

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-06-062
- vs -	:	<u>OPINION</u> 4/23/2012
JEFFREY D. ADAMS,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM LEBANON MUNICIPAL COURT
Case No. TRD 1101422

Matthew J. Graber, 50 South Broadway, Lebanon, Ohio 45036, for plaintiff-appellee

Jeffrey D. Adams, 2285 Broadmoor Drive, Kettering, Ohio 45419, defendant-appellant, pro se

PIPER, J.

{¶ 1} Defendant-appellant, Jeffrey Adams, appeals his conviction in the Lebanon Municipal Court for speeding and the accompanying forfeiture of his driver's license.

{¶ 2} On April 21, 2011, Adams received a traffic citation from the Ohio State Highway Patrol for driving 79 m.p.h. in a zone with a maximum speed limit of 65 m.p.h. The citation was filed with the Lebanon Municipal Court on April 22, 2011. Adams contested the traffic citation, and filed an entry on May 5, 2011, stating that he did not waive his speedy trial

rights. On the same day that Adams filed his refusal to waive speedy trial, Adams was given a Notice of Hearing, stating that his trial date was May 26, 2011. Adams signed the notice of hearing, thus indicating his receipt of the notice.

{¶ 3} The next day, however, the trial court changed the date of the trial to May 19, 2011 so that the trial would occur within the 30-day time frame for speedy trial purposes. When Adams did not appear for the May 19, 2011 hearing, the trial court convicted Adams and ordered his driver's license forfeited.

{¶ 4} Adams filed a motion for relief from judgment and an accompanying affidavit in which Adams averred that he had not received notice of the changed trial date. The trial court denied the motion. In the entry denying Adams' motion for relief, the trial court stated that Adams was sent notice of the change of the trial date on May 6, 2011. Adams appeals the trial court's decision, raising the following assignments of error,¹ which we will analyze together for ease of discussion.

{¶ 5} Assignment of Error No. 1:

{¶ 6} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT BY DENYING APPELLANT'S MOTION FOR RELIEF FROM JUDGMENT AND DISMISSAL OF THE WITHIN REFERENCED COMPLAINT FOR FAILURE TO PROVIDE DEFENDANT A SPEEDY TRIAL. [Underlining sic.]

{¶ 7} Assignment of Error No. 2:

{¶ 8} THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT BECAUSE THE TRIAL COURT FAILED TO INDICATE, ON ITS DOCKET, BY JOURNAL ENTRY A REVISION OF THE MAY 26, 2011 TRIAL DATE.

{¶ 9} In Adams' first and second assignments of error, he claims that his conviction

1. The state did not file a brief opposing the arguments advanced by appellant.

should be overturned because he was not brought to trial within the requisite time frame, and that the trial court did not give him notice that the date of his trial had changed.

{¶ 10} Adams was charged with traveling in excess of the posted speed limit, a minor misdemeanor pursuant to R.C. 4511.21(P)(1)(a). According to R.C. 2945.71(A) "Subject to division (D) of this section, a person against whom a charge is pending in a court not of record, or against whom a charge of minor misdemeanor is pending in a court of record, shall be brought to trial within thirty days after the person's arrest or the service of summons."

{¶ 11} Pursuant to R.C. 2945.73(B), a trial court shall discharge a defendant if the trial court and prosecution fail to bring the defendant to trial within the speedy trial time requirements. The Supreme Court of Ohio has "imposed upon the prosecution and the trial courts the mandatory duty of complying with" the speedy trial statutes. *State v. Singer*, 50 Ohio St.2d 103, 105 (1977).

{¶ 12} Adams' service of summons was served personally on April 21, 2011, along with the traffic citation. Therefore, Adams' speedy trial rights would have been violated if the trial would have been held outside the 30-day time frame commencing on April 21, 2011. The originally scheduled date of May 26, 2011, would have been outside the speedy trial time frame. For this reason, the trial court revised the date of the hearing to May 19, 2011, which is within the 30-day time frame. However, the record does not establish that Adams received notice of the new trial date.

{¶ 13} According to principles of due process, as guaranteed both by Section 1 of the Fourteenth Amendment to the United States Constitution and by Article I, Section 16 of the Ohio Constitution, a defendant, at a minimum, is entitled to notice and an opportunity to be heard. *State v. Crews*, 179 Ohio App.3d 521, 2008-Ohio-6230, ¶ 9.

{¶ 14} The record contains Adams' signed notice of hearing, dated May 5, 2011, setting his trial for May 26, 2011. The transcript of the docket includes a notation on May 6,

2011, of a "Notice of Hearing," and the record contains the notice. However, there is no indication that the notice was actually sent to Adams, or that he received anything other than the hearing notice with the May 26, 2011 trial date.

{¶ 15} The trial court noted in its entry denying Adams' motion to dismiss that the notice of a new hearing was mailed on May 6, 2011. However, the docket listing does not indicate that the court "sent" or "mailed" the notice of the new hearing date, or that the clerk did anything other than place the notice in the file and note its creation on the docket sheet. The file does not contain any certified mail receipts, envelopes, or any indication that the hearing notice was received by Adams or was returned for a delivery failure at any time. The court was in the position to have the notice of a new hearing date served on Adams in person or by registered mail. An affidavit from the clerk stating that the notice was sent and not returned due to failure of delivery would have also been appropriate. However, the record does not contain any indication that the notice was actually sent by the court or received by Adams.

{¶ 16} Instead, the record contains Adams' affidavit, in which he averred that he had not received notice of a new hearing, and that his first indication that his trial had occurred was the license forfeiture declaration. This affidavit went uncontroverted, and the file does not contain any evidence to challenge Adams' statements. See *State v. Crews*, 179 Ohio App.3d 521, 2008-Ohio-6230 (2nd Dist.) (reversing for lack of due process where Crews' uncontradicted affidavit stated he had not received notice of the hearing date in time to attend trial and nothing in the case file contradicted this statement).

{¶ 17} While the trial court's entry denying Adams' motion to dismiss indicates its belief that the notice was mailed, the record lacks any evidence or statement that such was the case. Given the fact that the case was criminal in nature and carried with the conviction a license forfeiture, we decline to make an assumption of service from a manifestly ambiguous

docket entry, as according to Ohio law, ambiguities in criminal proceedings are to be construed against the state. *State v. Waite*, 6th Dist. No. OT-04-051, 2005-Ohio-4440, ¶ 25.

{¶ 18} While we are aware that municipal courts bear a heavy case load and burden to dispose of cases efficiently and swiftly, "however hurried a court may be in its efforts to reach the merits of a controversy, the integrity of * * * rules is dependent upon consistent enforcement because the only fair and reasonable alternative thereto is complete abandonment." *Miller v. Lint*, 62 Ohio St.2d 209, 215 (1980).

{¶ 19} It cannot be said that Adams received proper notice of the change in hearing dates, and was therefore denied his right to a speedy trial. Adams' assignments of error are therefore sustained.

{¶ 20} Judgment reversed, and Adams' conviction is vacated and he is discharged.

POWELL, P.J., and RINGLAND, J., concur.