

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

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STATE OF WASHINGTON,	)	No. 90068-0
Petitioner,	)	
	)	
	)	STATEMENT OF
v.	)	ADDITIONAL
	)	AUTHORITIES
RYAN PEELER,	)	(RAP 10.8)
Respondent.	)	

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Pursuant to RAP 10.8, respondent Ryan Peeler, submits the following statement of additional authorities for the consideration of the Court regarding the application of the intrastate detainer law in Ohio, R.C. 2945.401 (cited in WAPA’s amicus brief, App. B):

*Cleveland Metroparks v. Signorelli*, 2008 Ohio 3675, ¶ 14, ¶ 23, 2008 WL 2837779 (Ohio Ct. of Appeals 2008)<sup>1</sup> (explaining incarcerated person’s substantial compliance with statute’s notice requirement, includes oral notice of person’s location and triggers prosecution’s due diligence obligation to comply with the time for trial

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<sup>1</sup> All Court of Appeals opinions may be cited as authority under Ohio court rules, without regard to whether they were published. Rep.Op.R.3.4 (Ohio). Copies of these cases are attached. GR 14.1(b).

requirements under R.C. 2945.401:

An inmate's 'notification of availability and request for final disposition' can take several forms, depending on the circumstances of the inmate. Inmates are sometimes in halfway houses or municipal jail facilities where a warden or superintendent may or may not be present as contemplated in R.C. 2941.401. At times, inmates take it upon themselves to notify the court and prosecutor directly, outside the prescribed method in R.C. 2941.401. See *State v. Drowell* (1991), 61 Ohio Misc.2d 623, 581 N.E.2d 1183. Even where the prescribed method is used, variations in notification still occur.

*Id.* at ¶ 14;

Upon the oral notification by Signorelli's attorney of his location, the prosecution had a duty to exercise reasonable diligence to secure defendant's availability.

*Id.* at ¶ 23);

*State v. Moore*, 2014-Ohio-4879, ¶ 18, ¶ 22, ¶ 29 2014 WL 5510788, \_\_, N.E.3d \_\_ (Ohio Ct. App. 2014) ("Review of Ohio cases indicates that substantial compliance with R.C. 2941.401 requires that the inmate does 'everything reasonably required of him that [is] within his control.'" (internal citations omitted), which is a "low standard," and therefore, "once the prosecuting attorney and the appropriate court are notified of the inmate's request for speedy trial, the state must act.");

*State v. Drowell*, 61 Ohio Misc.2d 623, 581 N.E.2d 1183, 1185

(Com. Pl. 1991):

The state of Ohio now contends that the defendant is not entitled to dismissal upon his motion for disposition because the defendant failed to strictly comply with R.C. 2941.401. This court finds that position to be not well taken.

*Id.* at 625;

The failure of the warden of the institution having custody of defendant to forward the appropriate certificate when defendant filed the subject request is not grounds to deny said motion (an official's failure to send the certificate of inmate status should not vitiate an inmate's right to a speedy trial once requested.

*Id.* at 626.

*State v. Gill*, 2004-Ohio-1245, ¶ 25; 2004 WL 528449 (Ohio Ct. App. 2004) (where defendant prepared accurate request to be tried, but warden did not properly serve it, “the failure of the warden or superintendent cannot be attributed to the inmate.”);

*State v. Ferguson*, 41 Ohio App. 3d 306, 310, 535 N.E.2d 708, 712-13 (Ohio Ct. App. 1987) (explaining reason for requiring inmate’s substantial compliance with interstate detainer act (IAD) where inmate was transferred to several different states:

We believe the policy reasons for Ohio's enacting the IAD are the key to the approach which should be taken when courts review the sufficiency of an accused's compliance with the IAD. . . . [T]he IAD's purpose is to eliminate uncertainties which obstruct prisoner treatment and rehabilitation, to encourage the orderly and expeditious disposition of charges, and to provide cooperative procedures between the states. Article IX of the IAD also states that the IAD is intended to be liberally construed.

Given the purpose and liberal policy of the IAD, we do not adopt a test which requires a defendant to strictly comply with Article III of the IAD. A more appropriate test, which adheres to the liberal policy of the IAD and the Ohio Supreme Court's reasoning in *Daugherty*, is a requirement that the accused substantially comply with Article III of the IAD.

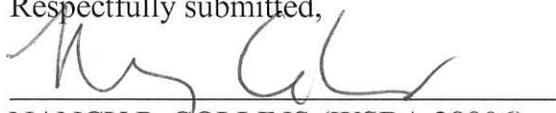
and where inmate was transferred but prison officials failed to notify prosecutors of transfer:

Appellee did everything that could reasonably be expected of him in initiating a request under the IAD, Article III. The fact that Waupun prison did not send the request to the proper Ohio authorities and that the certificate of status was either not sent by Waupun prison or was lost, will not destroy the appellee's rights under the IAD. The prosecutor's actual receipt of the request on approximately March 28, 1983 also effectively cured the mistake of mismailing the request to the wrong Ohio official.

535 N.E.2d at 713.

DATED this 16th day of January 2015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nancy Collins', written over a horizontal line.

NANCY P. COLLINS (WSBA 28806)  
Washington Appellate Project-91052  
Attorneys for Respondent

Statement of Additional  
Authorities

Washington Appellate Project  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, WA 98101  
(206) 587-2711

## **APPENDIX A**

2008 WL 2837779

CHECK OHIO SUPREME COURT  
RULES FOR REPORTING OF OPINIONS  
AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio,  
Eighth District, Cuyahoga County.

State of Ohio, CLEVELAND  
METROPARKS, Plaintiff-Appellant

v.

John F. SIGNORELLI,  
Defendant-Appellee.

No. 90157. | Decided July 24, 2008.

### Synopsis

**Background:** Defendant who was charged with importuning and possession of drug paraphernalia filed motion to dismiss on speedy trial grounds. The Euclid Municipal Court, No. 06 CRB 00595, granted motion. State appealed.

**Holding:** The Court of Appeals, Anthony O. Calabrese, Jr., P.J., held that speedy trial period was not tolled between date capias warrant was issued and date defendant filed motion to dismiss.

Affirmed.

Christine T. McMonagle, J., filed opinion concurring in judgment only.

West Headnotes (1)

### [1] Criminal Law

☛Defendant in Custody in Another Jurisdiction

Defendant's speedy trial period was not tolled between date capias warrant was issued due to defendant's nonappearance at hearing and date defendant filed motion to dismiss on speedy trial grounds, even though defendant was incarcerated in another county, where both defendant and his attorney informed the court and the prosecutor of defendant's whereabouts, and State failed to exercise reasonable diligence in securing defendant's availability, such as by requesting a transport order. R.C. §§ 2941.401, 2945.72(A).

Cases that cite this headnote

Criminal Appeal from the Euclid Municipal Court, Case No. 06 CRB 00595.

### Attorneys and Law Firms

Joseph E. Feighan III, Assistant Cleveland Metroparks Prosecutor, Lakewood, OH, for appellant.

Terrence P. Carl, Cleveland, OH, for appellee.

Before CALABRESE, P.J., KILBANE, J., and McMONAGLE, J.

## Opinion

ANTHONY O. CALABRESE, JR., P.J.

\*1 { ¶ 1} Appellant State of Ohio, Cleveland Metroparks, appeals the decision of the lower court. Having reviewed the arguments of the parties and the pertinent law, we hereby affirm the lower court.

### I.

{ ¶ 2} On June 11, 2006, defendant-appellee John F. Signorelli (“Signorelli”) was arrested and charged in the city of Euclid by the Cleveland Metroparks with violation of R.C. 2907.09(A)(3) and 2925.14, importuning and drug paraphernalia. On November 2, 2006, during the pendency of the Euclid case, Signorelli was sentenced as a result of separate convictions by Judge Larry Allen in Willoughby Municipal Court (Case Nos. 06 CRB 03080 and 06 CRB 03831) to sentences, inter alia, of 60, 90, and 180 days respectively, to run consecutively. He served these sentences in the Lake County Jail.

{ ¶ 3} Meanwhile, Signorelli failed to appear before the Euclid Municipal Court on November 9, 2006 as a result of his incarceration. Appellant’s attorney appeared on his behalf before the Euclid Municipal

Court on that date and related his circumstances, whereupon a *capias* was issued.

{ ¶ 4} On June 22, 2006, Signorelli appeared without counsel in Euclid Municipal Court and entered a plea of not guilty. On July 6, 2006, Signorelli’s attorney, Terrence Carl, entered an appearance on behalf of Signorelli, appeared with Signorelli in court, and requested a continuance of the pretrial until August 3, 2006. On August 31, 2006, defense counsel appeared and indicated to the court that he was going to file a motion to reduce the charge. The court gave Signorelli until October 6, 2006 to file the motion and the prosecutor was given to October 20, 2006 to respond.

{ ¶ 5} On October 23, 2006, the court overruled the defense motion to reduce the charge and set the matter for a final pretrial on November 9, 2006. On November 9, 2006, Carl appeared in Euclid Municipal Court and indicated that his client was incarcerated. The Euclid Municipal Court did not know where Signorelli was incarcerated, so *capias* was issued on that date.

{ ¶ 6} On May 7, 2007, counsel for the defendant and the Metroparks prosecutor appeared before the Euclid Municipal Court for an oral hearing on Signorelli’s motion to dismiss, filed on March 26, 2007. In that motion Signorelli argued that statutory and constitutional speedy trial provisions mandated dismissal. The Euclid Municipal Court ordered counsel to prepare additional briefs on the issue of who bears the burden of transporting defendant for trial. On June

4, 2007, Signorelli filed a “Supplement to Defendant’s Motion to Dismiss” which the lower court granted on June 19, 2007 and from which the state has appealed.

