

IN THE SUPREME COURT OF OHIO

ORIGINAL

13-1539

TERRANCE QUILLEN	:	
	:	
Appellant	:	On Appeal from the
	:	Butler County
-V-	:	Court of Appeals
	:	12th Appellate District
	:	
STATE OF OHIO	:	
	:	
Appellee	:	Court of Appeals
	:	Case No. 2012-10-0217
	:	

---

MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT TERRANCE QUILLEN

---

Terrance Quillen  
 Inmate No. A412908  
 Marion Correctional Institution  
 P.O. Box 57  
 Marion, Ohio 43302-0057

COUNSEL FOR APPELLANT IN PRO SE

Michael T. GMoser (002132)  
 Butler County Prosecuting Attorney

Lina N. Alkamdawi (0075462)  
 Assistant Prosecuting Attorney  
 Government Services Center  
 315 High Street, 11th Floor  
 Hamilton, Ohio 45011

FILED  
 SEP 27 2013  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

COUNSEL FOR APPELLEE BUTLER COUNTY PROSECUTOR

RECEIVED  
 SEP 27 2013  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

TABLE OF CONTENTS

Pages

EXPLANATION OF WHY THIS CASE IS A  
CASE OF PUBLIC OR GREAT INTEREST  
AND INVOLVES A SUBSTANTIAL  
CONSTITUTIONAL QUESTION..... 1

STATEMENTS OF CASE AND FACTS..... 3

LAW AND ARGUMENT..... 4

PROPOSITION OF LAW ONE..... 4

THE TRIAL JUDGE ABUSED HIS DISCRETION  
BY SENTENCING THE APPELLANT WHILE HE  
WAS MENTALLY INCOMPETENT WHICH DENIES  
HIS SUBSTANTIVE AND PROCEDURAL DUE  
PROCESS GUARANTEES OF THE UNITED STATES  
CONSTITUTION FOURTEENTH AMENDMENT..... 4

PROPOSITION OF LAW TWO..... 6

A QUESTION OF THE COMMON PLEAS COURTS  
JURISDICTION TO ACT CAN BE RAISED AT  
ANYTIME, WHERE THAT COURT LOST JURIS-  
DICTION OVER INDICTMENT AFTER ENTRY  
OF A VOID SENTENCE, THE APPELLANT IS  
DENIED FUNDAMENTAL RIGHTS TO SPEEDY  
TRIAL GUARANTEED VIA THE 5th, 6th,  
14th AMENDMENTS U.S.C.A., INCONJUNCTION  
WITH STATUTORY RIGHTS OF APPELLANT TO  
SPEEDY TRIAL WITHIN (90) DAYS OF ARREST  
AND THOUGH GUILTY PLEA WAIVES RIGHT TO  
SPEEDY TRIAL, SPEEDY TIME CLOCK IS NOT  
TOLLED BY A VOID SENTENCE, SO COMMON  
PLEAS COURT ABUSED ITS DISCRETION BY  
NOT GRANTING MOTION TO DISMISS INDICT-  
MENT IN VIOLATION TO HIS FUNDAMENTAL  
RIGHT TO LIBERTY..... 6

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

Chief Justice and Justices of the Ohio Supreme Court, due to the substantial Federal and State Constitutional Violations of the Appellants Vested Right To Liberty by The State of Ohio and State Officials, this case presents a case of Public and Great General Interest for the reasons below.

The Appellant raises a question of Statutory Subject Matter Jurisdiction see Proposition of Law Two Infra. This Supreme Court has a case on all fours with the Appellants Statutory Subject Matter Jurisdiction argument see LINGO V. STATE, case no. 2012-1774 (oral argument held 9-10-2013), Lingo's argument is the same as the Appellant raises in Proposition of Law No. 2 O.R.C. §§2967.28; 2929.14; 2945.71; 2945.73. A Common Pleas Court Jurisdiction is fixed by statute see STATE EX REL. MILLER V. KEEFE, (1958), 168 Ohio St. 234 (syllabus one), see Dictum: "The Constitution itself confers no jurisdiction whatever upon that court [Court of Common Pleas], either Civil or Criminal. It [Constitution] gives it the capacity to receive jurisdiction in all such cases, but it can exercise none, until fixed by Law". STEVEN V. STATE, 3 Ohio St. 453 (Ranney, Judge).

The Statutes at issue here see Proposition of Law No. 2 O.R.C. §§2967.28; 2929.14; 2945.71; 2945.73, having not been followed, and as shown by the record before this court these statutes were violated, confer a Federal Vested Right To Liberty on Mr. Quillen as held by the United States Supreme Court below:

The actions of the State of Ohio in not adhering to Mandatory Statutes above arbitrarily, un-

reasonably denies Appellant Due Process of Law see WOLFE V. MCDONNELL, 418 U.S. 539, 557, "A State must follow minimum due process to ensure that Liberty is not arbitrarily abrogated when the State creates a Statutory Right to release from prison, see VITEK V. JONES, 445 U.S. 480, 488-489, MEACHUM V. FANO, 427 U.S. 215, 226.

