[Cite as *State v. Short*, 2009-Ohio-3331.]

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,	)	
	)	CASE NO. 08 CO 22
PLAINTIFF-APPELLEE,	)	
	)	
- VS -	)	O P I N I O N
	)	
TROY SHORT,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court, Case No. 95CR48.

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee:

Attorney Robert Herron
Prosecuting Attorney
Attorney Tammie Riley Jones
Attorney Kyde Kelly
Assistant Prosecuting Attorneys
105 South Market Street
Lisbon, Ohio 44432

For Defendant-Appellant:

Troy Short, *Pro Se*
#134487
Fort Lyon Correctional Facility
P.O. Box 1000
Fort Lyon, Colorado 81038

JUDGES:

Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: June 29, 2009

VUKOVICH, P.J.

¶{1} Defendant-appellant Troy Short appeals the decision of the Columbiana County Common Pleas Court denying his "Request to Set Under the Uniform Mandatory Disposition of Detainers Act." The issue raised in this appeal is whether appellant was entitled to a hearing and relief pursuant to his aforementioned pleading. For the reasons expressed below, the judgment of the trial court is affirmed.

STATEMENT OF CASE

¶{2} In 1995, in Columbiana County Common Pleas Court, Short pled guilty to one count of aggravated burglary and one count of failure to comply. He was sentenced to an indefinite term of eight to fifteen years for aggravated burglary and a twelve month indefinite term for failure to comply; the sentences were ordered to be served concurrently. 07/26/95 J.E.

¶{3} In 2000, Short, after serving over five years in Lorain Correctional Institute, filed a "Motion for Relief" requesting that he be granted parole. 06/13/00 Motion. The state opposed the request. 06/30/00 Motion. The record does not indicate whether the request was granted, however, both parties assert that he was paroled at that time.

¶{4} The next filing in the record is Short's 2008 "Request to Set Under Mandatory Disposition of Detainers Act." 03/20/08 Motion. In that motion, he asserts that he is "currently serving a seventeen (17) year sentence in the state of Colorado and has a parole eligibility date of May 10, 2014."[1] He claims that he was paroled in Ohio in 2000, and that his parole was transferred to Pennsylvania. Then, according to him, after completing one year of supervised parole in Pennsylvania, he requested that the remainder of his parole be quashed and that on January 2, 2005, he was released from all Ohio parole obligations. He then claims that after being released from parole, he moved to Louisiana and then to Colorado. While in Colorado, he committed

[1]In the state's answer brief, it references that Short is serving a 17 year sentence in Colorado. In Short's reply brief, he contends that it is untrue that he is serving a 17 year sentence in Colorado. However, in his "Request to Set Under Mandatory Disposition of Detainers Act" he contended that he is serving a 17 year sentence.

another crime and was incarcerated. During that incarceration, he alleges that the Ohio Adult Parole Authority (hereafter referred to as the APA) placed a detainer against him in April 2006, but then released the detainer in December 2006. He asserts that the detainer was reinstated on May 5, 2007, and because of that detainer, he is not eligible for many of the offered programs, including early release programs, in the Colorado prison system. Attached to the "Request to set Under Mandatory Disposition of Detainers Act" is a detainer notice from the APA dated March 2007.

¶{5} The state opposed the "Request to Set under Mandatory Disposition of Detainers Act." 04/16/08 Motion. It explained that the interstate agreement on detainers is applicable only when there are untried indictments and since there are no untried indictments against Short, but rather a parole violation, that agreement is inapplicable. It further stated that Short's history with the APA is not as he asserts. It explained that Short was paroled in October 2000 to a detainer issued by Pennsylvania. He absconded from their supervision in September 2005 and he was declared a parole violator on September 27, 2005. It asserts an active detainer was placed on him on March 1, 2007 after the APA discovered the conviction and incarceration in Colorado.

¶{6} Short filed rebuttals to the opposition motion on April 25, 2008 and May 9, 2008. Both rebuttals assert that the interstate agreement on detainers is applicable to Short.

¶{7} On May 22, 2008, the trial court denied the request. Short filed a notice of appeal on July 3, 2008. Due to the length of time it took the Columbiana County Clerk of Courts to notify Short of the May 22, 2008 decision, we deemed the notice of appeal timely. 07/28/08 J.E.

ASSIGNMENT OF ERRORS ONE THROUGH FIVE

¶{8} "WHETHER OR NOT A STATE CAN RELEASE WARRANT/DETAINER, THEN REISSUE IT AT A LATER DATE AS DESIRED?"

¶{9} "WHETHER THERE ARE GUIDELINES FOR REQUIRED INFORMATION ON THE WARRANT/DETAINER?"

¶{10} "WHETHER OR NOT THE STATE OF OHIO HAS SENTENCE COMPLETION DOCUMENTS?"

¶{11} "WHETHER OR NOT THE STATE OF OHIO WAIVED JURISDICTION OVER APPELLANT WHEN IF FAILED TO APPREHEND?"