## II.

\*2 { ¶ 7} Appellant’s first assignment of error provides the following: “The trial court committed reversible error in granting the defendant’s motion to dismiss based on O.R.C. 2945.72(A).”

{ ¶ 8} Appellant’s second assignment of error provides the following: “The trial court committed reversible error in granting the defendant’s motion to dismiss when it discounted the application of O.R.C. 2941.401.”

## III.

{ ¶ 9} Appellant argues that the court erred in granting defendant’s motion to dismiss based on R.C. 2945.72(A). Additionally, appellant argues that the court further erred when it discounted the application of R.C. 2941.401. Due to the substantial interrelation between appellant’s arguments, we shall address them together below.

{ ¶ 10} R.C. 2945.72. Extension of time for hearing or trial, provides the following:

“The time within which an accused must be brought to trial, or, in the case of felony, to preliminary hearing and trial,

may be extended only by the following:

“(A) Any period during which the accused is unavailable for hearing or trial, by reason of other criminal proceedings against him, within or outside the state, by reason of his confinement in another state, or by reason of the pendency of extradition proceedings, *provided that the prosecution exercises reasonable diligence to secure his availability;* ” (Emphasis added.) R.C. 2941.401, in pertinent part, provides the following:

“When a person has entered upon a term of imprisonment in a penal or 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 caused to be delivered to the prosecuting attorney and the appropriate court in which the matter is pending written notice of his imprisonment and a request for a final disposition to be made on the matter \* \* \*.”

{ ¶ 11} In addition, the statute places a responsibility upon the institution as follows:

“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 request a final disposition of those charges.” *Id.*

{ ¶ 12} It is well established that the Ohio speedy trial statute is mandatory, constitutional, and must be construed strictly against the state. Once a criminal defendant shows that he was not brought to trial within the permissible period, the accused presents a prima facie case for release. At that point, the burden shifts to the state to demonstrate that sufficient time was tolled or extended under the statute. Furthermore, defendant's rights to a speedy trial may be waived provided that such waiver is either expressed in writing or made in open court on the record. *Brook Park v. Clingman*, Cuyahoga App. No. 88839, 2007-Ohio-4835.

\*3 { ¶ 13} The Ohio Supreme Court has held that, pursuant to R.C. 2941.401, the initial duty is placed on the defendant to notify the prosecutor and the court of his place of incarceration and to request final disposition of outstanding charges. *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471. "In its plainest language, R.C. 2941.401 grants an incarcerated defendant a chance to have all pending charges resolved in a timely manner, thereby preventing the state from delaying prosecution until after the defendant has been released from his prison term." *Id.* at 311, 804 N.E.2d 471.

{ ¶ 14} "An inmate's 'notification of availability and request for final disposition' can take several forms, depending on the circumstances of the inmate. Inmates are sometimes in halfway houses or municipal jail facilities where a warden or superintendent may or may not be present as contemplated in R.C. 2941.401. At times, inmates take it upon themselves to notify the

court and prosecutor directly, outside the prescribed method in R.C. 2941.401. See *State v. Drowell* (1991), 61 Ohio Misc.2d 623, 581 N.E.2d 1183. Even where the prescribed method is used, variations in notification still occur. See *State v. Fox* (Oct. 22, 1992), Cuyahoga App. No. 63100, 1992 Ohio App. LEXIS 5358, 1992 WL 309353 and *State v. Fox* (Dec. 17, 1998), Cuyahoga App. No. 74641, 1998 Ohio App. LEXIS 6071, 1998 WL 895265." *State v. Gill*, Cuyahoga App. No. 82742, 2004-Ohio-1245, at p. 10 (footnotes omitted).

{ ¶ 15} For appellee to have strictly followed the R.C. 2941.401 requirements, he should have given his written notice to the prison authorities, who should have forwarded it to the prosecutor and court along with a certificate of inmate status. However, it is clear that, although appellee did not strictly follow that path, the required information arrived at the court in the form of Signorelli's March 21, 2006 pro se motion.

{ ¶ 16} "While in general, the one hundred eighty day time requirement of R.C. 2941.401 does not begin to run until an inmate demands a speedy resolution of a pending charge, this is premised on the prosecutor exercising reasonable diligence in properly notifying the inmate concerning the indictment. The state cannot avoid the application of R.C. 2941.401 by neglecting to inform the custodial warden or superintendent of the source and content of an untried indictment. [*State v. Carter* (June 30, 1981), Franklin App. No. 80AP-434.] Equally, the state cannot rely upon the prisoner's failure to make demand for

speedy disposition, but must count the time as having commenced upon the first triggering of the state's duty to give notice of the right to make demand for speedy disposition. [*State v. Fitch* (1987), 37 Ohio App.3d 159, 162, 524 N.E.2d 912.] If a prosecutor has not exercised reasonable diligence in notifying an inmate of pending charges, the proper remedy is a motion to dismiss for denial of a speedy trial. *Id.*" *State v. Rollins* (Nov. 17, 1992), 10th Dist. No. 92 AP-273.

\*4 { ¶ 17} The state cites and relies upon the Ohio Supreme Court's decision in *State v. Hairston*, 101 Ohio St.3d 308, 804 N.E.2d 471, 2004-Ohio-969, in urging us to reverse the trial court's order granting appellee's motion to dismiss. However, we find *Hairston* to be distinguishable from the case at bar. Unlike in *Hairston*, there is evidence in this case that the state and the trial court had previous knowledge of the fact Signorelli was incarcerated.

{ ¶ 18} Indeed, the trial court stated in its June 27, 2007 journal entry:

*"It is uncontroverted that the defendant's attorney orally notified the court and the prosecution on the record on November 9th that the defendant was incarcerated at the Lake County Jail. The prosecution is a bit disingenuous in his supplemental brief when he argues that he was never notified by the defendant as to his*

*whereabouts."* (Emphasis added.)

{ ¶ 19} In addition to the statement in the journal entry above, the record reflects that Signorelli filed a pro se motion on March 21, 2007. Although his motion was overruled, the motion did inform the trial court that Signorelli was in jail and had a speedy trial issue. The trial judge mentioned Signorelli's pro se motion on the record at the May 7, 2007 hearing when speaking with defense counsel.

*"Just so you know, and I don't know if you know this, Mr. Carl, your client in March-on March 21st of 2007 filed a-I don't know what you call it. I get these all the time from people who are incarcerated. It is styled a Notice of Availability pursuant to Revised Code section 2941.401 that was filed in this clerk's office on March 21st of 2007."* (Emphasis added.)

{ ¶ 20} Appellant's notification was filed by the Euclid Municipal Clerk of Court on March 21, 2007, and is time-stamped at 2:20 p.m. The motion is styled as a notice of availability and states the following:

*"IN THE COURT OF Euclid Municipal Court, 555 E. 222nd St., Euclid, OH 44123*

*CASE # 06-CRB 595*

Lake Cuyahoga [both handwritten, Lake scratched out] CUYAHOGA [scratched out] COUNTY, OHIO

Ss: NOTICE OF AVAILABILITY”

To all prosecuting attorneys and their respective assigns. You are hereby notified that *John Signorelli* (Date of Birth: [XX-XX-XX ] Social Security No. [XXX-XX-XXXX ] ) is currently incarcerated at the Cuyahoga County Jail, and is available for final adjudication of all indictments, informations and/or complaints which are or may be pending against him/her in your respective jurisdiction(s). This NOTICE OF AVAILABILITY is given to your office(s) pursuant to Ohio Revised Code, Section 2941.401. Certification of custody is available upon request.

Executed on 3-19-07, [signature] *John Signorelli, Defendant, Pro Se*, Address: *Lake County Jail, 104 E. Erie St. Painesville, OH 44077.*” (Emphasis added.)

{ ¶ 21} Although, the body of the pre-printed form already listed Cuyahoga County as the location, Signorelli did write in the correct court at the top of the motion and he also filled in the correct jail and address at the bottom of the form, thereby providing additional evidence to the court in this filed and timestamped motion that he was in jail.

\*5 { ¶ 22} We find substantial evidence to support the lower court’s ruling. First, it is uncontroverted that Signorelli’s attorney orally notified the court and the prosecution

on the record on November 9th that the defendant was incarcerated at the Lake County Jail. Second, the defendant filed a time-stamped R.C. 2941.401 notice of availability motion with the Euclid Municipal Court, Clerk of Court, informing the court that he was currently in the Lake County Jail.<sup>1</sup> Third, there were numerous hearings prior to the May 7, 2007 hearing in which all parties were aware of Signorelli’s current situation. Although the time period prior to November 9, 2006 is not calculated with speedy trial time, it does demonstrate knowledge of the defendant’s situation between the parties and the court.

{ ¶ 23} In addition to the evidence above, we find that the prosecution failed to exercise reasonable diligence to secure Signorelli’s availability. Upon the oral notification by Signorelli’s attorney of his location, the prosecution had a duty to exercise reasonable diligence to secure defendant’s availability.

{ ¶ 24} Appellant was aware beginning November 9, 2007 that Signorelli was incarcerated as a result of the Willoughby matters. No effort to request the Euclid Municipal Court for a transport order was made at that time or at any time thereafter. Reasonable diligence to secure the availability of the accused was lacking and the provisions of R.C. 2945.72 were not tolled.

{ ¶ 25} The prosecution did nothing to confirm the information provided by Signorelli’s attorney. In fact, the prosecution waited until the oral hearing on the motion to dismiss on May 7, 2007 to even respond to it. Accordingly, the 137 days from the

issuance of the *capias* warrant and the filing of the motion to dismiss must be charged to the prosecution. Accordingly, more than 90 days elapsed, and the trial court's granting of Signorelli's motion to dismiss was proper.

{ ¶ 26} We find the lower court's actions to be proper. There is nothing in the record to demonstrate an abuse of discretion on the part of the lower court.