Because, the Appellants Statutory Rights have been violated he invokes his Fundamental Right to Redress via 1st Amend. U.S.C.A., under the Supremecy Clause of the U.S. Constitution, for this Supreme Court to adjudicate his Fundamental Rights granted by the United States Supreme Court Case Laws above because per Proposition of Law No. 2 O.R.C. §§2967.28; 2929.14; 2945.71; 2945.73, Appellants Common Pleas Court Judgement is void see FRANK V. MANGUM, 237 U.S. 309 (The Writ of Habeas Corpus shall issue when State Court Judgement is void for want of jurisdiction, and this is Mr. Quillens case.).

Please Note whatever happens in LINGO V. STATE, Case No.2012-Ohio-1774 (Ohio Supreme Court), shall determine the outcome of this Memorandum in Support of Jurisdiction, since both cases raise the same Jurisdictional Questions.

STATEMENTS OF CASE AND FACT

The Appellant Terrance Quillen, is a layman of the law. This is his first prison sentence and liberal pleading are contained herein.

This is a case where the Appellant has been held in prison almost 15 years now on a illegal sentence of 18 years. See Transcript (TR.) at p.3-4.

Common Pleas Judge Patricia Oney removed Mr. Quillen from the Marion Correctional Institution (MCI) at Marion, Ohio by order of that court to the Butler County Sheriff to transport him to the Butler County Jail, a total of three (3) removals.

Each time ie. twice Appellant was ordered by court order of Judge Oney to return Mr. Quillen to (MCI) without any court further proceeding accruing.

By virtue of being transferred in and out of prison twice on a void sentence the Common Pleas Court lost jurisdiction to sentence this Appellant via Crim.R.32 and case laws NEAL V. MAXWELL, Ohio St, \_\_, STATE V. OWEN, N.E.2D. \_\_, (7th App.Dist.Ct.).

Secondly, since this Appellant was imprisoned on a void Post Release Control (PRC) sentence for over twelve (12) years See TR. p.12, he is entitled to the Indictment being dismissed See Motion To Dismiss Indictment for Lack of Speedy Trial filed in the Common Pleas Court, and TR.p.5, shows Judge Oney unconstitutionally overruled Speedy Trial Motion.

The Court ordered Mr. Quillen to pay the court costs and attorney fees See Journal Entry of the New Sentence at p.2, ¶3.

The Appellant has been declared Indigent by Judge Oney as indicated by court appointed counsel for 10-9-12 Sentencing Hearing, therefore the court costs and attorney fees are void. and the Common Pleas Court possessed **NO JURISDICTION** to order them. The Appellant's Appellate Case challenges the Subject-Matter Jurisdiction of the Common Pleas Court in the first instant on this direct appeal.

### LAW AND ARGUMENT

#### PROPOSITION OF LAW ONE

The Trial Judge abused his discretion by sentencing the Appellant while he was Mentally Incompetent which denies his substantive and procedural Due Process Guarantees of the United States Constitution Fourteenth Amendment.

Mr. Quillen makes several incomprehensible statements to the court during Sentencing Hearing October 9, 2012. See Transcript (TR.) at pages (p.) 7-9.

Judges Fundamental Fairness mandates an incompetent defendant cannot be sentenced. (Citations Omitted).

The Ohio Supreme Court on this subject has said a Mentally Ill prisoner cannot be executed refer to: STATE V. BERRY, (1995),

72 Ohio ST.3d 354, for persuasive argument.

On the facts subjudice this Appellant has been denied Due Process where no competency hearing was held prior to sentencing hearing. As the record indicates Mr. Quillen was not competent during those proceedings. Under those circumstances the Supreme Court of Ohio has said a competency hearing must be held see STATE V. WILLIAMS, 99 Ohio ST.3d 439, at 451.

Moreover, the Appellant not understanding why he was in court see TR. p. 8, at lines 7-19 quoted below;

(Mr. Upton conferring with Defendant)

Mr. Upton: Your Honor, If I may?

The Court: Sure, Mr. Upton.

Mr. Upton: My client has some notes here and I've asked him about it and he says that what the court has told him up to this point hasn't answered his questions. The first is that he's unsure of why he's actually in court \*\*\*.

The Defendant: Yes; Yes, it is.

The Court: I thought I answered that, but I'll do it again.\*\*\*.