¶{12} "WHETHER OR NOT APPELLANT IS SUFFERING COLLATERAL CONSEQUENCES AS A RESULT OF WARRANT/DETAINER?"

¶{13} Short does not individually address each assignment of error and we will similarly address them simultaneously. After having reviewed the "Request to Set Under the Uniform Mandatory Disposition of Detainers Act," the subsequent filings, and the brief, it appears that Short is in part requesting that this detainer be resolved within 180 days. In his rebuttal to the state, he stated:

¶{14} "The State of Ohio will lose jurisdiction over defendant 180 days from the date defendant filed his Motion to Set if the State fails to extradite upon availability of defendant, in which he is currently available." 04/25/08 Motion.

¶{15} The interstate agreement on detainers was adopted and codified in Ohio by R.C. 2963.30. That statute states:

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

¶{17} "* * *

¶{18} "(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any **untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner**, he shall be brought to trial within one hundred eighty

days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner." R.C. 2963.30 (Emphasis Added).

¶{19} As can be seen from the clear language of this statute, it applies to detainers based on untried indictments, informations or complaints. A detainer for a parole violation does not fall within the definition of a detainer for an untried indictment, information or complaint. Fundamentally, convictions result after an indictment, information or complaint is tried and there is a finding of guilt. Then the court sentences the offender and if that offender is eligible, after serving a portion of the sentence, he or she could be paroled. Consequently, by definition, a detainer based on an alleged parole violation does not qualify as a detainer based on an untried indictment, information or complaint. Moreover, the statute does not state that it applies to detainers for parole violations. If it were intended to apply to detainers for parole violations, it would have expressly stated that it applied. We cannot read something into the statute that is not there. *United Tel. Credit Union v. Roberts*, 115 Ohio St.3d 464, 2007-Ohio-5247, ¶9. Thus, Short is unable to use the interstate agreement on detainers to force a parole revocation hearing within 180 days of filing that request.

¶{20} Furthermore, as the state correctly points out, there is no due process right for a parolee to have an immediate parole revocation hearing. "[U]nder federal due process principles, no liberty interest attaches until a parolee is taken into custody pursuant to the detainer. If a loss of liberty is attributable to detention for new crimes, the parole authority has no constitutional duty to hold an immediate parole revocation

hearing, regardless of his request therefor." *State ex rel. Taylor v. Ohio Adult Parole Auth.* (1993), 66 Ohio St.3d 121, 125. "Neither due process of law nor * * * [the] 'reasonable time' requirement compels a final revocation parole hearing while an alleged parole violator is imprisoned pending prosecution for, or after a conviction of, another crime." Id. at 128. As such, Short has no right to an immediate hearing on the revocation of parole since he has been charged and convicted with another case (Colorado case).

¶{21} Accordingly, Short's argument that Ohio will lose jurisdiction over him if it does not set the matter after he has made a request for it to be set fails.

¶{22} The other part of Short's argument in his request and briefs is that the APA did not have the authority to place a detainer on him because in 2005 it released him from all parole obligations. Thus, according to him, he was no longer on parole at the time of his conviction in Colorado and accordingly the APA could not place a detainer on him. He also contends that the APA had the opportunity to apprehend him before the 2007 detainer, but it did not take advantage of those opportunities, and that the APA first issued a detainer in March 2006 then in December 2006 released that detainer and not until March 2007 did it reinstate that detainer. The state disputes these arguments and contends that he was never released from his parole obligations, but rather in 2005, when he absconded from Pennsylvania's jurisdiction, he became a parole violator at large.

¶{23} Short's arguments fail because in the request he provides no support for his factual allegations. The burden is on Short to show that he was released from parole and that the APA had no authority to place a detainer on him. See *Johnson v. Smith*, 3d Dist. No. 9-09-04, 2009-Ohio-1914, ¶20 (stating burden of proof in habeas corpus case for right to release from parole is on petitioner). The only document in the record pertaining to the APA is the March 2007 detainer which was attached to Short's March 20, 2008 "Request to Set Under Mandatory Disposition of Detainers Act." Thus, neither this court nor the trial court had any other records of the on-goings between the APA and Short. Furthermore, it is not clear that the allegations he is making could properly be made through a filing in the original criminal case before the trial court. Moreover, we must acknowledge that the APA controls final release from parole and

that decision is solely within that agency's discretion. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, ¶36-37. See, also, *State ex rel. Jenkins v. Ohio Adult Parole Auth.*, 8th Dist. No. 85453, 2005-Ohio-761, ¶5, citing *State ex rel. Duganitz v. Ohio Adult Parole Auth.,* 77 Ohio St.3d 190, 192, 1996-Ohio-326. Consequently, given the lack of information in the record to support his allegations and given the APA's discretion, without anything in the record to support his allegations, we cannot find that the trial court erred when it denied the "Request to Set Under Mandatory Disposition of Detainers Act."

¶{24} For the foregoing reasons, the judgment of the trial court is hereby affirmed.

Donofrio, J., concurs.
Waite, J., concurs.