{ ¶ 27} Accordingly, appellant's first and second assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute

#### Footnotes

<sup>1</sup> The notice of availability motion is not being referenced for its validity; it is simply being referenced to show that the pro se defendant did his best to inform the court and the state of his situation. Although the motion was ultimately denied, it was filed and did appear on the docket.

the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, J., concurs.

CHRISTINE T. McMONAGLE, J., Concur in Judgment Only with Separate Opinion.

CHRISTINE T. McMONAGLE, J., Concurring in Judgment Only.

{ ¶ 28} Respectfully, I concur in judgment only and write separately on the issue of the application of R.C. 2941.401. I would hold that it has no application to a defendant incarcerated in a county jail. *Newark v. Barcus* (Sept. 29, 1994), 5th Dist. No. 94 CA 00015.

#### Parallel Citations

2008 -Ohio- 3675

## **APPENDIX B**

61 Ohio Misc.2d 623  
Court of Common Pleas of Ohio,  
Lorain County.

The STATE of Ohio

v.

DROWELL, a.k.a. Steele.\*

Nos. 89 CR 036904, 89 CR 037845. |

Decided April 25, 1991.

Defendant moved to dismiss indictments on speedy trial grounds. The Court of Common Pleas, Lorain County, Kosma J. Glavas, J., held that failure of defendant to strictly comply with speedy trial provision by including warden's certificate did not prevent trial court from losing jurisdiction upon expiration of 180-day speedy trial period following defendant's delivery of written notice showing his place of imprisonment and including request that there be final disposition.

Motion granted.

West Headnotes (2)

<sup>[1]</sup> **Criminal Law**  
Demand for Trial

Failure of defendant to strictly comply with speedy trial provision by including warden's certificate did not prevent trial court from losing jurisdiction upon expiration of

180-day speedy trial period following defendant's delivery to court and prosecuting attorney of written notice showing his place of imprisonment and including request that there be final disposition; motion did note both names used by defendant, address and institutional location, and defendant's penal system prison number. R.C. §§ 2901.04(B), 2941.401.

10 Cases that cite this headnote

<sup>[2]</sup> **Criminal Law**  
Demand for Trial

Before incarcerated defendant can avail himself of speedy trial rights, he must first show that he had delivered to appropriate court and prosecuting attorney a written notice showing his place of imprisonment and include a request that there be final disposition in case. R.C. § 2941.401.

2 Cases that cite this headnote

**Attorneys and Law Firms**

**\*\*1184 \*623** Gregory A. White, Pros. Atty., and Michael Scherach, for plaintiff.

\*624 Michael D. Tully, for defendant.

## Opinion

KOSMA J. GLAVAS, Judge.

On May 14, 1990, the defendant, Nathaniel Jack Drowell, a.k.a. Gregory Steele, in a then *pro se* capacity, filed a motion for final disposition of any untried indictments, pursuant to R.C. 2941.401.

Although the defendant filed his motion in case No. 89CR-036904, the court finds that the motion applies to both of the pending criminal indictments against the defendant.

On February 4, 1991, the state of Ohio filed a motion to strike or otherwise dismiss the defendant's motion, on the basis the defendant did not strictly comply with the requirements set out in R.C. 2941.401.

The court had scheduled a hearing on these matters for March 29, 1991, at which time the court was to receive argument and any evidence relevant and necessary for a determination of the issues. However, that hearing was canceled and by journal entry the court directed the parties to submit any proposed findings of fact and conclusions of law.

The defendant, who has been represented by Michael D. Tully, his appointed counsel, submitted proposed findings of fact and conclusions of law. The state of Ohio merely renewed its motion to strike the motion of the defendant.

This court has carefully considered the

pleadings, the files and records in this case and the applicable law.

<sup>[1]</sup> <sup>[2]</sup> The state of Ohio has correctly cited the case of *State v. Turner* (1982), 4 Ohio App.3d 305, 4 OBR 556, 448 N.E.2d 516, where the Court of Appeals for Medina County held that before a defendant can avail himself of the speedy trial rights of R.C. 2941.401, he must first show that he has delivered to the appropriate court and the prosecuting attorney a written notice showing his place of imprisonment and include a request that there be a final disposition in the case.

Thereafter, the defendant must be brought to trial within one hundred and eighty days.

In these cases, wherein the defendant was indicted by the Lorain County Grand Jury, the court finds that without question the defendant, in compliance with R.C. 2941.401, delivered to this court and to the Lorain County Prosecutor, on May 14, 1990, a written notice demanding a speedy trial and indicating the defendant's place of imprisonment.

Absent a subsequent waiver of his right to a speedy disposition of the pending cases (no such waiver was made), the state had one hundred eighty days \*625 to bring the defendant to trial, and therefore, on or about November 10, 1990, the state of Ohio's right to bring the cases to trial would cease.

For reasons which are not known and not relevant, the state of Ohio failed to bring the defendant into court prior to December 28, 1990, at which time the defendant was arraigned.

The state did make some efforts to bring the defendant to court between May 14 and December 1990, but the state never requested an order for transporting the defendant to court from the Mansfield Reformatory or the Chillicothe Correctional Institute, the two facilities where the defendant \*\*1185 has been incarcerated since May 14, 1990.

The state of Ohio now contends that the defendant is not entitled to dismissal upon his motion for disposition because the defendant failed to strictly comply with R.C. 2941.401. This court finds that position to be not well taken. The court relies on and approves the holding in *State v. Ferguson* (1987), 41 Ohio App.3d 306, 535 N.E.2d 708, and the cases cited therein.

This court lost jurisdiction of these two cases on or about November 10, 1990, when the indictments became utterly void.

The court adopts and approves in its entirety the findings of fact and conclusions of law submitted by the defendant, which follow here and are in addition to those findings and conclusions already stated, above.

### Findings of Fact

This cause came on to be heard on the 24th day of April, 1991, upon the motions to dismiss by the defendant due to his contention that the state of Ohio failed to bring him to trial within one hundred eighty days after he made his request pursuant to

R.C. 2941.401. The parties have had sufficient time to file briefs and supporting memorandum in support of their positions and the court believes that it has the necessary information before it to make a just determination of the issues raised by the parties.

The court further finds as follows:

1. On January 31, 1989 and on October 11, 1989, defendant, Nathaniel Jack Drowell, a.k.a. Gregory Steele, was indicted by the Lorain County Grand Jury for the instant offenses referred to in the respective cases;
2. On May 14, 1990, the defendant filed a motion with the Lorain County Court of Common Pleas, Clerk's Office, for final disposition of any outstanding warrants and/or indictments by speedy trial, pursuant to R.C. 2941.401.
3. Also on May 14, 1990, the defendant delivered a copy of said request, by certified mail, return receipt requested, to the Lorain County Prosecutor's Office.
- \*626 4. The defendant's motion did not include the warden's certificate which is authorized by R.C. 2941.401; however, the motion did note both names used by the defendant, address and institutional location, and most notably, his Ohio penal system prison number.
5. Efforts to bring the defendant to the Lorain County Court of Common Pleas for his arraignment were unsuccessful until he was arraigned in open court on the within charges on December 28, 1990.

6. There is nothing in the court's records to indicate that defendant waived the time requirement that he be brought to trial within one hundred eighty days after serving notice upon the court and the prosecuting attorney.

### Conclusions of Law

1. Under R.C. 2941.401, a person who is incarcerated in this state has the right to a speedy trial with regard to any untried indictment, information or complaint.

2. R.C. 2901.04(B) provides that the rules of criminal procedure " \* \* \* shall be construed so as to effect the \* \* \* speedy \* \* \* administration of justice."

3. Defendant substantially complied with the notice requirements of R.C. 2941.401 by filing a copy of his motion with the clerk on May 14, 1990, and also by serving a copy of the same on the Lorain County Prosecutor's Office by certified mail, return receipt requested, on the same date.

4. The failure of the warden of the institution having custody of defendant to forward the appropriate certificate when defendant filed the subject request is not grounds to deny said motion (an official's failure to send the certificate of inmate status should not vitiate an inmate's right to a speedy trial once requested, *State v. Ferguson* [1987], 41 Ohio App.3d 306, 311, 535 N.E.2d 708, 713).

5. R.C. 2941.401 further provides in part:

"If the action is not brought to trial within the time provided, subject to a continuance allowed pursuant to this section, no court any longer has jurisdiction thereof, \*\*1186 the indictment, information or complaint is void, and the court shall enter an order dismissing the action with prejudice."

Using the May 14, 1990 filing date as the day time began to run, the expiration of one hundred eighty days resulted on November 10, 1990 and this defendant was not brought to trial prior to this date.

### \*627 Journal Entry

It is therefore ORDERED, ADJUDGED, and DECREED that the indictments in the within cases are void and this court is without jurisdiction in these cases. These cases are hereby dismissed, with prejudice.

The Lorain County Clerk of Courts shall send a certified copy of these findings of fact and conclusions of law and journal entry to the Lorain County Prosecutor, defendant, and defendant's counsel, Michael D. Tully.

*So ordered.*

### Parallel Citations

581 N.E.2d 1183

## Footnotes

- \* Reporter's Note: No appeal has been taken from the decision of the court.

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## **APPENDIX C**

2004 WL 528449

CHECK OHIO SUPREME COURT  
RULES FOR REPORTING OF OPINIONS  
AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio,  
Eighth District, Cuyahoga County.

STATE of Ohio, Plaintiff-Appellant

v.

Mildred GILL, Defendant-Appellee.

No. 82742. | Decided March 18, 2004.

### Synopsis

**Background:** Defendant filed motion to dismiss drug abuse charge, alleging a violation of her speedy trial rights. The Court of Common Pleas, Cuyahoga County, No. CR-423601, granted motion, and State appealed.