Because, the Appellant has a history of Mental Illness the Court and Prison systems are aware of Mr. Quillen has been denied his constitutional Right to Due Process, and Fair Trial, because he was sentenced while incompetent see for authority PATE V. ROBINSON, 383 U.S. 375. which violates the 14th Amend. U.S.C.A., Adjudication requested.

PROPOSITION OF LAW TWO

A QUESTION OF THE COMMON PLEAS COURTS JURISDICTION TO ACT CAN BE RAISED AT ANYTIME, WHERE THAT COURT LOST JURISDICTION OVER INDICTMENT AFTER ENTRY OF A VOID SENTENCE, THE APPELLANT IS DENIED FUNDAMENTAL RIGHTS TO SPEEDY TRIAL GARANTEED VIA THE 5th, 6th, 14th, AMENDMENTS U.S.C.A., INCONJUNCTION WITH STATUTORY RIGHTS OF APPELLANT TO SPEEDY TRIAL WITHIN (90) DAYS OF ARREST, AND THOUGH GUILTY PLEA WAIVES RIGHT TO SPEEDY TRIAL, SPEEDY TIME CLOCK IS NOT TOLLED BY A VOID SENTENCE, SO COMMON PLEAS COURT ABUSED ITS DISCRETION BY NOT GRANTING MOTION TO DISMISS INDICTMENT IN VIOLATION TO HIS FUNDAMENTAL RIGHT TO LIBERTY.

Now comes the defendant moving this Court via Ohio Constitution Article I §§ 1,2,9,16, and United States Constitution Amendments 1<sup>st</sup>,5<sup>th</sup>,6<sup>th</sup>,8<sup>th</sup>,14<sup>th</sup>, under his fundamental rights to petition the Government for redress, to adjudicate his unconstitutional denial of the right to *complete trial*, as mandated per the Sixth Amend., which on the facts here constitutes *cruel and unusual punishment* see HARMELIN V. MICHIGAN, \_\_\_ U.S. \_\_\_:[ FOOTNOTE 10.] ( imprisonment that is *illegal is cruel and unusual* ), on the facts here the defendant's sentence is void for post release control violations see STATE V. FISCHER,(2010), 128 Ohio St.3d 92 ( *a sentence that is void for illegal post release control violations may be heard at anytime* ).

Your Honor the facts are clear here, this Defendant has languished in prison about *(11) eleven years on a void sentence (id.)* see the certified journal entry of sentence attached hereto, it says; "post release control is mandatory in this case up to a maximum of 5 years, several courts have ruled the the up to language is not in accord with the statute R.C. 2967.28 as well as other sentencing statutes ( citations omitted ), therefore, via FISCHER, HEADNOTE 3, this sentence not inaccord with the statutory mandates renders Mr. Quillen's sentence void, and further, since the defendant attempted sentence was on or about June 12, 2001 via the laws in effect at that time it may be said that this alleged sentence is *void ab initio* via ROMITIO V. MAXWELL,(1967), \_\_\_ Ohio St.2d. \_\_\_ ( a sentence that does not comport with statutory mandates is a nullity as if no sentence had been passed).

The Ohio Courts of Common Pleas basic *jurisdiction stems from two sources*, first is called *inherent powers* to control all contempt of Court, and its power to vacate void judgments see DeRYT V. DeRYT,(1966), 6 Ohio St.2d. 31 HEADNOTES 7.8; PATTON V. DIEMER,(1988), 35 Ohio St.3d. 68,70 (same).

Second type of basic jurisdiction is *statutory jurisdiction*, and this is the form of jurisdiction this motion is grounded in. Honorable Judge the fundamentals of statutory jurisdiction derive from the Ohio Constitution Article IV §§ I,IV as held by the Ohio Supreme Court see STATE EX REL. MILLER V. KEEFE,JUDGE,(1958), 168 Ohio St. 234 ( Syllabus I. ) and p. 235 quoted below;

“ The Constitution itself confers no jurisdiction whatever upon that court [ Court of Common Pleas ], either in civil or criminal cases. It is given a capacity to receive jurisdiction in all such cases, *but it can exercise none*, until 'fixed by law'”.STEVENS V. STATE,3 Ohio St. 453

Further;

**14 Ohio Jurisprudence (2d), 584, Section 166:**

“ The Courts of Common pleas are the constitutional courts of general jurisdiction in Ohio, but they are capable of exercising only such jurisdiction as conferred by the Legislature. The Constitution itself confers no jurisdiction whatever upon the Common Pleas Court, either in civil or criminal cases, but merely gives that Court the capacity to receive jurisdiction which shall be fixed by law. The Constitution declares that the jurisdiction of the Courts of Common Pleas, and of the Judges thereof shall be fixed by law. This Constitutional provision is not self-executing, but must be enforced by appropriate legislation, and in this sense,therefore the jurisdiction of the Common Pleas Court *can be said to be statutory*”

The statutory rights of this Defendant via O.R.C. §§ 2967.28; 2929.14; 2945.71; 2945.73 and the statutory jurisdiction granted to the Butler County Common Pleas Court over the subject-matter of this motion e.g. *void sentence, lack of speedy trial* may not through agreement vest this court with subject-matter jurisdiction see STATE V. FLYNT,(1975),338 N.E.2d. 554.

