

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2003-A-0056
BRYAN K. CAMPBELL,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 02 CR 166.

Judgment: Reversed and judgment entered for appellant.

Thomas L. Sartini, Ashtabula County Prosecutor and *Angela M. Scott*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellee).

Marie Lane, Ashtabula County Public Defender, Inc., 4817 State Road, #202, Ashtabula, OH 44004 (For Defendant-Appellee).

CYNTHIA WESTCOTT RICE, J.

{¶1} Bryan K. Campbell appeals from his conviction on two counts of assault on a peace officer, R.C. 2903.13(A) and (C)(3), fourth degree felonies, following a bench trial in the Ashtabula County Common Pleas Court. Because Campbell was not brought to trial within the 270 day time limit established by R.C. 2945.71(C)(2), his conviction must be reversed.

{¶2} Campbell was arrested on May 19, 2002, and released on bond. Campbell failed to appear at his preliminary hearing on May 28, 2002. The court issued a capias and Campbell was arrested on May 29, 2002. The court revoked Campbell's bond and he remained in custody. Campbell's preliminary hearing and pretrial were rescheduled for June 5, 2002 and his case was bound over to the Ashtabula County Common Pleas Court.

{¶3} On July 15, 2002, Campbell was indicted on two counts of assault on a peace officer. He was released from custody on a personal recognizance bond on July 19, 2002.

{¶4} On July 25, 2002, Campbell entered a plea of not guilty by reason of insanity and filed a motion to determine competency to stand trial. The case was set for trial on October 2, 2002.

{¶5} On the state's motion, the trial court revoked Campbell's bond on August 12, 2002 and ordered bond set at \$25,000. Campbell did not post bond and was returned to custody.

{¶6} As of September 19, 2002, the trial court had not received Campbell's psychological evaluation and the court orally advised Campbell that the trial would not proceed as scheduled on October 2, 2002, because there was no time for preparation.

{¶7} On September 30, 2002, the trial court found Campbell competent to stand trial and the trial was rescheduled for November 13, 2002. On October 1, 2002, the trial court put on a judgment entry ordering the trial be rescheduled; however, the trial court failed to state any reason for the continuance.

{¶8} On November 12, 2002, Campbell filed a motion to dismiss arguing his right to a speedy trial had been violated. The trial court denied Campbell's motion by entry filed January 15, 2003. Campbell was finally tried on February 11, 2003.

{¶9} Campbell filed a timely appeal from his conviction asserting one assignment of error: "The trial court erred when overruling Appellant's motion to dismiss for violating Appellant's right to a speedy trial."

{¶10} A person charged with a felony "[s]hall be brought to trial within two hundred seventy days after the person's arrest." R.C. 2945.71(C)(2). "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 section 2945.71 and 2945.72 of the Revised Code." R.C. 2945.73(B). "[S]uch discharge is a bar to any further criminal proceedings against him based on the same conduct." R.C. 2945.73(D).

{¶11} We have consistently held that speedy trial statutes are to be strictly construed against the state. See, e.g., *State v. Miller* (1996), 113 Ohio App.3d 606, 608.

{¶12} We first must determine the date on which the 270 day time limit began to run. The parties agree Campbell has forfeited his right to count the days prior to his failure to appear for his preliminary hearing on May 28, 2002. R.C. 2945.72(D). That said, Campbell argues the time began to run on the day of his re-arrest, May 29, 2002. The state argues the time began to run on June 5, 2002, the day Campbell appeared for his preliminary hearing.

{¶13} In *State v. Bauer* (1980), 61 Ohio St.2d 83, the Ohio Supreme Court stated:

{¶14} “It is our conclusion that a defendant who fails to appear at a scheduled trial, and whose trial must therefore be rescheduled for a later date, waives his right to assert the provisions of R.C. 2945.71 through 2945.73 for that period of time which elapses from his initial arrest to the date he is subsequently rearrested.” *Id.* at 85.