**Holding:** The Court of Appeals, Sean C. Gallagher, J., held that defendant was denied her right to a speedy trial.

Affirmed.

West Headnotes (1)

### [1] Criminal Law

← Accrual of Right to Time

### Restraints

Statutory speedy trial period began to run when drug defendant, who was incarcerated, tendered to warden two copies of a notice of availability and a demand for final disposition of untried indictment, even though copy intended for clerk of court was improperly sent to county prosecutor's office due to an error by warden's office; record indicated that defendant fully complied with speedy trial statute for inmates, and the warden's error would not be imputed to inmate. R.C. § 2941.401.

14 Cases that cite this headnote

Criminal appeal from Common Pleas Court, Case No. CR-423601.

### Attorneys and Law Firms

William D. Mason, Esq., Cuyahoga County Prosecutor by Mark Schneider, Esq., Assistant County Prosecutor, Cleveland, OH, for plaintiff-appellant.

Robert L. Tobik, Esq., Cuyahoga County Public Defender by Paul Kuzmins, Esq., Assistant Public Defender, Cleveland, OH, for defendant-appellee.

### Opinion

SEAN C. GALLAGHER, J.

\*1 { ¶ 1} Appellant, the State of Ohio, appeals the decision of the Cuyahoga County Court of Common Pleas where the Court dismissed a drug abuse charge against appellee Mildred Gill (“Gill”). The court found that the state failed to comply with the requirements of R.C. 2941.401 by not bringing the accused, an incarcerated inmate, to trial within 180 days. For the reasons set forth below, we affirm the decision of the trial court dismissing the case on speedy trial grounds.

{ ¶ 2} The following facts give rise to this appeal.

{ ¶ 3} On May 2, 2002, Gill was sentenced to a term of incarceration of nine months for drug abuse in case number CR-391437. On May 30, 2002, Gill was indicted in a separate action in case No. CR-423601 for one count of drug abuse in violation of R.C. 2925.11.

{ ¶ 4} On June 27, 2002, a notice of detainer for the new offense was sent to the warden at the prison where Gill was serving her sentence. That same day Gill signed a notice of availability and a demand for final disposition on the untried indictment and forwarded two copies to the warden.

{ ¶ 5} On July 9, 2002, the Cuyahoga County Prosecutor’s Office received Gill’s notice. Due to an error by the warden’s office, the second copy, intended for the Cuyahoga County Clerk of Court’s Office, was also sent to the county prosecutor’s office. The Clerk of Courts of Cuyahoga County never received a copy of Gill’s notice.

{ ¶ 6} On February 20, 2003, Gill filed a motion to dismiss for failure to prosecute the case within 180 days. Gill’s motion was granted. The State of Ohio appeals from the granting of Gill’s motion and advances one assignment of error.

{ ¶ 7} “Assignment of error no. I: The trial court erred in dismissing the case when appellee had not followed the requisite steps to request a speedy disposition.”

{ ¶ 8} In considering the propriety of granting Gill’s motion to dismiss, “we must independently determine, as a matter of law, whether the trial court erred in applying the substantive law to the facts of the case.” *State v. Williams* (1994), 94 Ohio App.3d 538, 641 N.E.2d 239.

{ ¶ 9} R.C. 2941.401, Ohio’s speedy trial statute for inmates, provides:

**“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.

\*2 “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.

“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.

“Escape from custody by the prisoner, subsequent to his execution of the request for final disposition, voids the request.

“If the action is not brought to trial within the time provided, subject to continuance allowed pursuant to this section, no court any longer has jurisdiction thereof, the indictment, information, or complaint is void, and the court shall enter an order dismissing the action with prejudice.

“This section does not apply to any person adjudged to be mentally ill or who is under sentence of life imprisonment or death, or to any prisoner under sentence of death.”

{ ¶ 10} An inmate’s “notification of availability and request for final disposition” can take several forms, depending on the circumstances of the inmate. Inmates are sometimes in halfway houses or municipal jail facilities where a warden or superintendent may or may not be present as contemplated in R.C. 2941.401. At times, inmates take it upon themselves to notify the court and prosecutor directly, outside the prescribed method in R.C. 2941.401. See *State v. Drowell* (1991), 61 Ohio Misc.2d 623, 581 N.E.2d 1183.<sup>1</sup> Even where the prescribed method is used, variations in notification still occur. See *State v. Fox* (Oct. 22, 1992), Cuyahoga App. No. 63100 and *State v. Fox* (Dec. 17, 1998), Cuyahoga App. No. 74641.<sup>2</sup>

{ ¶ 11} It is undisputed that Gill’s notice and the copy that was intended to be delivered to the court were both delivered to the county prosecutor. The common pleas court and the county clerk of courts never received a copy of the notice. The state argues that the failed delivery of Gill’s notice to the court, in accordance with the wording in the first paragraph of R.C. 2941.401, results in Gill’s speedy trial time never starting to run. Gill counters that she “substantially complied” with the statute, and it was the warden’s mistake, not hers, that resulted in the court not being served and she should not suffer the effect of that

mistake. Gill argues that her proper delivery of the notices to the warden is sufficient to trigger the running of her speedy trial time.

{ ¶ 12} We decline to adopt Gill's "substantial compliance" reasoning to these facts and instead rely on a plain reading of R.C. 2941.401, which we believe controls the resolution of this case.

\*3 The state relies on the holding of a nearly identical fact scenario in *State v. McGowan* (June 21, 2000), Summit App. No. 19989. The *McGowan* view holds that the speedy trial time does not begin to run under R.C. 2941.401 until *both* the prosecutor and the court are served with written notice from the defendant, irrespective of what the defendant sent the warden. *Id.* We expressly decline to follow the holding in *McGowan* because we believe it was improperly decided.

{ ¶ 13} *McGowan* is based on *State v. Turner* (1982), 4 Ohio App.3d 305, 448 N.E.2d 516, a case with facts easily distinguished from the facts in the *McGowan* decision. In *Turner*, unlike *McGowan*, an inmate from Summit County, wanted on Medina County charges, never petitioned anyone-not the warden, the prosecutor or the trial court-for a resolution of an unresolved case. *Turner*, *supra*. In this instance, it is uncontested that Gill forwarded the documents to the warden as required. Using *Turner* as a justification for the *McGowan* standard where the inmate acts but the error of the warden is imputed to the inmate, is not logical in light of the specific language of R.C. 2941.401.

{ ¶ 14} The prosecutor ends the analysis of

R.C. 2941.401 after the first paragraph, focusing only on the section that states the inmate must cause the notice to be delivered to " \* \* \* the prosecuting attorney and the appropriate court in which the matter is pending." Had the Ohio legislature stopped there, the prosecutor's analysis and the reliance on *McGowan* would be appropriate. However, the Ohio legislature went on to expressly state exactly what the inmate was required to do and then outlined the further responsibility of the warden or superintendent. The facts here are silent on what happened to the return receipt of the certified mail sent back to the institution. Nevertheless, contrary to the prosecutor's position at oral argument, the statute places no duty on the inmate to follow up on the return receipt of the certified mail. In fact, the statute places the burden for use of certified mail directly on the warden or superintendent and not on the inmate.

{ ¶ 15} While we agree with the prosecutor's perspective that it is unwise to have a prison warden serve as a defacto postmaster general for matters as important as untried indictments, nevertheless, this is exactly the scenario that the Ohio legislature has created.

{ ¶ 16} Where an inmate makes an application under R.C. 2941 .401, strict compliance by the inmate with the notice and information requirements in the statute are necessary in order for the inmate to take advantage of the subsequent burden placed on the warden and hence the state. If an inmate provides *satisfactory notice and request for disposition*, using the procedure under R.C. 2941.401, the statute makes clear what the inmate and warden must do:

**“ \* \* \* written notice of the place of his imprisonment and a request for a final disposition \* \* \***

**\*4 “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.”**

{ ¶ 17} This language does not mean the inmate must personally insure the delivery of the documents to both the appropriate court and prosecutor, an unlikely task for a jailed inmate. Rather, the inmate must properly complete and forward all necessary information and documents to the warden for processing as prescribed by the statute. Where the inmate forwards incomplete, inaccurate, misleading or erroneous information, any subsequent errors by the warden or superintendent will be imputed to the inmate. Where, however, as here, the evidence is that the inmate fully complied with the statutory requirements of R.C. 2941.401, by including all the proper information, the error cannot be imputed to the inmate.

{ ¶ 18} This logic is drawn from the decision of *State v. Drowell* (1991), 61 Ohio Misc.2d 623, 581 N.E.2d 1183, where the inmate, on his own, did actually serve both the prosecutor and the court, but the warden never forwarded the appropriate certificate. The court held: “ \* \* \* the failure of the warden of the institution having custody of defendant to forward the appropriate

certificate when defendant filed the subject request is not grounds to deny said motion.” *Id.* (concluding an official’s failure to send the certificate of inmate status should not vitiate an inmate’s right to a speedy trial once requested, citing *State v. Ferguson* [1987], 41 Ohio App.3d 306, 311, 535 N.E.2d 708).

{ ¶ 19} The *Ferguson* decision referenced the Supreme Court of Ohio ruling in *Daugherty v. Solicitor for Highland Cty.* (1971), 25 Ohio St.2d 192, 267 N.E.2d 431, where the court held that a federal penitentiary inmate’s letters to the appropriate Ohio prosecutor and judge requesting either a trial or dismissal of an Ohio charge, although informal, constituted a general request for a speedy trial. The court stated that [w]here an inmate in a penal institution has made a diligent, good-faith effort to call to the attention of the proper authorities in another state that he desires a charge pending against him in that state disposed of, by trial or dismissal, he is entitled to have such request acted upon. The failure of the authorities to do so constitutes the denial of a speedy trial. *Daugherty*, 25 Ohio St.2d at 193, 267 N.E.2d 431.