Moreover, because the sentence in this case is void, for failure of this Court to impose post release control according to the statutes above, the “*up to*” language seen in ex.(A-1-2) renders sentence void, the defendant attempted sentencing hearing was held on or about June 12, 2001, therefore, by law he is entitled to a *de novo* sentencing hearing via STATE V. SINGLETON,(2009), 124 Ohio St.3d 173 (Syllabus 1.) (“ For criminal sentences imposed prior to July 11, 2006, in which a trial court failed to properly impose post release control, trial court shall conduct a *de novo* sentencing hearing in accordance with decisions of the Supreme Court of Ohio”). The Supreme Court cases applicable to this Defendants case are STATE V. JORDAN,(2004), 104 Ohio St.3d 21; STATE V. BEZAK,(2006), 114 Ohio St.3d 94; STATE V. SIMPKINS,(2008), 117 Ohio St.3d 420;ROMITIO V. MAXWELL, (1967), 10 Ohio St.2d 266, 267-268 (*Mr. Quillen’s sentence is a nullity as if no sentence had been entered*).

Also it may be said that this defendant has *no conviction* because he has *no sentence (id.)*, the Ohio Supreme court has held there can be no conviction where the record reflects no sentence see STATE V. HENDERSON,(1979), 58 Ohio St.2d 171; *infra*

#### SYLLABUS 1.

Where an accused has entered a plea of guilty to \*\*\*offense but has **not been sentenced** by the Court on that charge, such offender has not been \*\*\* convicted\*\*\* “.

In STATE V. WHITFIELD,(2010),124 Ohio St.3d 319 HEADNOTE 4. “\*\*\* conviction consists of a guilty verdict and the imposition of a sentence or penalty”.

In instant has languished in prison (10) *ten years plus*, without a sentence or conviction, which state procedure arbitrarily denies the Defendant's fundamental right to liberty see DENT V. WEST VIRGINIA, \_\_\_ U.S. \_\_\_; an 5<sup>th</sup>, 14<sup>th</sup>, Amends. U.S.C.A., rights to be heard, and redress in the courts of law, that all other persons in prison have been afforded thus denying *Due Process and Equal Protection of Law*.

The defendant has been denied fundamental fairness and the right to speedy trial via the case law of the United States Supreme Court see KLOPPER V. NORTH CAROLINA, (1967), 386 U.S. 213; an BARKER V. WINGO, \_\_\_ U.S. \_\_\_: (two years imprisonment without completing court proceedings *prejudice to defendants rights shall be presumed*).

Further, the defendant has been denied his *statutory speedy trial rights, where as here the County Prosecutor has failed to completely prosecute this case, where as here the defendant languishes in prison 10 + years without being sentenced*. The statutes that control the jurisdiction of this court :

R.C. 2945.71(C)(2):

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

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

R.C. 2945.73:

( B ) Upon motion made at or prior to the commencement of trial, a person charged with an offense shall be discharged if he is not brought to *trial* within the time required by sections 2945.71 and 2945.72 of the Revised code.

The threshold question here is has this defendant received *a trial* ? The Black's Law Dictionary at p. 1504, **Trial** " a judicial examination and determination of issues between parties to action,\*\*\* A judicial examination, in accordance with the laws of the land, as plead supra, the **conviction is void, the sentence is void**, therefore, it may be said that there has been *no trial* under the laws of the land.

An analogy with the facts of this case may be seen in STATE V. WILLIS, 432 N.E.2d 219 Syllabus 2. "Where an appellate court reverses an erroneous dismissal and remands a criminal case for trial, Ohio speedy trial statutes apply." And the Federal Courts hold "whether delay in imposition of sentence amounts to deprivation of right to speedy trial, or violates due process depends upon the circumstances see 6<sup>th</sup>, 14<sup>th</sup>, Amends. U.S.C.A. WELSH V. UNITED STATES, 348 F.2d 885.

The Appellant comes to the court as a layman of the law via the Authority of HAINES V. KERNER, 404 U.S. \_\_\_.

Mr. Quillen hereby formally disagrees with the Statement of Facts, of the Appellee, for this reason, the Appellant's Speedy Trial Violation is grounded on the fact, COUNTING FROM JUNE 11, 2001, THE DAY HE RECEIVED THE VOID SENTENCE, UNTIL OCTOBER 9, 2012 WHEN THE LOWER COURT ATTEMPTED TO CORRECT THE VOID SENTENCE A TOTAL OF 10 YEARS, 7 MONTHS, 29 DAYS "IS" THE TIME PERIOD SHOWING THE SPEEDY TRIAL VIOLATION. NOT, the time period prior to guilty plea as the State Attorney suggests see Appellee Brief at p.3 1-2.

