

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 :
 Plaintiff-Appellant, : Case No. 2007-1744
 :
 -vs- : On Appeal from the Stark County
 : Court of Appeals, Ninth Appellate
 DOUGLAS CENTAFANTI, : District
 :
 Defendant-Appellee. : Court of Appeals 2007CA00044

AMICUS BRIEF OF THE OFFICE OF THE OHIO PUBLIC DEFENDER
IN SUPPORT OF DOUGLAS CENTAFANTI, APPELLEE

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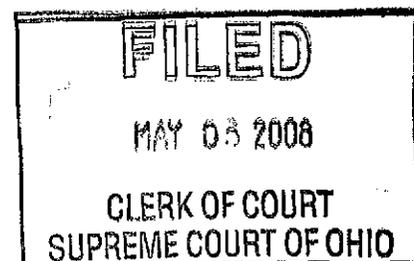


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STATEMENT OF THE CASE AND FACTS

Amicus adopts the statement of the case and facts set forth in the Merit Brief by Appellee Douglas Centafanti.

INTEREST OF AMICUS CURIAE

Ohio law provides that the Ohio Public Defender Commission “provide, supervise, and coordinate legal representation at state expense for indigent and other persons.” R.C. 120.01. The Commission appoints the State Public Defender, who among other duties, provides legal representation to indigent defendants in criminal cases, at trial and appellate court levels. The Public Defender presents this brief of Amicus Curiae in support of Appellee, Douglas Centafanti, pursuant to Supreme Court Rule VI, Section 6.

Section 10, Article I of the Ohio Constitution and the Sixth Amendment of the United States Constitution guarantee that individuals charged with a crime be given a speedy and public trial. It is of critical importance that this Court safeguard this right, while providing guidance to courts below. However because of the fact-specific nature of this case, the majority opinion is unlikely to provide meaningful guidance to the bench and bar. Therefore, the Ohio Public Defender submits this Brief of Amicus Curiae strongly urging this Court dismiss the State’s appeal as improvidently allowed.

STATE'S PROPOSITION OF LAW

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.

Introduction

The Elephant in the Room

The Ohio Public Defender respectfully requests this Court reconsider its decision to review this case. The proposed proposition of law may indeed warrant consideration by this Court. However, this is not the case to do so. Thus, this Court should dismiss this appeal as improvidently accepted.¹

This Court is one of limited jurisdiction, and does not pass upon the merits of every discretionary appeal in which its jurisdiction is sought. Instead, the Court hears only those appeals that present "substantial" constitutional questions or questions of "public or great general interest." Rule III, Section 6 of the Rules of Practice of the Supreme Court of Ohio; Section 2(B), Article IV of the Ohio Constitution.

Whether time is tolled under R.C. 2941.401 when an Ohio prisoner fails to accompany his written notice with a warden's certificate should be determined in a case where R.C. 2941.401 actually applies. R.C. 2941.401 however does not apply to federal prisoners like Douglas Centafanti. Rather, R.C. 2963.30, Ohio's codification of the Interstate Agreement on Detainers ("IAD"), provides a means for incarcerated persons facing Ohio charges, while incarcerated in either a federal or another state's facility to

¹ The state failed to serve the Ohio Public Defender with a copy of the Notice of Appeal and the Memorandum in Support of Jurisdiction, contrary to Supreme Court Rule XIV, Section 2. "An amicus curiae may file a jurisdictional memorandum urging the Supreme Court to accept or decline to accept a claimed appeal of right or a discretionary appeal." Supreme Court Rule III, Section 5(A).

demand speedy disposition of an untried indictment or complaint.² Unfortunately, this crucial detail was missed by Centafanti's counsel, the prosecutor, the trial court, and the court of appeals. This case asks this Court to decide whether Centafanti, a federal prisoner, complied with a speedy trial statute which only applies to state prisoners.