{ ¶ 20} We recognize that in *Drowell* and *Daugherty* both the prosecutor and court were actually served, albeit with some variations, unlike the present case. Nevertheless, in *Ferguson*, an interstate detainer case where prison authorities sent the notice to the police department rather than the prosecutors office, the error was not imputed to the inmate. *Ferguson*, 41 Ohio App.3d 306, 535 N.E.2d 708.

{ ¶ 21} In light of the above analysis, it is still necessary to address Gills assertion that the substantial compliance standard applies to this case. Gill cites to *State v. Fox* (Oct. 22, 1992), Cuyahoga App. No. 63100 (see, also, *State v. Fox* [Dec. 17, 1998] Cuyahoga App. No. 74641), for the proposition that substantial compliance with R.C. 2941.401 is sufficient to begin the running of her speedy trial time.

\*5 { ¶ 22} Although the phrase substantial compliance is used in *Fox*, no analysis of the phrase is evident in the opinion and the case was resolved on other grounds without a discussion of its meaning. Further, the reference in *Fox* to substantial compliance does not indicate what degree of compliance qualifies as substantial, nor under what circumstances a substantial compliance standard should apply.

{ ¶ 23} The origin of the term substantial compliance, as it relates to R.C. 2941.401, is derived from *State v. Drowell*, citing *State v. Ferguson*, 41 Ohio App.3d 306, 535 N.E.2d 708 (a case dealing with interstate detainer agreements). Generally, the issue of substantial compliance comes into play where the inmate, or counsel for the inmate, acts on their own as opposed to using the procedures outlined in R.C. 2941.401. Nevertheless, in *State v. Doane* (July 9, 1992), Cuyahoga App. No. 60097, this court applied the standard in a case where the inmate did utilize the procedure in R.C. 2941.401. In *Doane*, the defendant complied with R.C. 2941.401 by forwarding the proper documents and information to the warden, who then sent notice to the Cuyahoga County Clerk of Courts, the Lakewood Police Department and to the

*municipal* prosecuting attorney. *Id.* Substantial compliance was applied and found, because [a]though no indictment had been returned until after the receipt of the notice, there were charges pending against the appellant. *Id.* Thus, the perceived error by the warden in filing felony papers with a municipal court and not the appropriate court was not found because charges at the municipal level were still pending.

{ ¶ 24} We therefore view the substantial compliance analysis as the evaluation necessary in those instances where documents actually reach a location, regardless if mailed by the inmate or institution, and a determination is required to see if they satisfy the statutory requirements.

{ ¶ 25} Since Gill specifically followed the prescribed process in paragraph two of R.C. 2941.401, no analysis based on substantial compliance is necessary or appropriate. Clearly the documents did not reach the appropriate court, so technically there was nothing to evaluate under the substantial compliance doctrine. Once the inmate strictly complies with the requirements of R.C. 2941.401, the failure of the warden or superintendent cannot be attributed to the inmate.

{ ¶ 26} Since the only evidence before us is that the inmate strictly complied with the above statutory requirements and she was not brought to trial within 180 days, the dismissal of the action by the trial court was proper. R.C. 2941.401 is clear and provides in part:

**If the action is not brought to trial within the time provided, subject to a**

**continuance allowed pursuant to this section, no court any longer has jurisdiction thereof, the indictment, information or complaint is void, and the court shall enter an order dismissing the action with prejudice.**

\*6 { ¶ 27} For the above reasons, we affirm the decision of the trial court.

Judgment affirmed.

JAMES J. SWEENEY, P.J., and TIMOTHY E. McMONAGLE, J., concur.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal. It is ordered that a special mandate issue out of this court directing the Cuyahoga County Common Pleas Court to carry this judgment into execution.

#### Footnotes

- <sup>1</sup> In *Drowell*, the accused was in a state facility with a warden, yet filed a motion pro se in the appropriate county clerk's office, with service to the prosecutor's office, requesting disposition of any outstanding warrants and/or indictments pursuant to R.C. 2941.401.
- <sup>2</sup> In *Fox*, the warden forwarded the court papers for a felony charge to a municipal court rather than the county court prior to the charge being bound over to the felony court. The municipal court then failed to forward the papers on to the county court.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

N.B. This entry is an announcement of the courts decision. See App .R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the courts decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this courts announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

#### Parallel Citations

2004 -Ohio- 1245

## **APPENDIX D**

2014 WL 5510788  
Court of Appeals of Ohio,  
Third District, Union County.

STATE of Ohio, Plaintiff–Appellee,

v.

Hezekiah M. MOORE,  
Defendant–Appellant.

State of Ohio, Plaintiff–Appellee,

v.

Hezekiah M. Moore,  
Defendant–Appellant.

State of Ohio, Plaintiff–Appellee,

v.

Hezekiah M. Moore,  
Defendant–Appellant.

State of Ohio, Plaintiff–Appellee,

v.

Hezekiah M. Moore,  
Defendant–Appellant.

State of Ohio, Plaintiff–Appellee,

v.

Hezekiah M. Moore,  
Defendant–Appellant.

Nos. 14–14–06, 14–14–07, 14–14–08,  
14–14–11, 14–14–12. | Nov. 3, 2014.

**Synopsis**

**Background:** After overruling his motions for speedy trial, defendant was convicted in the Marysville Municipal Court, Union County, Nos. CRB1200323, TRC1202111B, TRC1201397A, CRB1200324 and CRB1200206, of multiple charges upon his entry of no contest pleas in five separate cases. He appealed.

**[Holding:]** The Court of Appeals, Willamowski, P.J., held that defendant substantially complied with statute governing speedy trial rights of an imprisoned defendant such that he was entitled to dismissal on speedy trial grounds.

Reversed.

Preston, J., dissented.

West Headnotes (2)

<sup>[1]</sup> **Criminal Law**  
◆ Time for Trial

Appellate review of speedy-trial issues involves a mixed question of law and fact. U.S.C.A. Const.Amend. 6.

Cases that cite this headnote

<sup>[2]</sup> **Criminal Law**  
◆ Demand for Trial  
**Criminal Law**  
◆ In General; Confinement

State prisoner substantially complied with notification procedures set forth in statute governing speedy trial

rights of an imprisoned defendant, thus triggering state's responsibility to bring him to trial within 180-day period; although prisoner's motion for speedy trial was not initially served upon proper prosecutor and appropriate court, and he failed to prove that warden received his notice and request for final disposition, State's response in opposition to prisoner's motion proved that notice and request were "cause[d] to be delivered" to it by response date, at latest, and because State was served with notice and request, and was aware of prisoner's status in facility, it was not prejudiced from his failure to prove that warden received notice. R.C. § 2941.401.

Cases that cite this headnote

### Attorneys and Law Firms

Alison Boggs, Marysville, for Appellant.

John M. Eufiner, for Appellee.

### OPINION

WILLAMOWSKI, P.J.

\*1 { ¶ 1} In this consolidated action, Defendant-appellant Hezekiah Moore ("Moore") appeals the judgments of the Marysville Municipal Court of Union County, Ohio, overruling his motions for speedy trial and finding him guilty of multiple charges, as listed below, upon his entry of no contest pleas in five separate cases, labelled as CRB 1200323 (App. # 06), TRC 1202111 (App. # 07), TRC 1201397 (App. # 08), CRB 1200324 (App.# 11), and CRB 1200206 (App. # 12). For the reasons that follow, we reverse the trial court's judgments.

{ ¶ 2} The procedural facts relevant to this opinion indicate that on March 15, 2012, Moore was charged with multiple traffic offenses, including OVI (operation of a vehicle under the influence), speeding, operation without a license, and a lane violation, in Union County case number TRC 1201397 (App. # 08). On the same date, Moore was charged with failure to comply with an order of a police officer (fleeing and eluding), in case number CRB 1200206 (App. # 12). On March 21, Moore filed a plea of not guilty and he was released on a personal recognizance bond. A jury trial for these two cases was scheduled for May 25, 2012.

{ ¶ 3} On April 20, 2012, Moore was charged with another OVI, as well as operation with a suspended license, operation without a license, and noncompliance with suspension, in case number TRC 1202111 (App. # 07). On the same day, Moore was charged with assault, a misdemeanor of the first degree, in violation of R.C. 2903.13(A), in case

number CRB 1200323 (App. # 06). He was further charged with the use or possession of drug paraphernalia, a misdemeanor of the fourth degree, in violation of R.C. 2925.14, in case number CRB 1200324 (App. # 11). He pled not guilty to all charges, and a jury trial for these three cases was scheduled for July 13, 2012.

{ ¶ 4} It appears that the scheduled jury trials did not take place. A filing in one of the five cases, TRC 1201397, indicates that on May 17, 2012, Moore failed to appear in court for a pretrial and the trial court issued a bench warrant for his arrest. No other filings appear in the cases until January 2013.