#### REPLY ARGUMENT

Contrary to the arguments of the state, the Appellant is entitled to raise the Speedy Trial Violation that occurred after he received the Void Sentence per STATE V. FISCHER, 128 Ohio St.3d 92, at ¶36 Quoted Below:

"~~we~~ our decision today revisits only one component of the holding in BEZAK, and we overrule only that portion of the syllabus that requires a complete resentencing hearing rather than a hearing restricted to the VOID PORTION OF THE SENTENCE. In light of our holding, the Court of Appeals in this case correctly found that Fischer's remaining claims, which did not involve an Void Sentence or Judgment, were barred by Res Judicata."

However, unlike Fischer above, the Appellant's issue's of denial of Speedy Trial is directly tied to the Void Sentence (id.).

Therefore, the Appellant having made a prima facie case of Speedy Trial Statutory R.C. 2945.71, beginning with entry of the Void Sentence, and terminating with the Butler County Common Pleas Court entering another Void Sentence on October 9, 2012, mandates Dismissal of Indictment and Loss of Subject Matter Jurisdiction via R.C. 2945.73, and BARKER V. WINGO, \_\_\_ U.S. \_\_\_, which questions of Law and Fact may be determined, and Writ of Habeas Corpus issued to restore Appellants Liberty as held by the U.S. Supreme Court in FRANKLIN V. MANGUM U.S. \_\_\_.

REPLY TO STATES NEW VOID SENTENCE

As ADMITTED by the State's Attorney at p.5, part C., the Butler County Judge on October 9, 2012, vacated Appellant's Void Sentence entered on June 11, 2001. Then again on October 9, 2012 again sentenced the Appellant Mr. Quillen, to a Void Sentence, by unlawfully removing his Jail Time Credit, Jail Time Credit is part of the Sentence as held by the State and Federal Courts (citations omitted).

The prejudice and irreparable injury to the Appellants Substantive Rights, can be seen in the Ohio Law that confers a vested Liberty Interest protected by the Ohio Const. Art.I§§1, 2,16 in conjunction with the United States Const. 5th, 14th Amends. mandating Adjudication, see the Law below:

OHIO CRIM.R.32(A)  
IMPOSITION OF SENTENCE

"Sentence shall be imposed without unnecessary delay."

The above right to liberty guaranteed under Ohio Law, as protected by the Federal Constitution 5th, 14th Amends. U.S.C.A., has as admitted by the state, has been denied this appellant requiring redress.

In a case ON similar facts ie. sentence not imposed within a reasonable time The Ohio Supreme Court held indicated such a prisoner as Appellant has a liberty interest see NEAL V. MAXWELL, (1963), 175 Ohio St. 201.

Further the 7th Appellate District in adjudicating the same issue of Delay in Sentencing found in STATE V. OWEN, 910 N.E.2d, 1059 (2009) at HEADNOTE ONE (1) is on point with Mr. Quillen's case here see the reasoning below at ¶27:

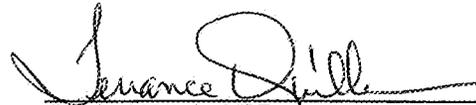
"An unreasonable delay between a plea and a sentencing, which cannot be attributed to the defendant, will invalidate that sentence. STATE V. BROWN, 786 N.E.2d 492 at ¶31. Our holding in Brown was based upon an Inference from the Ohio Supreme Court's holding in NEAL V. MAXWELL, (1963), 175 Ohio St. 201. In Neal the court held:"[i]T is well established that the time of pronouncing sentence is within the discretion of the trial court and a delay for a reasonable time does not invalidate the sentence" Id. at 202.

The time for the state to enter a valid sentence cannot be attributed to the First Void Sentence, and now the Second Void Sentence he received is and was by the state design, therefore the State of Ohio has forfeited Jurisdiction to enter a Sentence in the case now on Appeal via NEAL V. MAXWELL, STATE V. OWENS, STATE V. BROWN, and for the Twelfth District Court of Appeals to vacate his 18 Year Void Sentence he prays for redress.

CONCLUSION

Based on the unique facts of this case, the Appellant Imprisonment is in Violation of his Fundamental Rights, to Substantive and Procedural Due Process, Equal Protection of the Laws, Contrary to the Mandates of the Ohio Const. Art.I§§1,2,16, and 1st, 5th, 14th Amends. United States Const. Because, the speedy trial statutes must be strictly construed against the state and in favor of the defendant STATE V.GERALDO N.E.2d; and the statutes defining offenses and PENALTIES shall be strictly construed against the state, and liberally construed in favor of the accused via R.C.§2901.04, this Defendant moves the Court to dismiss the indictment in the above styled case, and for this defendant prays Justitia Piepondrous Laus Deo.

