

[Cite as *State v. Brown*, 2013-Ohio-3896.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

ROMAN BROWN

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 13-CA-24

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Fairfield County Court of
Common Pleas, Case No. 2010-CR-0470

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

September 9, 2013

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant Roman Brown appeals his felony conviction entered by the Fairfield County Court of Common Pleas. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE CASE¹

{¶2} On November 10, 2010, the Fairfield County Grand Jury indicted Appellant on one count of unlawful sexual contact with a minor, a violation of R.C. 2907.04(A) and (B)(3), a felony of the third degree. At the time of the indictment, Appellant was in the Fairfield County Jail, being held on an unrelated charge. Appellant was later extradited to Pennsylvania to serve a prison sentence in an unrelated driving conviction.

{¶3} While incarcerated in Pennsylvania, Appellant sent a letter to the Fairfield County Clerk of Court dated November 15, 2011, inquiring as to a detainer or warrant was pending against him. The Clerk responded with a letter to Appellant stating nothing was on file relating to a detainer or warrant pending against Appellant.

{¶4} Appellant again wrote to the Clerk of Courts on March 26, 2012, requesting information relative to a detainer or warrant against him. No response was received from the Clerk's office relative to Appellant's March 26, 2012 letter.

{¶5} Upon release from incarceration in Pennsylvania, Appellant returned to Fairfield County, and was arraigned on the indictment on July 13, 2012. Appellant entered a plea of not guilty.

{¶6} On November 21, 2012, Appellant filed a motion to dismiss the charge. The trial court overruled the motion.

¹ A rendition of the underlying facts is unnecessary for our disposition of this appeal.

{¶7} On January 23, 2013, Appellant entered a plea of no contest to a lesser charge of attempted gross sexual imposition, in violation of R.C. 2923.02, a fifth degree felony. The trial court sentenced Appellant to a nine month term of imprisonment, and credited Appellant with 204 days spent in the Fairfield County Jail.

{¶8} Appellant now appeals, assigning as error:

{¶9} "I. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING THAT THE DEFENDANT DID NOT SUBSTANTIALLY COMPLY WITH THE REQUIREMENTS OF OHIO REVISED CODE SECTION 2941.401 AS IT APPLIES TO THE RIGHTS OF THE DEFENDANT FOR A SPEEDY TRIAL."

{¶10} R.C. 2941.401 states:

{¶11} "When a person has entered upon a term of imprisonment in a correctional institution of this state, and when during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he shall be brought to trial within one hundred eighty days after he causes to be delivered to the prosecuting attorney and the appropriate court in which the matter is pending, written notice of the place of his imprisonment and a request for a final disposition to be made of the matter, except that for good cause shown in open court, with the prisoner or his counsel present, the court may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the warden or superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time served and 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 adult parole authority relating to the prisoner.

{¶12} "The written notice and request for final disposition shall be given or sent by the prisoner to the warden or superintendent having custody of him, who shall promptly forward it with the certificate to the appropriate prosecuting attorney and court by registered or certified mail, return receipt requested.

{¶13} "The warden or superintendent having custody of the prisoner shall promptly inform him in writing of the source and contents of any untried indictment, information, or complaint against him, concerning which the warden or superintendent has knowledge, and of his right to make a request for final disposition thereof.***"

{¶14} R.C. 2941.401 sets forth specific statutory requirements. Appellant did not deliver to the prosecuting attorney and the appropriate court written notice of his place of imprisonment or a request for a final disposition of the matter. Further, Appellant did not proffer a certificate of the warden or superintendent of the prison in which he was in custody stating the terms of his commitment, the time of his parole eligibility or any decisions with regard to the adult parole authority.

{¶15} Appellant admits he did not comply with the statute, but submits his letters inquiring as to whether any warrants and detainers pending against him, which letters were sent to the Clerk of Courts, are sufficient. We disagree. We find Appellant did not substantially nor sufficiently comply with the statutory requirements.

{¶16} The sole assignment of error is overruled.

{¶17} Appellant's conviction in the Fairfield County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur

HON. WILLIAM B. HOFFMAN

HON. SHEILA G. FARMER

HON. PATRICIA A. DELANEY