{¶15} We have consistently held the speedy trial time commences to run from the date of re-arrest. See, e.g., *State v. Peterson* (Nov. 29, 1996), 11th Dist. No. 96-T-5456, 1996 Ohio App. LEXIS 5416, 10; *State v. Smith* (Sept. 20, 1993), 11th Dist. No. 91-T-4610, 1993 Ohio App. LEXIS 4793, 19. Therefore, the speedy trial time began to run upon the date of Campbell’s re-arrest, May 29, 2002. Campbell was in custody from May 29, 2002 to July 19, 2002. Under the triple count provision of R.C. 2945.71(E), this period counts as 153 days. Campbell was free on a recognizance bond from July 19, 2002 to the date he filed his motion to determine competency, July 25, 2002. Thus, six more days are added to the 153 days for a total of 159 days.

{¶16} We must next determine when the speedy trial time resumed its countdown after the trial court found Campbell competent to stand trial. Campbell contends the time began to run again on September 30, 2002, the date the trial court found him competent to stand trial. The state argues the time to bring Campbell to trial was extended until November 13, 2002, the earliest possible date the trial could be rescheduled because of Campbell’s motion to determine competency.

{¶17} In support of its argument, the state contends the trial court's October 1, 2002 judgment entry ordering the trial to be rescheduled amounted to a sua sponte continuance upon reasonable grounds. We disagree.

{¶18} R.C. 2945.72(H) provides, "The time within which an accused must be brought to trial, *** may be extended only by the following:

{¶19} "(H) The period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion[.]"

{¶20} In *State v. Mincy* (1982), 2 Ohio St.3d 6 the Ohio Supreme Court held, "When sua sponte granting a continuance under R.C. 2945.72(H), the trial court must enter the order of continuance *and the reasons therefore* by journal entry *prior to the expiration* of the time limit prescribed in R.C. 2945.71 for bringing a defendant to trial. (Emphasis added.) *Id.* at syllabus. See, also, *State v. Stamper* (1995), 102 Ohio App.3d 431, 441, (stating, "**** this court has consistently held that the running of the statutory time period can be tolled on the basis of a sua sponte continuance only when the trial court journalized an entry explaining the reasons for the delay.")

{¶21} In the instant case, the trial court complied with the first requirement, i.e., it entered the order before the expiration of the time limit to bring appellant to trial; however, it failed to set forth the reasons for the continuance. And the fact that the reasons for the continuance set forth in the trial court's judgment denying appellant's motion to dismiss (after the fact) may have been proper grounds for a continuance under R.C. 2945.72(H), does not cure this defect.

{¶22} The state, relying on *State v. Pate* (June 23, 1981) 10th Dist. No. 81AP-20, 1981 Ohio App. LEXIS 10282, argues the speedy trial deadline should be extended not only for the time in which the motion to determine competency was pending, but also by an additional period of time reasonably necessary to reschedule the trial. We disagree.

{¶23} In *State v. Palmer*, 84 Ohio St.3d 103, 1998-Ohio-507, the Ohio Supreme Court held, “The tolling of R.C. 2945.72(B) continues until the trial court makes a competency determination ***.” *Id.* at paragraph two of the syllabus.

{¶24} *Pate* is also distinguishable from the instant case. The defendant in that case filed his motion to determine competency one week before the scheduled trial date. Here, appellant filed his motion to determine competency five plus weeks before his scheduled trial and the motion was decided before the scheduled trial date.

{¶25} In a remarkably similar case, we stated:

{¶26} “Assuming that the state is correct that there was no time to arrange a February jury trial or that the state was ready to proceed in November 1995, *the court only needed to file an entry prior to the expiration of the statutory time limit stating that the case would be continued until March because of its inability to seat a jury until that time.* Its failure to do so requires that appellant be discharged.” *State v. Jones* (1997), 119 Ohio App.3d 59, 67. (Emphasis added.)

{¶27} In the instant case, 153 days elapsed between Campbell’s re-arrest on May 29, 2002 and his July 19, 2002 release on bond. Six days elapsed between his release on bond and July 25, 2002, the date he filed his motion to determine

competency. Thus, the state is charged with 159 days against the 270 days it had to bring Campbell to trial. The speedy trial time was tolled between July 25, 2002, and October 1, 2002 when the trial court entered its order finding appellant competent to stand trial and continuing the trial previously scheduled to begin October 2, 2002. Campbell was incarcerated between October 2, 2002 and November 12, 2002 (the date he filed his motion to dismiss); thus the triple count provision applies and the state is charged with 123 days. The time was again tolled between November 12, 2002 and January 15, 2003 when the trial court overruled appellant's motion to dismiss. Thus, between appellant's re-arrest on May 29, 2002 and the filing of his motion to dismiss, 282 days elapsed (159+123=282). The 270 days within which the state had to bring appellant to trial had expired before appellant filed his motion to dismiss.