Respectfully submitted,



TERRANCE QUILLEN  
Inmate No. A412908  
MARION CORRECTIONAL INSTITUTION  
P.O. BOX 57  
MARION, OHIO 43302-0057  
DEFENDANT

PROOF OF SERVICE

A copy of this motion was sent to the Butler County Prosecutor at Government Services Center 315 High Street Hamilton, Ohio 45012 via reg. U.S. Mail this 23<sup>rd</sup> day of September, 2013.

  
TERRANCE QUILLEN

---

APPENDIX

---

TABLE OF CONTENTS

	Pages
TWELFTH APPELLATE DISTRICT JUDGEMENT ENTRY.....	1
CASE NO. CA2012-10-0217	
TWELFTH APPELLATE DISTRICT OPINION.....	2-8
CASE NO. CA2012-10-0217	

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

FILED  
2013 AUG 27 AM 8:37  
MARY L. SWAIN  
BUTLER COUNTY  
CLERK OF COURTS

STATE OF OHIO,

Plaintiff-Appellee,

CASE NO. CA2012-10-217

- vs -

FILED BUTLER CO:  
COURT OF APPEALS  
AUG 27 2013  
MARY L. SWAIN  
CLERK OF COURTS

JUDGMENT ENTRY

TERRANCE QUILLEN,

Defendant-Appellant.

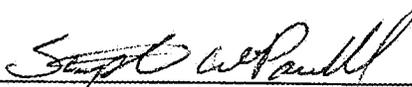
The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed in part, reversed in part, and this cause is remanded for further proceedings according to law and consistent with the Opinion filed the same date as this Judgment Entry.

It is further ordered that a mandate be sent to the Butler County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed 67% to appellant and 33% to appellee.



Robert A. Hendrickson, Presiding Judge



Stephen W. Powell, Judge



Robert P. Ringland, Judge

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
BUTLER COUNTY

STATE OF OHIO,  
Plaintiff-Appellee,

- vs -

TERRANCE QUILLEN,  
Defendant-Appellant.

CASE NO. CA2012-10-217

OPINION  
8/26/2013

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
Case No. CR2000-03-0306

✓ Michael T. Gmoser, Butler County Prosecuting Attorney, Government Services Center, Lina N. Alkamaha, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

✓ Terrance Quillen, #A412908, Marion Correctional Institution, P.O. Box 57, Marion, Ohio 43302, defendant-appellant, pro se

**S. POWELL, J.**

{¶ 1} Defendant-appellant, Terrance Quillen, appeals pro se from the Butler County Court of Common Pleas decision denying his motion to dismiss his indictment on three counts of rape, as well as its decision to resentence him to a mandatory five-year postrelease control term. For the reasons outlined below, we affirm in part, reverse in part, and remand for further proceedings.

{¶ 2} On April 9, 2001, Quillen pled guilty to three counts of rape in violation of R.C. 2907.02(A)(1)(b), all first-degree felonies. Quillen was subsequently sentenced to an aggregate 18-year jail term and properly notified of his mandatory five-year postrelease control obligations. However, as part of his sentencing entry, the trial court improperly included language indicating Quillen's postrelease control obligations were merely "up to" a maximum of five years. Quillen did not appeal from his conviction or sentence.

{¶ 3} On March 23, 2012, Quillen filed a pro se motion to dismiss his indictment and sentence. In support of this motion, Quillen argued that his sentence was void due to the improper imposition of his mandatory five-year postrelease control term, and therefore, "the statutory jurisdiction granted to the Butler County Common Pleas Court over the subject-matter of this motion" has ceased. The trial court denied Quillen's motion to dismiss on speedy trial grounds. However, finding Quillen's mandatory five-year postrelease control term was improperly imposed, the trial court ordered a new sentencing hearing limited to the proper imposition of his mandatory five-year postrelease control term.

{¶ 4} On October 9, 2012, the trial court held a resentencing hearing during which the court properly advised Quillen of his mandatory five-year postrelease control obligations. The trial court then issued an amended sentencing entry that properly notified Quillen that postrelease "control is mandatory in this case for 5 years." The trial court also made a finding that Quillen was entitled to 4,187 days of jail time credit.

{¶ 5} Quillen now appeals from the trial court's decision, raising three assignments of error for review. For ease of discussion, Quillen's first assignment of error will be addressed out of order.