Fact-specific cases, like this one, do not meet the threshold test for discretionary appeals of cases of public or great general interest. "Because of its fact-specific nature, the majority opinion is unlikely to provide meaningful guidance to the bench and bar." *Blue Ash v. Kavanagh*, 113 Ohio St.3d 67, 2007 Ohio 1103; 862 N.E.2d 810, ¶31 (Pfeifer, J., dissenting). Further, this Court "sits to settle the law, not to settle cases," and does not engage in "error correction' regarding the application of settled law" to the facts of a particular case. *Baughman v. State Farm Mut. Auto. Ins. Co.*, 88 Ohio St.3d 480, 492; 2000 Ohio 397; 727 N.E.2d 1265 (Cook, J., concurring and citing Section 2, Article IV of the Ohio Constitution.

This case would settle no law so this appeal should be dismissed.

Argument

Section 10, Article I of the Ohio Constitution and the Sixth Amendment of the United States Constitution require that individuals charged with a crime be given a speedy and public trial. The right has been codified under R.C. 2941.401 and R.C. 2945.71 for those charged with Ohio crimes already incarcerated in an Ohio state correctional facility³;

² The IAD is a congressionally sanctioned interstate compact within the Compact Clause, U.S. Const., Art. I, § 10, cl. 3, and thus is a federal law subject to federal construction. *Norton v. Parke*, 892 F.2d 476, 477 n.2 (6th Cir. 1989).

³ When a person is incarcerated, the provisions of R.C. 2941.401 apply in addition to those set forth by R.C. 2945.71. R.C. 2941.401 is a specific statute which prevails over the general speedy trial statutes. See, R.C. 1.51.

while R.C. 2963.30, Ohio's codification of the IAD, guarantees the same for those facing out of state or federal charges.

This case presents the peculiarity of an inmate in an Ohio federal prison attempting to request speedy disposition of a case pending in an Ohio state court. On February 13, 2006, United States District Judge Donald C. Nugent found Centafanti in violation of federal parole and placed him in the custody of the Bureau of Prisons for a term of seven months. That same day, counsel wrote the Alliance court informing it of Centafanti's location and request for disposition pursuant to R.C. 2941.401 and R.C. 2945.71, statutes intended for state prisoners.⁴

Thus, from the outset, federal prisoner Centafanti sought speedy disposition of his Stark County cases pursuant to statutes intended for state prisoners. The State, however, never asserted that Centafanti failed to comply with the IAD. The trial court overruled Centafanti's motion to dismiss relying upon R.C. 2941.401. The court of appeals reversed the trial court's dismissal, again interpreting R.C. 2941.401, finding that Centafanti substantially complied with the statute. *State v. Centafanti*, 5th Dist. No. 2007 CA 00044, 2007 Ohio 4036.

⁴ It should be noted that current counsel for Centafanti, the Stark County Public Defender, was not appointed until August 28, 2006. This was 196 days after prior counsel made mailed notice to the Alliance Municipal Court, Alliance Municipal Clerk of Court, and the Stark County Clerk of Courts seeking disposition under R.C. 2941.401. Thus, by the time the Public Defender assumed representation, the factual basis of Centafanti's claim had already been determined.

Monday Morning Quarterbacking

The IAD was not referenced until the State's Memorandum in Support of Jurisdiction and even then just briefly.⁵ Notwithstanding this reference, the State sought the jurisdiction of this Court asserting that Centafanti failed to comply with R.C. 2941.401. There is no reference to the IAD in the State's proposition of law. It is not until the Merit Brief does the State raise the possibility that the IAD might be the applicable statute. And even then it is discussed primarily by way of a footnote. While raising the IAD, the State's brief predominantly argues that Centafanti failed to substantially comply with R.C. 2941.401.