{¶28} In *State v. Stamper* (1995) 102 Ohio App.3d 431, Judge Christley of this court wrote:

{¶29} "It is highly regrettable that someone such as the appellant should benefit by our observance of what many would consider a technicality. However, the concept of due process as embodied in the constitutional right to a speedy trial is found in both the Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution. It was even set forth in R.C. 2945.71 by our legislature as recently as 1981.

{¶30} "The writers of the Constitution and our legislators obviously did not think the concept of a speedy trial was an insignificant technicality, and neither do we on this

court. Thus, in such a situation as we now face, our concern must be with the preservation of the integrity of the legal process.” *Id.* at 442.

{¶31} For the foregoing reasons appellant’s sole assignment of error has merit. The judgment of the Ashtabula County Common Pleas Court is reversed and judgment is entered for appellant.

WILLIAM M. O’NEILL, J., concurs,

DIANE V. GRENDALL, J., dissents with Dissenting Opinion.

DIANE V. GRENDALL, J., dissents with a Dissenting Opinion.

{¶32} The majority professes that it is bound to reverse Campbell’s conviction based on a strict application of Ohio’s speedy trial statutes. A strict form over substance approach to the application of speedy trial laws does not act to preserve the integrity of legal process. Ohio’s speedy trial statutes, as written, do not mandate such result. Accordingly, I respectfully dissent.

{¶33} Bryan K. Campbell was arrested and charged with two counts of assault on a peace officer. After being released on bond, Campbell failed to appear in court and had to be re-arrested. Campbell’s trial was set for October 2, 2002. On July 25, 2002, Campbell entered a plea of not guilty by reason of insanity. As of September 19, 2002, less than two weeks before trial was scheduled to commence, the trial court had

not received Campbell's psychological evaluation. At this time, Campbell was advised that the trial would not be able to proceed on October 2, 2002, given that there was insufficient time to prepare.

{¶34} On September 30, 2002, two days prior to the start of trial, Campbell stipulated to his competency to stand trial. The next day, the trial court entered the following judgment entry:

{¶35} "The Court *** finds that this case is currently scheduled for Trial to Jury on October 2nd, 2002, and it is, **therefore** [i.e., for that reason], ordered that this case shall be rescheduled for Trial to Jury by the Assignment Commissioner, who shall forward notice of the new trial date to all counsel." (Emphasis added).

{¶36} When an accused files a motion raising issue with his competency to stand trial and that motion causes the trial court to vacate a trial date scheduled within the speedy trial limits under R.C. 2945.71, the time within which the accused must be brought to trial is extended for the period during which his mental competency is being determined plus the time reasonably necessary for the trial court to reschedule the case for trial. R.C. 2945.72(B) and (E) (the time for bringing an accused to trial may be extended for "[a]ny period *** during which [the accused's] mental competence to stand trial is being determined" and "[a]ny period of delay necessitated by reason of a *** motion *** made or instituted by the accused").

{¶37} In this case, the speedy trial period was tolled from the date Campbell filed his competency motion, on July 25, 2002, until the trial date of November 13, 2002, rescheduled as a result of Campbell's filing the motion to determine competency.

Campbell's filing of his motion to dismiss further extended the speedy trial period until that motion was denied on January 15, 2003. R.C. 2945.72(E); *State v. Blumensaadt*, 2000-L-107, 2001-Ohio-4317, 2001 Ohio App. LEXIS 4283, at *18-*19.

{¶38} The majority concludes that the trial court “failed to set forth the reasons for the continuance.” However, the justification for the continuance is manifest from the judgment entry: trial cannot be held on October 2, 2002, because Campbell's competency was not determined until September 30, 2002. The trial court did not expressly state “two days is not enough time to prepare for trial.” It was not necessary for the court to do so. Campbell, the attorneys, and anyone familiar with the basic facts of this case were on notice that only two days remained and that the delay was caused by the necessity of determining Campbell's competency. The majority denies the trial court the indulgence of relying on the parties' ability to draw such obvious conclusions.