{ ¶ 5} On January 23, 2013, Moore filed a motion for speedy trial pursuant to R.C. 2941.401, in each of the five cases relevant to this appeal.<sup>1</sup> The motion indicated that Moore was at the time incarcerated “at Southeastern Correctional Institution located in Lancaster, OH 43130–9606.” (*See* R. in case CRB 1200323,<sup>2</sup> at 9.) Moore requested a “hearing within the time frame” set out by the statute and asked the trial court to “grant the Defendant to [sic] a speedy trial.” (*Id.*) The motion was filed by Moore pro se, although he had been previously represented by counsel, Perry Parsons, in all these cases. The following documents were attached to the motion: sworn affidavit of indigency, in which Moore attested that he was “incarcerated at the Southeastern Correctional Institution located in Lancaster Ohio”; certificate of service, indicating that the motion and the affidavit were sent to the office of the Union County Prosecutor by regular mail; and a printout of the “Offender Search” page from the Ohio Department of

Rehabilitation and Correction website with Moore’s information, indicating that he had been incarcerated there on unrelated charges since May 8, 2012. (*Id.*) The printout was not authenticated or notarized, but it listed Moore’s name, number, date of birth, race, admission date, institution, status, offense information, stated prison term, and the expiration date for the stated term. (*Id.*)

\*2 { ¶ 6} On March 27, 2013, the State filed a response in opposition to Moore’s motion, requesting the trial court “to deny action” upon the motion, because it “failed to comport with the requirements of R.C. § 2941.401.” (R. at 10.) In particular, the State cited failure to attach “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,” as required by R.C. 2941.401. (*Id.*)

{ ¶ 7} On May 22, 2013, the trial court issued a “finding and order.” (R. at 11.) Although the State did not raise this issue, the trial court noted that Moore served his motions upon an improper party. “The Union County Prosecutor does not represent the State of Ohio in the cases cited by Defendant. Rather, the State of Ohio is represented by the Marysville Law Director’s Office.” (R. at 11.) Because the Marysville Law Director’s Office responded to Moore’s motion with objections, they were apparently provided with Moore’s motions, in spite of the improper service by Moore. (*See* R. at 10.) The trial court gave

Moore an opportunity to respond to the challenges that the State had raised to his motion, setting a deadline for the response of June 13, 2013. (R. at 11.) Moore did not file anything within the deadline, and no action was taken on the cases until February 27, 2014.

{ ¶ 8} On February 27, 2014, a notice of hearing was filed, indicating that all cases had been assigned for a hearing. (R. at 12.) The hearing took place on March 6, 2014. Moore was represented by his attorney Mr. Parsons, who started with an argument regarding the January 2013 motion for speedy trial. (Tr. of Proceedings (“Tr.”) at 3, Mar. 6, 2014.) Through his counsel, Moore argued that he substantially complied with the requirements of R.C. 2941.401, and asked the trial court “to grant his motion and dismiss these [cases] for lack of being tried within 180 days.” (*Id.* at 5:18–19.) Moore asserted that he “did what he was required to do” and that he “can’t be held liable for the warden not doing what they’re required to do.” (*Id.* at 5:9–15.) The State replied that there was no proof that Moore “had made any kind of written or verbal request to the warden” to attempt to comply with the statute and that the motion should be overruled for failure to substantially comply with the statute. (*Id.* at 6:18–20.)

{ ¶ 9} The trial court refused to dismiss the cases for violation of speedy trial rights, stating, “I don’t think the statute was complied with even substantially in the case.” (*Id.* at 7:1–4.) Following the trial court’s decision, Moore entered pleas of no contest to each of the charges. (*Id.* at 8–14.) The trial court found him guilty of OVI in case TRC 1201397, fleeing and eluding in

case CRB 1200206, assault in case CRB 1200323, driving under suspension in case TRC 1202111, and possession of drug paraphernalia in case CRB 1200324. The remaining charges have been dismissed. (*Id.*)

\*3 { ¶ 10} Moore now appeals raising one assignment of error.

**APPELLANT’S SPEEDY TRIAL RIGHTS WERE VIOLATED WHEN THE TRIAL COURT OVERRULED HIS MOTION TO BRING HIS CASES TO TRIAL WITHIN 180 DAYS AFTER HE NOTIFIED THE COURT AND PROSECUTOR THAT HE WAS INCARCERATED.**

***Legal Framework for Review of this Case***

[1] { ¶ 11} “Appellate review of speedy-trial issues involves a mixed question of law and fact.” *State v. Masters*, 172 Ohio App.3d 666, 2007-Ohio-4229, 876 N.E.2d 1007, ¶ 11 (3d Dist.); *accord State v. Hansen*, 3d Dist. Seneca No. 13–12–42, 2013-Ohio-1735, 2013 WL 1799939, ¶ 20. Therefore, we must give “due deference to the trial court’s findings of fact if they are supported by competent, credible evidence.” *Masters* at ¶ 11; *Hansen* at ¶ 20. But we conduct an independent review of “whether the trial court correctly applied the law to the facts of the case.” *Id.*

{ ¶ 12} Moore’s request for speedy trial was based on R.C. 2941.401, which allows an incarcerated defendant to request a

speedy disposition of other charges pending against him in Ohio courts “in a timely manner.” *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶ 25. This statute provides, in relevant parts:

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.

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.

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.

\*4 \* \* \*

If the action is not brought to trial within the time provided, subject to continuance allowed pursuant to this section, no court any longer has jurisdiction thereof, the indictment, information, or complaint is void, and the court shall enter an order dismissing the action with prejudice.

R.C. 2941.401.

{ ¶ 13 } We recognize that the language of R.C. 2941.401 is analogous to the language of Article III of the Interstate Agreement on Detainers (“IAD”), R.C. 2963.30.<sup>3</sup> See *Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶ 23–24 (recognizing the same duty placed upon the incarcerated defendant by the two statutes); *State v. McDonald*, 7th Dist. Mahoning No. 97 C.A. 146, 1999 WL 476253, \*3 (June 30, 1999) (“R.C. 2963.30 is analogous to R.C. 2941.401 in that the provisions therein mirror the language in the first paragraph of R.C. 2941.401.”); *State v. Wells*, 110 Ohio App.3d 275, 280, 673 N.E.2d 1008 (10th Dist.1996). Ohio courts have relied on case law analyzing Article III of IAD when

resolving issues under R.C. 2941.401. *See, e.g., State v. Gill*, 8th Dist. Cuyahoga No. 82742, 2004-Ohio-1245, 2004 WL 528449, ¶ 18–20, 23 (citing *State v. Ferguson*, 41 Ohio App.3d 306, 535 N.E.2d 708 (10th Dist.1987), an interstate detainer case, when analyzing R.C. 2941.401); *McDonald* at \*4, (resolving an issue of compliance with R.C. 2941.401 by referencing two IAD cases); *see also State v. Antos*, 8th Dist. Cuyahoga No. 88091, 2007-Ohio-415, 2007 WL 274304, ¶ 11–12 (resolving issues of compliance with R.C. 2941.401 by citing other cases that dealt with “the speedy trial statute that applies to defendants in out-of-state prisons, including federal penitentiaries”). Acknowledging the similar nature of the statutes and almost identical operational language, we follow our sister districts and use the relevant reasoning from the cases that dealt with Article III of IAD as influential on the issue before us.<sup>4</sup>

### ***Requirement of Compliance with R.C. 2941.401***

{ ¶ 14} Moore’s entire argument focuses on the question of whether the trial court properly denied his request for dismissal, which was based on the alleged violation by the State of the speedy trial statute, R.C. 2941.401. The State asserts that the decision was proper because Moore’s request for speedy trial under the statute was not properly submitted and therefore, the State had no duty to act under R.C. 2941.401.

{ ¶ 15} The Ohio Supreme Court held that the initial duty under R.C. 2941.401 is upon

the defendant and the defendant’s initial compliance with the requirements of R.C. 2941.401 in requesting the speedy trial triggers the state’s responsibility to bring him to trial within the 180–day period or to forego any prosecution. *Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, at ¶ 20. The question before us is therefore, whether Moore complied with R.C. 2941.401 when requesting the speedy trial, thus satisfying his burden. This is the only issue we are addressing in this opinion.<sup>5</sup>

\*5 { ¶ 16} We note the apparently mandatory nature of R.C. 2941.401, listing a number of procedures that “shall” be followed under its express language. *See also* R.C. 2963.30. In spite of this mandatory language, however, Ohio courts analyzing both R.C. 2941.401 and R.C. 2963.30 (IAD), have consistently held that only substantial compliance with the statutes by the inmate is required in order to trigger the running of the 180–day time limitation. The Ohio Supreme Court held that “[t]he one-hundred-eighty-day time period set forth in R.C. 2963.30, Ohio’s codification of the Interstate Agreement on Detainers, begins to run when a prisoner *substantially complies* with the requirements of the statute set forth in Article III(a) and (b) thereof.” (Emphasis added.) *State v. Mourey*, 64 Ohio St.3d 482, 597 N.E.2d 101 (1992), paragraph one of the syllabus. Ohio appellate courts followed this reasoning in IAD and R.C. 2941.401 cases. *See, e.g., State v. Centafanti*, 5th Dist. Stark No. 2007–CA–00044, 2007-Ohio-4036, 2007 WL 2269481, ¶ 43–44, *remanded sub nom. State v. Centafanti*, 120 Ohio St.3d 275, 2008-Ohio-6102, 898 N.E.2d 45 (holding that substantial compliance is required to

satisfy R.C. 2941.401); *State v. Quinones*, 168 Ohio App.3d 425, 2006-Ohio-4096, 860 N.E.2d 793 (8th Dist.), ¶ 17 (analyzing IAD); *Gill*, 8th Dist. Cuyahoga No. 82742, 2004-Ohio-1245, 2004 WL 528449, at ¶ 24 (holding that substantial compliance is the appropriate standard under R.C. 2941.401 “in those instances where documents actually reach a location”); *McDonald*, 7th Dist. Mahoning No. 97 C.A. 146, 1999 WL 476253 (“Substantial compliance is all that is required of a defendant under R.C. 2941.401.”); *State v. York*, 66 Ohio App.3d 149, 153, 583 N.E.2d 1046 (12th Dist.1990) (requiring substantial compliance with IAD).

