arrest that he was not even certain existed. He caused notice of his location, his sentence and the sentencing court to be served upon the proper authorities who had jurisdiction of the pending charges. The court and the prosecutor did nothing. The Fifth District decision did not impose any greater burden or duty upon the prosecutor than is already required by law, to exercise reasonable diligence in the commencement of prosecution. Furthermore, the Sixth Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment and Article I of the Ohio Constitution, guarantee an accused the right to a speedy trial. Fex v. Michigan, (1993) 113 S.Ct. 1085 sets forth the strict requirement that the 180 day time period commences upon receipt of the disposition request by the court and the prosecution. When an inmate in a penal institution has made a good-faith effort to call to the attention of the proper authorities that he desires a charge pending against him be resolved, he is entitled to have such request acted upon. The failure of the authorities to do so constitutes the denial of his speedy trial right. State v. Holt, (1992) 83 O.App. 3d 676, citing Smith v. Hooley, (1969) 393 U.S. 374. The initial duty is upon the defendant to notify the prosecutor and the court of his place of incarceration and to request final disposition of outstanding charges.

State v. Hairston, (2004) 101 O.S. 3d 308. The purpose is to allow an incarcerated defendant an opportunity to have all pending charges resolved in a timely manner, preventing the state from delaying prosecution until after the defendant has been released from his prison term. Id. at 311.

In State v. Pierce, Cuyahoga Co. App. No. 79376, 2002-OHIO-652, appeal not allowed by State v. Pierce, (2002) 96 O.S. 3d 1438, the court ruled that the defendant substantially complied with the requirements, thus commencing the running of the 180-day speedy trial period where defendant's attorney notified the court and the prosecuting attorney of the defendant's place of imprisonment. The information provided to the court and the prosecutor was sufficient to enable the prosecutor to verify the facts and make a decision on whether to prosecute the defendant on the pending charges, as the State has stated is the vital purpose. The law did not permit the prosecutor to sit idly by for months before deciding to commence prosecution, thereby violating the rights afforded the defendant by the Constitutions of the United States and Ohio and the laws of the State of Ohio.

CONCLUSION

The State wishes to have the law strictly construed against the appellee, yet not enforce the duty of even due diligence upon the State. It is inconceivable that the legislature would require actions to be completed by a prisoner which would require knowledge known only to the court, law enforcement or prosecutors. Mr. Centafanti used the resources available to him to send notice that he wished to resolve any outstanding complaints or warrants. The existence of the outstanding complaints and warrants was known to the Alliance court and prosecutor. They chose to sit idly and wait for Mr. Centafanti's eventual arrest on the warrant they were unwilling to publish so the warden of the institution where an accused was serving an unrelated sentence could have the knowledge required to advise the Defendant of his rights. The view of the State is irreconcilable with the constitutional protections long afforded defendants. They wish this Court to require strict compliance by the accused and no duty of any diligence on the part of the State. This would require the absurd result of requiring a person to do an impossible act. Such is not the intent of the statute.

At the time Mr. Centafanti was arrested on the outstanding warrant, the Court had lost jurisdiction. When he was brought before the municipal court to answer the charges, that Court lacked jurisdiction to proceed. The municipal court prosecutor lacked jurisdiction to bind the case over to the Stark County Grand Jury for review. And most certainly, the Stark County Prosecutor and the Stark County Court of Common Pleas had no jurisdiction to do anything except dismiss the case.

Respectfully submitted,

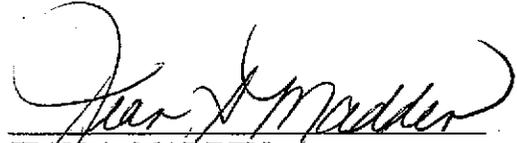
A handwritten signature in cursive script, appearing to read "Jean A. Madden", is written over a horizontal line.

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PROOF OF SERVICE

A copy of the foregoing Memorandum in Opposition to Jurisdiction was duly served by personal service upon Kathleen O. Tatarsky and Renee Watson, at the Stark County Prosecuting Attorney's Office, 5th Floor, 110 Central Plaza South, Canton, Ohio 44702, and upon John Fenlon, Ohio Public Defender Office by ordinary mail at 8 East Long, Columbus, Ohio 43215, this 1st day of May, 2008.



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