This Court should not allow the State to change the playing field in the fourth quarter by raising the IAD now, having failed to do so below. A party who fails to raise an issue at the trial court level is deemed to have waived the issue at the appellate level. *State v. Hetrick*, Lorain App.No. 07CA009231, 2008 Ohio 1455, at ¶16. Res judicata is a rule of fundamental and substantial justice. *State v. Simpkins*, Slip Opinion 2008 Ohio 1197, ¶25. Res judicata should prevent the State from raising any defense it failed to raise below. See *State v. O'Neill*, Wood App. No. WD-06-055, 2008 Ohio 818, at ¶33 (While Crim. R. 47 requires a defendant to state his grounds for a motion to suppress "with particularity," the State waives this issue if it is not raised in opposition to a defendant's motion to suppress).

The State has waived any IAD based argument on appeal to this Court.

⁵ The Memorandum cites "R.C. 2963.63" and "R.C.2953.30" at pp. 10 and 12 when discussing the IAD. These appear to be typos. Neither statute exists. The State repeats the errors in its Merit Brief.

R.C. 2941.401 does not apply to federal prisoners.

When faced with an issue of statutory or rule interpretation, this Court first looks to the plain language of the statute or rule and applies it as written if its meaning is unambiguous and definite. See *State v. Lowe*, 112 Ohio St. 3d 507, 2007 Ohio 606, 861 N.E.2d 512, ¶9. If the meaning of the statute is unambiguous and definite, it must be applied as written and no further interpretation is necessary. *State ex rel. Herman v. Klopffleisch* (1995), 72 Ohio St. 3d 581, 584, 651 N.E.2d 995, 997. R.C. 2941.401 plainly and unambiguously only applies to *state* prisoners.

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 final disposition to be made of the matter.....

* * *

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. (Emphasis added).

By its plain language, R.C. 2941.401 applies to a person who has entered upon a term of imprisonment in a correctional institution *of this state*. R.C. 2941.401 has no relevance to this case because Centafanti was not imprisoned in a correctional institution *of this state*. The Northeast Ohio Correctional Center is not a correctional institution *of this*

state. It is a federal correctional institution located *in* this state.⁶ Had the General Assembly intended R.C. 2941.401 to apply to one imprisoned in a correctional institution of another state, *or* in a federal facility located in Ohio it would have said. It did not. See R.C. 2929.41(B)(2), (“If a court *of this state* imposes a prison term upon the offender for the commission of a felony and a court *of another state or the United States...*”)(Emphasis added); R.C. 2901.01(A)(9)(b) (“A violation of an existing or former municipal ordinance or law *of this or any other state or the United States ...*”)(Emphasis added). Thus, R.C. 2941.401 does not apply to a federal prisoner like Centafanti. The legislative intent of the statute is clear. Nothing in the language of the statute supports its application to federal prisoners housed in Ohio.

Fact-specific cases, like this one, do not meet the threshold test for discretionary appeals of cases of public or great general interest. It is unlikely the factual scenario in this case will arise again in the courts below. “Because of its fact-specific nature, the majority opinion is unlikely to provide meaningful guidance to the bench and bar.” *Blue Ash v. Kavanagh*, 113 Ohio St.3d 67, 2007 Ohio 1103, 862 N.E.2d 810, ¶31 (Pfeifer, J., dissenting).

The real issue - but never presented below- is whether Centafanti’s notice, while premised under R.C. 2941.401 and buttressed under R.C. 2945.71, sufficiently notified State authorities of his demand for a speedy trial guaranteed under the IAD and the Ohio and Federal Constitutions. The Ohio Public Defender emphatically submits the answer is “Yes.” However, that issue is not before the Court and must be left for another day.

⁶ The Ohio Correctional Institution is a privately operated community corrections center under contract with the Federal Bureau of Prisons. <http://www.bop.gov>.