{ ¶ 17} The standard for substantial rather than strict compliance with the statute might be justified by the nature of the right that the statute protects, i.e., the right to a speedy trial. The Ohio Supreme Court recognized that “ ‘[t]he right to a speedy trial is a fundamental right guaranteed by the Sixth Amendment to the United States Constitution, made obligatory on the states by the Fourteenth Amendment. Section 10, Article I of the Ohio Constitution guarantees an accused this same right.’ ” *State v. Parker*, 113 Ohio St.3d 207, 2007-Ohio-1534, 863 N.E.2d 1032, ¶ 11, quoting *State v. Hughes*, 86 Ohio St.3d 424, 425, 715 N.E.2d 540 (1999). That is why the Ohio Supreme Court has “repeatedly announced that the trial courts are to strictly enforce the legislative mandates [of the speedy trial statutes]” and construe them against the state. *State v. Pachay*, 64 Ohio St.2d 218, 221, 416 N.E.2d 589 (1980); see also *Brecksville v. Cook*, 75 Ohio St.3d 53, 57, 661 N.E.2d 706 (1996); *Hughes*, 86 Ohio St.3d at 427, 715 N.E.2d 540; *Masters*,

172 Ohio App.3d 666, 2007-Ohio-4229, 876 N.E.2d 1007, citing *State v. Singer*, 50 Ohio St.2d 103, 109, 362 N.E.2d 1216, ¶ 9 (1977). We must thus apply this construction, against the state and in favor of the criminal defendant, to the statute at issue. See *McDonald*, 7th Dist. Mahoning No. 97 C.A. 146, 1999 WL 476253, \*5 (June 30, 1999) (“By its very nature, a speedy trial statute, such as R.C. 2941.401, must be strictly construed against the State.”).

\*6 { ¶ 18} Review of Ohio cases indicates that substantial compliance with R.C. 2941.401 requires that the inmate does “everything reasonably required of him that [is] within his control.” See, e.g., *Mourey*, 64 Ohio St.3d at 487, 597 N.E.2d 101; accord *Centafanti*, 5th Dist. Stark No. 2007-CA-00044, 2007-Ohio-4036, 2007 WL 2269481, ¶ 44, citing *Ferguson*, 41 Ohio App.3d at 311, 535 N.E.2d 708.

{ ¶ 19} Analyzing what is reasonably required of an incarcerated criminal defendant under the statute, the Ohio Supreme Court held:

A careful review of Article III(a) of R.C. 2963.30 reveals that the prisoner “*shall have caused to be delivered* to the prosecuting officer and the appropriate court of the prosecuting officer’s jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint \* \* \*.” (Emphasis added.) The other requirements listed in Article III(a) are the responsibility of the officials having custody of the prisoner.

Article III(b) of the agreement then requires that the written notice of the prisoner “ \* \* \* shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him \* \* \*.” The remainder of subsection (b) provides the other responsibilities of the officials having custody of the prisoner.

(Emphasis sic.) *Mourey*, 64 Ohio St.3d at 487, 597 N.E.2d 101, quoting R.C. 2963.30. The above quote indicates that the Ohio Supreme Court recognized two requirements of the statute: delivery of the notice and the request for speedy trial to the prosecuting officer and the court, and service of the notice on the prison official having custody of the prisoner.

{ ¶ 20} In *Mourey*, the Ohio Supreme Court was asked to determine when the 180-day time period begins to run. *Id.* at 485, 597 N.E.2d 101. The court found that the defendant substantially complied with the statute and that therefore, the time began to run when the defendant “ ‘caused to be delivered’ his IAD request form to the California prison officials.” *Id.* This was found to substantially satisfy the statute, even though the appropriate prosecutor and the court had not been notified of the request yet.<sup>6</sup> *Id.* at 484, 597 N.E.2d 101. Therefore, in spite of the fact that the Ohio Supreme Court recognized two procedures required under the statute, it found substantial compliance upon satisfaction of one of the procedures only. It appears that the Ohio Supreme Court justified this low standard for inmate’s compliance with the statute by reasoning that the prisoner should not be held “accountable for measures and duties

that are totally beyond his or her control.” *Id.* at 487, 597 N.E.2d 101.

{ ¶ 21} The *Mourey* holding that mere delivery of the request to the prison officials satisfies the statute was soon effectively overruled by the United States Supreme Court in *Fex v. Michigan*, 507 U.S. 43, 113 S.Ct. 1085, 122 L.Ed.2d 406 (1993). Reviewing a Michigan IAD case, the United States Supreme Court held that “the 180-day time period in Article III(a) of the IAD does not commence until the prisoner’s request for final disposition of the charges against him has actually been delivered to the court and prosecuting officer.” *Id.* at 52, 113 S.Ct. 1085; see *State v. Ward*, 10th Dist. Franklin No. 02AP-56, 2002-Ohio-4852, 2002 WL 31057422, ¶¶ 48-49 (recognizing that the *Fex* holding “effectively overruled that portion of *Mourey*”). Yet, the *Mourey* reasoning and the substantial compliance standard continue to be governing law in Ohio.

\*7 { ¶ 22} Other cases in Ohio confirm this low standard for substantial compliance with R.C. 2941.401 by the inmate. Thus, the courts have found that where the prosecuting attorney and the appropriate court are notified of the inmate’s request for speedy trial, but the notification to the prison official is missing, the statute is satisfied and the state must act. For example, in *Centafanti*, 5th Dist. Stark No. 2007-CA-00044, 2007-Ohio-4036, 2007 WL 2269481, the inmate sent letters “to the appropriate prosecutor’s office and court, notifying them of his location of imprisonment and demanding a final disposition.” (Emphasis added.) *Id.* at ¶ 52. Reversing the trial court’s denial of the

inmate's motion to dismiss for speedy trial violations due to noncompliance with the statute, the court of appeals noted that

[f]or appellant to have strictly followed the R.C. 2941.401 requirements, he should have given his written notice to the prison authorities, who should have forwarded it to the prosecutor and court along with a certificate of inmate status. However, it is clear that, although appellant did not strictly follow that path, the required information arrived at the proper place.

*Id.* at ¶ 41. The court further noted that upon receipt of the inmate's request for speedy trial "[a]ll the State needed to do was communicate with the warden of the institution where appellant was incarcerated to obtain the appropriate certificate." *Id.* at ¶ 52.

The State cannot avoid the application of R.C. 2941.401 by neglecting to inform the custodial warden or superintendent of the source and content of an untried indictment when the State is aware of the defendant's location and the source and content of the untried indictment and the defendant has made a demand for speedy disposition of the same.

*Id.*<sup>7</sup>

{ ¶ 23} A case from the Eighth District Court of Appeals dealt with facts almost identical to the case at issue. In *State v. Barrett*, 191 Ohio App.3d 245, 2010-Ohio-5139, 945 N.E.2d 1070 (8th Dist.), an inmate "sent notice to the trial court of his availability and requested that the criminal case move forward." *Id.* at ¶ 2. The statutorily required notice was not sent to the warden or superintendent charged with the inmate's custody. *Id.* at ¶ 12. No certificate of the warden was attached either, although the inmate "included his federal prison identification number, his home federal prison institution in Kentucky, and a certificate of service indicating that the notice was also sent to the prosecutor." *Id.* at ¶ 2. The Court of Appeals determined that the inmate "provided enough information to invoke the IAD and the right to be brought to trial within 180 days." *Id.* at ¶ 15. It affirmed the trial court's dismissal for violation of the inmate's speedy trial rights, even though the trial court improperly relied on R.C. 2941.401 instead of the IAD in its action. *See also State v. Levy*, 8th Dist. Cuyahoga No. 83114, 2004-Ohio-4489, 2004 WL 1902534, ¶ 34 ("Levy would be in substantial compliance had he filed with both the court and the prosecutor."); *State v. Pierce*, 8th Dist. Cuyahoga No. 79376, 2002 WL 337727 (reaching the same result where the state argued that the speedy trial provisions of IAD "were never triggered" because the "notice by defendant's counsel to the court and prosecution" did not constitute "the prisoner's request" under the statute).

\*8 { ¶ 24} The Ohio Supreme Court has

not addressed the exact facts with which we are faced in this case, where an incarcerated defendant requests speedy trial under R.C. 2941.401 by causing the request to be delivered to the prosecutor and the court, but not the warden. But the court's existing opinions suggest that compliance would be found on these facts. In *Hairston*, the Ohio Supreme Court was again asked to determine when the state's duty to act starts under R.C. 2941.401. 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, at ¶ 20. The court rejected the defendant's argument that R.C. 2941.401 requires the state to locate an incarcerated defendant and bring him to trial. *Id.* at ¶ 20. It held that the state's duty to bring the incarcerated defendant to trial within 180 days begins when the defendant " 'cause[s] to be delivered to the prosecuting attorney and the appropriate court \* \* \* written notice of the place of his imprisonment and a request for final disposition to be made of the matter.' " *Id.* at ¶ 26, quoting R.C. 2941.401. In that case, the incarcerated defendant did not provide any such notice to the prosecuting attorney or the court, and thus, he "never triggered the process to cause him to be brought to trial within 180 days of his notice and request." *Id.* at ¶ 21. We note that *Hairston* was not a case concerning substantial compliance with R.C. 2941.401. Therefore, we do not read it as determinative on the issue of whether *sole* delivery to the prosecution and the appropriate court satisfies substantial compliance standard. Its holding is instructive, however.

{ ¶ 25} In *Daugherty v. Solicitor for Highland Cty.*, 25 Ohio St.2d 192, 267 N.E.2d 431 (1971), an inmate submitted letters "to the prosecuting authorities and the

Common Pleas Judge," requesting "either a trial or dismissal of the charge for lack of prosecution." *Id.* at 192, 267 N.E.2d 431. The prosecution argued that "no proper demand for speedy trial has ever been made." *Id.* The Ohio Supreme Court found that the inmate "has made a diligent, good-faith effort to call to the attention of the proper authorities in another state that he desires a charge pending against him in that state disposed of, by trial or dismissal." *Id.* Therefore, "he was entitled to have such request acted upon. The failure of the authorities to do so constitute[d] the denial of a speedy trial." *Id.* We note that the *Daugherty* opinion did not mention any statute upon which the prisoner's request for speedy trial was based.<sup>8</sup> Yet, the facts of that case, the issues addressed in the opinion, and the reasoning, confirm the Ohio Supreme Court's position that the burden on an imprisoned criminal defendant is low when it comes to informing the state that he wishes to exercise his constitutional right to a speedy trial. Finally, in *Mourey*, the Ohio Supreme Court recognized that the statute places a twofold burden on criminal defendant, but found substantial compliance upon satisfaction of one element only.<sup>9</sup> *Mourey*, 64 Ohio St.3d 482, 597 N.E.2d 101.

