

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 11AP-498
	:	(C.P.C. No. 05CR-04-2681)
Keith Jones,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on February 14, 2012

Ron O'Brien, Prosecuting Attorney, and *Barbara Farnbacher*,
for appellee.

Dennis Kaps, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Keith Jones is appealing from his convictions on two counts of identity fraud in violation of R.C. 2913.49. His appointed counsel has submitted a single assignment of error:

THE APPELLANT'S PRO SE MOTION TO DISMISS PURSUANT TO SECTIONS 2941.401 AND 2963.30 SHOULD HAVE BEEN GRANTED BY THE TRIAL COURT BECAUSE MORE THAN 180 DAYS HAD ELAPSED BETWEEN THE TIME THE DEMAND WAS MADE FOR A SPEEDY TRIAL AND THE TIME THE APPELLANT ENTERED HIS GUILTY PLEA.

{¶2} After Jones reviewed his counsel's initial appellate brief, he insisted that two other issues be specifically addressed. He alleges that his attorney in the trial court rendered ineffective assistance of counsel under the Sixth Amendment to the U.S. Constitution. He also alleges that the trial judge who sentenced him was biased or prejudiced.

{¶3} Jones shows all the signs of being a career criminal. The record on this case alone shows repeated delays due to his being arrested on new or different charges in other jurisdictions. He served a term of incarceration in a federal prison while these state charges were unresolved.

{¶4} Despite his lengthy history of theft-related charges and despite his repeated incarcerations, his defense counsel was able to negotiate a plea to only two of the four charges in the indictment. Defense counsel was also able to convince a trial court judge to place Jones on community control. Jones had failed to successfully complete community control on other occasions and had failed to successfully complete periods of parole previously.

{¶5} At the time Jones was sentenced, years following his guilty pleas, he was clearly advised that if he failed to successfully complete community control this time, he would serve ten years of incarceration. He failed to successfully complete community control once again and was sentenced to the term of incarceration promised.

{¶6} Nothing in the record before us gives the least indication that the trial court judges who handled Jones's case were biased. One gave him a chance to prove himself and the other gave him the sentence promised for his failures at successfully completing community control.

{¶7} The record likewise fails to support the allegation that Jones's trial counsel was somehow ineffective. Defense counsel obtained an opportunity for Jones to prove that he could function legally in free society. Jones failed to take advantage of that opportunity. His failure is in no way attributable to counsel's performance.

{¶8} The remaining issue is the issue submitted on behalf of appellate counsel. To understand this issue requires setting forth the complex history of this case.

{¶9} Jones was indicted on April 25, 2005 for three counts of identity fraud, two counts of forgery and two counts of theft. He was arraigned before a magistrate two days later and counsel was appointed to represent him. Discovery was pursued and a pretrial was held on the case on June 1, 2005. The case was scheduled for trial on June 14, 2005.

{¶10} The trial date was reassigned to July 11, 2005, via an entry signed by Jones. The entry included a waiver of speedy trial rights for the period of the continuance.

{¶11} The case was continued from July 11, to September 7, 2005. Again, Jones signed the entry and waived his speedy trial rights.

{¶12} Nine days later, private counsel entered an appearance.

{¶13} The trial date of September 7, 2005 was also continued to November 3, 2005. Jones was present and once again signed the continuance entry, complete with its waiver of speedy trial rights.

{¶14} On September 7, 2005, a reporting recognizance bond was set for Jones at the request of the State of Ohio. The trial court judge assigned to the case was reluctant to approve the new bond.

{¶15} After being released on his own recognizance, Jones did not appear for his November 3, 2005 trial date. His recognizance bond was revoked and a warrant issued for his arrest.

{¶16} Jones was arrested again on January 10, 2007, over one year later. His case was ordered to be reactivated.

{¶17} Jones wrote a motion which he filed in the trial court in which he stated that about one month after he failed to appear for trial on the Ohio charges, he was sent to federal prison for 23 months as a parole violator. He asked for his recognizance bond to be reinstated and for counsel to be appointed to represent him.

{¶18} Jones's Ohio charges were set for trial for February 8, 2007, but the date was initially reassigned because the judge was in trial. Then, apparently, a plea agreement was reached. As a part of the agreement, a pre-sentence investigation was ordered and Jones was released on a recognizance bond once again, as recommended by the State of Ohio. A sentencing date of July 18, 2007 was set and then moved to July 25, 2007.

{¶19} Jones did not appear for his sentencing.

{¶20} On September 14, 2007, counsel for the State of Ohio sent a letter to Hamilton County, Ohio, asking that a detainer be placed on Jones, who had been arrested in Cincinnati. Jones was sent to prison again as a result of his Cincinnati arrest and attempts were made to retrieve him from the correctional reception center.

{¶21} A letter in the file indicates that Jones testified for the State of Ohio in a death penalty jury trial in October 2007. The prosecuting attorney's office in Hamilton County requested leniency for Jones as a result.

{¶22} In July 2008, Jones filed his first motion requesting that his felony charges, to which he had already pled guilty 17 months earlier, be dismissed "pursuant to R.C. 2941.401."

{¶23} On December 10, 2009, Jones was finally sentenced to five years of community control on the Franklin County charges. After he was sentenced, he was returned to custody in Cincinnati, Ohio. He apparently never saw his probation officer for over one year after getting out of jail. He also committed new crimes in Cincinnati. He was declared an absconder from probation in March 2010.

{¶24} At his probation revocation hearing, he stipulated to violating the terms of his probation. He had never pursued a direct appeal of his convictions and sentence imposed in December 2009.

{¶25} There are many reasons Jones is not entitled to relief. He had entered guilty pleas long before he filed his motion requesting dismissal of the charges. He repeatedly failed to show up for his sentencing. Whatever issues he may have had were waived when he failed to pursue his direct appeal following his initial sentencing. The only issue potentially remaining is whether the trial court erred in revoking his community control after he utterly failed to comply with the conditions of his probation. He stipulated that revocation was appropriate.

{¶26} No error was committed in the trial court. The sole assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

KLATT and FRENCH, JJ., concur.