Conclusion

This Court is one of limited jurisdiction, and does not pass upon the merits of every discretionary appeal in which its jurisdiction is sought. Instead, the Court hears only those appeals that present “substantial” constitutional questions or questions of “public or great general interest.” Rule III, Section 6, of the Rules of Practice of the Supreme Court of Ohio; Section 2(B), Article IV of the Ohio Constitution. This case does not meet this test. First, this Court “sits to settle the law, not to settle cases,” and does not engage in “‘error correction’ regarding the application of settled law” to the facts of a particular case. *Baughman*, 88 Ohio St.3d 480 at 492; 2000 Ohio 397; 727 N.E.2d 1265 (Cook, J., concurring). Second, because of its fact-specific nature, the majority opinion is unlikely to provide meaningful guidance to the bench and bar. *Blue Ash*, 113 Ohio St.3d 67, 2007 Ohio 1103; 862 N.E.2d 810, at ¶31 (Pfeifer, J., dissenting).

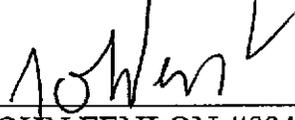
By its plain language, R.C. 2941.401 applies to a person who has entered upon a term of imprisonment in a correctional institution *of this state*. R.C. 2941.401 has no relevance to this case because Centafanti was not imprisoned in a correctional institution *of this state*. Late in the game, the State now raises the possibility that the IAD is the applicable statute. This Court should not allow the State to change the playing field at this late stage.

The real issue never presented is whether Centafanti’s notice sufficiently notified State authorities of his demand for a speedy trial guaranteed under the IAD and the Ohio and Federal Constitutions. However, that issue is not before the Court.

For these reasons this Court should dismiss the appeal as improvidently allowed.

Respectfully submitted,

Office of the Ohio Public Defender



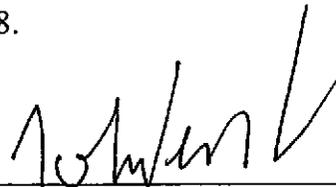
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CERTIFICATE OF SERVICE

I certify a copy of the foregoing **AMICUS BRIEF OF THE OFFICE OF THE OHIO PUBLIC DEFENDER IN SUPPORT OF DOUGLAS CENTAFANTI, APPELLEE** has been sent by regular U.S. mail to Kathleen Tatarsky, Stark County Assistant Prosecutor, 110 Central Plaza S., Suite 614, Canton, Ohio 44702 and also Jean Madden, Assistant Stark County Public Defender, 200 W. Tuscarawas Street, Suite 200, Canton, Ohio 44702 on this 5th day of May, 2008.



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IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 :
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 -vs- : On Appeal from the Stark County
 : Court of Appeals, Ninth Appellate
 DOUGLAS CENTAFANTI, : District
 :
 Defendant-Appellee. : Court of Appeals 2007CA00044

APPENDIX TO

AMICUS BRIEF OF THE OFFICE OF THE OHIO PUBLIC DEFENDER
IN SUPPORT OF DOUGLAS CENTAFANTI, APPELLEE

B

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FIFTH APPELLATE DISTRICT

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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

(H)

JUDGMENT:

Reversed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

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A TRUE COPY TESTED
CLERK
By *[Signature]*
Date 8-7-07

FILED

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.

{¶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*, 8th 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

viliate 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), 10th 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. Hooey* (1969), 393 U.S. 374, 89 S.Ct. 575, 21 L.Ed.2d 607.)" *State v. Antos*, 8th 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

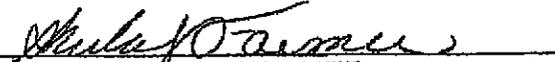
superintendent of the source and content of an untried indictment when the State is aware of the defendant's location and the source and content of the untried indictment and the defendant has made a demand for speedy disposition of the same. *State v. Rollins*, supra.

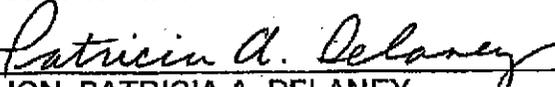
{¶53} Accordingly, we find that appellant substantially complied with R.C. 2941.401, and that the court erred by denying his motion to dismiss the charges against him. We emphasize that this is not a case where a defendant simply made a blanket demand; rather appellant was represented by counsel who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

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

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

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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