

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State of Ohio

Court of Appeals No. E-10-061

Appellee

Trial Court No. 2008-CR-329

v.

Jimmie White

DECISION AND JUDGMENT

Appellant

Decided: November 18, 2011

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Mary Ann Barylski, Assistant Prosecuting Attorney, for appellee.

Eric J. Allen, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Erie County Court of Common Pleas, which found appellant guilty of an amended count of receiving stolen property. Appellant was sentenced to a term of incarceration of 143 days, whereupon, appellant

received a full 143 days credit for time served, thereby completing his sentence. For the reasons set forth more fully below, the judgment of the trial court is affirmed.

{¶ 2} Appellant, Jimmie White, sets forth two assignments of error:

{¶ 3} "I. APPELLANT WAS DENIED HIS RIGHT TO A SPEEDY TRIAL PURSUANT TO THE SEVENTH AMENDMENT TO THE FEDERAL CONSTITUTION MADE APPLICABLE TO THE STATES BY THE FOURTEENTH AMENDMENT.

{¶ 4} "II. THE TRIAL COURT VIOLATED APPELLANT'S RIGHT TO SPEEDY TRIAL UNDER THE STATE CONSTITUTION AND PURSUANT TO OHIO REVISED CODE § 2945.71."

{¶ 5} The following undisputed facts are relevant to the issues raised upon appeal. On March 22, 2008, appellant was arrested in connection with traveler check forgery and receiving stolen property. The matter was continued on three occasions to enable appellant to secure counsel. Following appellant's failure to appear at a scheduled hearing on April 15, 2008, a warrant was issued for his arrest. On June 11, 2008, appellant was indicted by an Erie County Grand Jury on three counts of forgery, one count of receiving stolen property, one count of tampering with records, and one count of tampering with evidence.

{¶ 6} Following the indictment, appellant posted bond. Appellant violated bond and fled the state. On June 27, 2008, appellant's bond was revoked. A bench warrant was issued on July 3, 2008. Appellant had unlawfully fled to Michigan. Appellant's

illegal flight from the jurisdiction and state delayed his prosecution for nearly two years as he fought extradition upon being located in Michigan. Appellant was ultimately returned to Ohio pursuant to a Governor's Warrant on May 27, 2010. On June 18, 2010, appellant entered a plea of "not guilty" to the charges. On July 12, 2010, appellant filed a motion to stay all proceedings in the U.S. District Court for the Eastern District of Michigan. It was denied. On July 28, 2010, appellant filed a motion to dismiss with the trial court. It was denied. On September 1, 2010, appellant filed a motion claiming a violation of the right to a speedy trial with the trial court. It was denied.

{¶ 7} On October 12, 2010, appellant pled guilty to one count of an amended, lesser offense of receiving stolen property. The trial court sentenced appellant to 143 days imprisonment. Appellant received 143 days credit for time served as of October 12, 2010, thereby completing his sentence at the time of sentencing.

{¶ 8} In both his first and second assignments of error, appellant contends that the trial court violated his constitutional right to a speedy trial. Given the common premise of both assignments, we will address them together. We will also address appellant's contention that the trial court did not admonish that he was waiving his right to a speedy trial pursuant to Crim.R. 11.

{¶ 9} "Where a defendant, convicted of a criminal offense, has voluntarily paid the fine or completed the sentence for that offense, an appeal is moot when no evidence is offered from which an inference can be drawn that the defendant will suffer some *collateral disability or loss of civil rights* from the judgment or conviction." *State v.*

Wilson (1975), 41 Ohio St.3d 236, at syllabus. (Emphasis added.) In conjunction with this, the Supreme Court of Ohio has clearly stated, "The general view is that where an accused enters a plea of guilty he waives his right to raise the denial of his right to speedy trial on appeal." *Village of Montpelier v. Greeno*, (1986), 25 Ohio St.3d 170.

{¶ 10} Applying these controlling legal principles to the facts and circumstances of this case, we find that appellant's right to a speedy trial claim, argued and denied at the trial court level, was waived for appellate purposes and is moot. Appellant entered a plea of guilty to and subsequently completed his sentence based upon the credit for time served pursuant to the standard set forth in *Wilson*. Appellant has not pled or otherwise established any potential "collateral disability" that would enable his appeal to survive.

{¶ 11} Although appellant acknowledges that the guilty plea may constitute a waiver under Ohio law, he further argues that there is no indication that he knowingly or intelligently waived this right. Appellant bases this argument on the premise that the trial court failed to admonish his waiver of right to speedy trial under Crim.R. 11.

{¶ 12} The Supreme Court of Ohio has stated: "A trial court must strictly comply with Crim.R. 11(C)(2)(c) and orally advise a defendant before accepting a felony plea that the plea waives (1) the right to a jury trial (2) the right to confront one's accusers, (3) the right to compulsory process to obtain witnesses, (4) the right to require the state to prove guilt beyond a reasonable doubt, and (5) the privilege against compulsory self incrimination. When a trial court fails to strictly comply with this duty, the defendant's plea is invalid." *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, ¶ 31.

{¶ 13} A specific advisement of waiver of the right to speedy trial, as implied by appellant, is not required under Crim.R. 11. Appellant's argument is without merit. The record reflects the trial court complied with Crim.R.11. Appellant's first and second assignments of error are not well-taken.

{¶ 14} Wherefore, we find that substantial justice has been done. The judgment of the Erie County Court of Common Pleas is affirmed. Pursuant to App.R. 24, costs of this appeal are assessed to appellant.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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