{¶39} The majority asserts that the law must be applied with such exacting strictness “to preserve the integrity of legal process.” I disagree. Such hyper-technical application of the law actually fosters contempt for legal process by elevating the form of legal observance over its substance. It is not alleged that Campbell was in any doubt regarding the reason for the continuance or that he objected to it in any way. Moreover, the “requirement” on which the majority's decision rests is not found in the United States Constitution, the Ohio Constitution, or the Ohio Revised Code.

{¶40} The Sixth Amendment to the United States Constitution and Article I, Section 10, of the Ohio Constitution guarantees defendants the right to a speedy trial. Campbell's rights under these provisions have not been violated. Under the

jurisprudence proper to the Sixth Amendment, this court must consider the length of the delay in bringing Campbell to trial, the reason for the delay, and how Campbell might have been prejudiced by the delay before determining whether a speedy trial violation had occurred. *Barker v. Wingo* (1972), 407 U.S. 514; *Doggett v. United States* (1992), 505 U.S. 647. Whether the court stated its reason for the continuance in a judgment entry is not a constitutional or statutory mandate with respect to the Sixth Amendment or Ohio law.

{¶41} Ohio's speedy trial statutes provide an alternative entitlement to a speedy trial, related to but independent from the constitutional guarantees. Ohio Revised Code 2945.72(H) provides that the time for bringing the accused to trial may be extended for "the period of any reasonable continuance granted other than upon the accused's own motion." Notably, there is no requirement in the statute that the court's reason for a sua sponte continuance must be stated in a judgment entry in order to toll the running of the statute.

{¶42} The requirement that a court must state its reasons for the continuance in its judgment entry is a judge-made rule. As stated in *State v. Mincy* (1982), 2 Ohio St.3d 6: "When sua sponte granting a continuance under R.C. 2945.72(H), the trial court must enter the order of continuance and the reasons therefore by journal entry prior to the expiration of the time limit prescribed in R.C. 2945.71 for bringing a defendant to trial." *Id.* at syllabus. This Ohio Supreme Court, however, did not establish a specific content requirement for such an entry. The clear purpose of this requirement is notice to the defendant. In this case, Campbell was provided such notice as

discussed above. Applying this judicially created procedural rule within the factual context of each case does not offend the important societal interests protected by the right to a speedy trial.

{¶43} Courts should not be allowed to arbitrarily continue the time to bring an accused to trial. The accused should also be aware of the reason for a continuance in advance to afford him an opportunity to object to its reasonableness. In the present case, the continuance was *not* arbitrary, Campbell was aware of the reason and the necessity for the continuance, and Campbell had the opportunity to object and insist upon the October 2, 2002 trial date had he desired to do so. Campbell made no such objection or request.

{¶44} The concept of a speedy trial is *not* an “insignificant technicality.” Differentiating between a constitutional delay versus an unconstitutional delay in proceeding to trial simply on the basis of the clarity of the trial court’s entry continuing a trial date is an exercise in form over substance and an insignificant technicality. It is doubtful that the writers of the Constitution envisioned allowing a criminal to avoid prosecution simply because an entry implied the obvious.

{¶45} Affirming the lower court’s decision does not contravene the rule announced in *Mincy* or the purpose it serves. Its overly strict application in the present case, however, vindicates the concerns expressed in Justice Holmes’ dissenting opinion in *Mincy*: “The unreasonably strict interpretation of this section of law *** unfortunately allows a convicted criminal to again roam the streets and offer a potential threat to

society. Such a determination renders the speedy trial law a sword against, rather than a shield for, the best societal interest.” *Id.* at 10 (Holmes, J., dissenting).

{¶46} As demonstrated above, the trial court substantially met the *Mincy* requirement that the reason for continuance be cognizable from a judgment entry prior to the expiration of the statutory period. The “highly regrettable” result in this case is the erroneous reversal of the conviction of a guilty man simply because the entry continuing the trial date does not restate the obvious. For these reasons, I disagree and respectfully dissent. The judgment of the court below should be affirmed.