{¶ 6} Assignment of Error No. 2:

{¶ 7} THE TRIAL JUDGE ABUSED HIS DISCRETION BY SENTENCING THE APPELLANT WHILE HE WAS MENTALLY INCOMPETENT WHICH DENIES HIS

SUBSTANTIVE AND PROCEDURAL DUE PROCESS GUARANTEES OF THE UNITED STATES CONSTITUTION FOURTEENTH AMENDMENT.

{¶ 8} In his second assignment of error, Quillen argues the trial court erred by resentencing him to the mandatory postrelease control term when he made "several incomprehensible statements" during his resentencing hearing indicating he was "not competent during those proceedings." In support of this claim, Quillen points to the following discussion before the trial court:

[DEFENSE COUNSEL]: My client has some notes here and I've asked him about it and he says that what the Court has told him up to this point hasn't answered his questions. The first is that he says he's unsure of why he's actually in court today given the nature of the motions that he's filed up to this point, it's my understanding; is that correct, Terrence?

THE DEFENDANT: Yes; yes, it is.

{¶ 9} However, Quillen conveniently ignores the remainder of that same discussion, which included, in pertinent part, the following:

THE COURT: I thought I answered that, but I'll do it again. He's here today for a resentencing on the portion of the sentencing entry which was in error, which was the portion of the sentencing entry regarding post-release control. \* \* \* [Y]ou were placed on post-release control for a period of up to five years, okay? That's wrong. The Judge should have told you that the mandatory – that the post-release control is five years and it's mandatory. It's not 'up to.' It's mandatory. So we're here today to correct that entry. That's the reason we're here today. Does that answer that question?

THE DEFENDANT: Yeah.

THE COURT: Okay. Next question.

[DEFENSE COUNSEL]: Your Honor, I think, I can kind of summarize this. **And when I said he didn't understand why he was in court today I don't think he's incompetent or anything**, I think his point is that – these are all his pro se motions, Your Honor, so if I'm summarizing them incorrectly, I'm sure he can tell me, but it's my client's position that he was never sentenced to begin with correctly, and that his sentence is void

and that he can't be resentenced upon that void sentence. Is that your –

THE DEFENDANT: Yes.

(Emphasis added.)

{¶ 10} Quillen then went on to personally address the trial court regarding his position that the court lacked subject matter jurisdiction to proceed, as well as challenges to his speedy trial and due process rights. This included several citations to United States Supreme Court decisions that he claimed supported his argument for dismissal.

{¶ 11} As can be seen, when taken in its entirety, there is simply nothing in the record that suggests Quillen was incompetent during his resentencing hearing. See R.C. 2945.37(B); see also *State v. Rodriguez*, 12th Dist. Butler No. CA2008-07-162, 2009-Ohio-4460, ¶ 50; *State v. Marks*, 8th Dist. Cuyahoga No. 92548, 2009-Ohio-6306, ¶ 26. To suggest otherwise is nothing more than a mischaracterization of the record before this court. The trial court, therefore, did not err by resentencing Quillen to correctly notify him of his mandatory five-year postrelease control term without further inquiry as there was nothing to suggest he lacked the necessary competency to proceed. See, e.g., *State v. Burns*, 12th Dist. Butler Nos. CA2004-07-084 and CA2004-10-126, 2005-Ohio-5290, ¶ 34-40 (affirming trial court's decision denying request for competency hearing following guilty plea where there was no indicia of incompetence or good cause shown that would have entitled appellant to a competency hearing prior to sentencing). Accordingly, as there was nothing to suggest Quillen lacked the necessary competency, Quillen's second assignment of error is overruled.

{¶ 12} Assignment of Error No. 3:

{¶ 13} A QUESTION OF THE COMMON PLEAS COURTS JURISDICTION TO ACT CAN BE RAISED AT ANYTIME, WHERE THAT COURT LOST JURISDICTION OVER INDICTMENT AFTER ENTRY OF VOID SENTENCE, THE APPELLANT IS DENIED

FUNDAMENTAL RIGHTS TO SPEEDY TRIAL GUARANTEED VIA THE 5TH, 6TH, 14TH, AMENDMENTS U.S.C.A., INCONJUNCTION (sic) WITH STATUTORY RIGHTS OF APPELLANT TO SPEEDY TRIAL WITHIN 90 DAYS OF ARREST, AND THOUGH GUILTY PLEA WAIVES RIGHT TO SPEEDY TRIAL, SPEEDY TIME CLOCK IS NOT TOLLED BY A VOID SENTENCE, SO COMMON PLEAS COURT ABUSED ITS DISCRETION BY NOT GRANTING MOTION TO DISMISS INDICTMENT IN VIOLATION TO HIS FUNDAMENTAL RIGHT TO LIBERTY.

{¶ 14} In his third assignment of error, Quillen challenges the trial court's decision denying his motion to dismiss the indictment against him. In essence, Quillen argues that his indictment, conviction, and sentence are all void and must be dismissed as a violation of his speedy trial rights because his case has been pending for over a decade since he was first informed of his postrelease control obligations during his June 11, 2001 sentencing hearing. We disagree.

{¶ 15} Although the trial court incorrectly informed Quillen of his postrelease control obligations as part of its original sentencing entry, contrary to Quillen's claims otherwise, this case has not been pending for over a decade. As noted by the Ohio Supreme Court in *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, "a sentence that does not include the statutorily mandated term of postrelease control is void, and the new sentencing hearing to which a defendant is accordingly entitled is limited to proper imposition of postrelease control." *State v. Schleiger*, 12th Dist. Preble No. CA2011-11-012, 2013-Ohio-1110, ¶ 16. However, this has absolutely no impact on the "other aspects of the merits of the conviction, including the determination of guilt." *State v. Gipson*, 12th Dist. Warren No. CA2011-02-015, 2011-Ohio-5747, ¶ 15, citing *Fisher* at ¶ 40.

{¶ 16} Simply stated, it is only the "offending portion" of the sentence that is subject to review and correction. *State v. Watkins*, 12th Dist. Butler Nos. CA2010-09-228 and CA2010-

12-346, 2011-Ohio-5227, ¶ 27, quoting *Fisher* at ¶ 27. In fact, as this court recently stated, in a resentencing hearing held for the purpose of properly imposing mandatory postrelease control, such as the case here, "a trial court has no discretion and is required and limited to imposing postrelease control the way it was required to do in the first place." *Schleiger* at ¶ 16. Therefore, correcting a sentence to properly impose a mandatory five-year postrelease control term does not violate or even implicate speedy trial rights. See *State v. Peterson*, 8th Dist. Cuyahoga No. 97362, 2012-Ohio-2200, ¶ 11; see also *State v. Spears*, 9th Dist. Summit No. 24953, 2010-Ohio-1965, ¶ 19-20.

{¶ 17} Moreover, it is undisputed that Quillen pled guilty to three counts of rape. "[A] guilty plea waives the defendant's right to raise a challenge to his conviction based on the statutory right to a speedy trial on appeal." *State v. Melampy*, 12th Dist. Brown No. CA2007-04-008, 2008-Ohio-5838, ¶ 11; *State v. Kelley*, 57 Ohio St.3d 127 (1991), paragraph one of the syllabus. Quillen also signed a waiver of his speedy trial rights. As with other fundamental rights, a defendant can waive the statutory right to a speedy trial, so long as the waiver is "expressed in writing or made in open court on the record." *State v. Cox*, 12th Dist. Clermont No. CA2008-03-028, 2009-Ohio-928, ¶ 14, quoting *State v. King*, 70 Ohio St.3d 158 (1994), syllabus. Such a waiver, when "made knowingly and voluntarily, also constitutes a waiver of [the defendant's] speedy trial rights guaranteed by the United States and Ohio Constitutions." *State v. O'Hara*, 12th Dist. Brown No. CA2009-04-015, 2010-Ohio-107, ¶ 12. There is nothing in the record to suggest that Quillen's waiver was not knowingly and voluntarily made. Therefore, Quillen's claim that the indictment must now be dismissed as a violation of his speedy trial rights is without merit. Accordingly, Quillen's third assignment of error is overruled.

{¶ 18} Assignment of Error No. 1:

{¶ 19} THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED PLAIN

ERROR WHEN THE JUDGE CHANGED JAIL TIME CREDIT FROM 4,648 DAYS TO 4,187 DAYS TOTAL JAIL CREDIT DENYING APPELLANT'S 14TH AMEND. U.S.C.A. RIGHT TO EQUAL PROTECTION UNDER THE LAW.

{¶ 20} In his first assignment of error, Quillen argues the trial court erred in calculating the appropriate jail time credit. The state concedes, and we agree, that there was error in the trial court's calculation and this matter should be remanded so that the court can properly determine the amount of jail time credit Quillen should be afforded. Therefore, in light of the record before this court, Quillen's second assignment of error is sustained and this matter is reversed and remanded to the trial court for the limited purpose of making the factual determination regarding the calculation and application of jail time credit. We take no position as to the proper amount of jail time credit. However, we instruct the trial court that in making its determination, the court should take into account both its January 3, 2007 nunc pro tunc entry finding Quillen was entitled to 401 days of jail time credit for time served between May 10, 2000 and June 14, 2001, as well as its October 4, 2012 nunc pro tunc entry finding Quillen was entitled to 4,187 days of jail time credit for time served between March 20, 2000 to May 10, 2000 and June 15, 2001 to October 9, 2012.

{¶ 21} Judgment affirmed in part, reversed in part, and remanded.

HENDRICKSON, P.J., and RINGLAND, J., concur.