\*9 { ¶ 26} We acknowledge the conflict between the mandatory language of R.C. 2941.401 and the above summary of Ohio case law. The language of R.C. 2941.401 seems to require at least three procedures that "shall" be followed to invoke the imprisoned defendant's speedy trial rights: (1) notice of the place of imprisonment and a request for final disposition to the prosecuting attorney and the appropriate

court; (2) a certificate of the warden or superintendent who has custody of the prisoner, attached to the request, containing specific information about the prisoner; and (3) service of the notice and the request on the warden or superintendent having custody of the prisoner. Conversely, the cases cited above require only that the first requirement be satisfied, directly or indirectly.

{ ¶ 27} Several courts in Ohio refused to so significantly lower requirements of the statute. For instance, in *State v. York*, an inmate sent a letter to the clerk of courts “requesting ‘information as to what [he] must do to have [the] detainer disposed of.’” 66 Ohio App.3d 149, 151, 583 N.E.2d 1046 (12th Dist.1990). The clerk forwarded the letter to the trial court, who in turn forwarded it to the appropriate prosecutor. *Id.* Because “no notice of the alleged request was given to prison officials \* \* \* [,] the alleged request was not accompanied by a certificate of inmate status.” *Id.* at 153–154, 583 N.E.2d 1046. The Twelfth District Court of Appeals held that “[n]otice to the prison officials and the certificate of inmate status are indispensable and essential to effectuate the purposes of the I.A.D.” *Id.* at 154, 583 N.E.2d 1046. We note that *York* was decided prior to the Ohio Supreme Court’s decision in *Mourey*, where the court held that substantial compliance requires the defendant to do “everything reasonably required of him that was within his control” and did not find the certificate of inmate status to be indispensable and essential for compliance with the IAD.<sup>10</sup> *Mourey*, 64 Ohio St.3d at 487, 597 N.E.2d 101. The *York* holding was subsequently cited with approval by the Sixth District Court of Appeals in *State v. Denniss*, 6th Dist. Lucas

No. L–06–1361, 2009-Ohio-3498, 2009 WL 2096283. *See also State v. Schnitzler*, 12th Dist. Clermont No. CA98–01–008, 1998 WL 729250, \*4 (Oct. 19, 1998) (holding that the prisoner did not substantially comply with IAD where he failed to deliver his request to prison officials and to attach “the certification and the information from prison officials specified in Article III(a)”).

{ ¶ 28} The Twelfth and Sixth districts focused on the requirement that the inmate files his or her request with the officials “having custody of him.” *See* R.C. 2941.401 and 2963.30. Yet, it appears that the Ohio Supreme Court did not intend to create such a distinction for finding substantial compliance when it held that the state’s duty to bring the incarcerated defendant to trial within 180 days begins when the defendant “ ‘cause[s] to be delivered to the prosecuting attorney and the appropriate court \* \* \* written notice of the place of his imprisonment and a request for final disposition to be made of the matter.’ ” *Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, at ¶ 26, quoting R.C. 2941.401.

\*10 { ¶ 29} Although we recognize the position taken by the courts in the Twelfth and the Sixth districts, and the mandatory language of R.C. 2941.401, the Ohio Supreme Court has held that once the prosecuting attorney and the appropriate court are notified of the inmate’s request for speedy trial, the state must act. *Hairston* at ¶ 26; *Daugherty*, 25 Ohio St.2d 192, 267 N.E.2d 431; *see also Centafanti*, 5th Dist. Stark No. 2007–CA–00044, 2007-Ohio-4036, 2007 WL 2269481; *Barrett*, 191 Ohio App.3d 245,

2010-Ohio-5139, 945 N.E.2d 1070; *Pierce*, 8th Dist. Cuyahoga No. 79376, 2002 WL 337727; *Levy*, 8th Dist. Cuyahoga No. 83114, 2004-Ohio-4489, 2004 WL 1902534. We feel bound by the Ohio Supreme Court's interpretation of the statute. Therefore, we apply it to the case at hand.

### ***Compliance of Moore's Request for Speedy Trial with R.C. 2941.401***

[<sup>21</sup> { ¶ 30} As we have previously stated, under the express language of R.C. 2941.401, three procedures are required: (1) delivery of the notice of the place of imprisonment and a request for final disposition to the prosecuting attorney and the appropriate court; (2) attachment to the request of the warden or superintendent's certificate, containing specific information about the prisoner; and (3) service of the notice and the request on the warden or superintendent having custody of the prisoner.

{ ¶ 31} With respect to the first requirement, Moore filed his request for speedy trial on January 23, 2013. Although this request was not initially served on the proper prosecuting attorney, the State's response on March 27, 2013, proves that the notice and the request were "cause[d] to be delivered" to it by this date, at the latest. See R.C. 2941.401; see also *Centafanti*, 5th Dist. Stark No. 2007-CA-00044, 2007-Ohio-4036, 2007 WL 2269481, ¶ 41 ("it is clear that, although appellant did not strictly follow that path, the required information arrived at the proper place");

*Ferguson*, 41 Ohio App.3d 306, 311, 535 N.E.2d 708 (holding that the prosecutor's "actual receipt of the request \* \* \* effectively cured the mistake of mismailing the request to the wrong Ohio official"). Thus, Moore fully complied with the first requirement of the statute. According to the law delineated above, this, alone, is sufficient to satisfy the substantial compliance standard. Continuing our analysis, however, we find substantial compliance in this case because there are additional facts present in this case.

{ ¶ 32} With respect to the second statutory requirement, although Moore's request was not accompanied by the necessary warden's certificate, Moore attached a printout of the "Offender Search" page from the Ohio Department of Rehabilitation and Correction website with information concerning his status at Southeastern Correctional Institution. While the printout was not authenticated or notarized, it did list "the term of commitment under which [Moore was] being held," the admission date and the expiration of his stated term, as are required to be listed on the certificate under R.C. 2941.401 as "the time served and remaining to be served on the sentence." The printout did not include "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," which are also required to appear on the certificate. R.C. 2941.401.

\*11 { ¶ 33} The dissenting justices in *Mourey* noted that the certificate was important because the information contained within it "is vital, and it may be difficult for

the prosecuting attorney to make an informed decision on whether to prosecute the prisoner on the pending charges without receipt of a *completed* certificate of the official having custody of the prisoner.” (Emphasis sic.) *Mourey*, 64 Ohio St.3d at 489–490, 597 N.E.2d 101 (Resnick, J., Moyer, C.J., and Holmes, J., dissenting). In this case, Moore provided much of this “vital” information to the prosecuting attorney in his case. Additionally, the decision to prosecute had already been made, as charges in all cases relevant to this appeal had actually been filed before his incarceration in an unrelated case. Therefore, the concern raised by lack of the certificate by the dissenters in *Mourey* is not as significant in this case. See *Pierce*, 8th Dist. Cuyahoga No. 79376, 2002 WL 337727, \*3, fn. 2 (citing the *Mourey* dissent and explaining that “the certificate does not have the same function when a case is already in court and is proceeding to trial”).

{ ¶ 34} With respect to the third statutory requirement, although no evidence was provided that Moore had given his notice and request “to the warden or superintendent having custody of him,” he argued in the trial court that he “did what he was required to do” and that he “can’t be held liable for the warden not doing what they’re required to do.” (Tr. at 5:9–15.) We agree that it would be improper to hold Moore responsible for the warden’s inaction. See *Mourey* at 487, 597 N.E.2d 101 (holding that the prisoner should not be held “accountable for measures and duties that are totally beyond his or her control”). But Moore offered no testimony or evidence in the trial court to support his suggestion that he had contacted the warden with a request.

Therefore, we are unable to determine whether this element of R.C. 2941.401 was satisfied. At the same time, we see no prejudice to the State resulting from Moore’s failure to prove that the warden of the Southeastern Correctional Institution received his notice and request for final disposition. The State was served with the notice and the request, and it was aware of Moore’s status in the facility. See *Centafanti*, 5th Dist. Stark No. 2007–CA–00044, 2007-Ohio-4036, 2007 WL 2269481, ¶ 41 (“For appellant to have strictly followed the R.C. 2941.401 requirements, he should have given his written notice to the prison authorities, who should have forwarded it to the prosecutor and court along with a certificate of inmate status. However, it is clear that, although appellant did not strictly follow that path, the required information arrived at the proper place.”); see also *Antos*, 8th Dist. Cuyahoga No. 88091, 2007-Ohio-415, 2007 WL 274304, at ¶ 10 (holding the same); *Gill*, 8th Dist. Cuyahoga No. 82742, 2004-Ohio-1245, 2004 WL 528449, at ¶ 10 (“An inmate’s ‘notification of availability and request for final disposition’ can take several forms, depending on the circumstances of the inmate. Inmates are sometimes in halfway houses or municipal jail facilities where a warden or superintendent may or may not be present as contemplated in R.C. 2941.401. At times, inmates take it upon themselves to notify the court and prosecutor directly, outside the prescribed method in R.C. 2941.401. \* \* \* Even where the prescribed method is used, variations in notification still occur.”).

\*12 { ¶ 35} Based on the review of the Ohio law and our analysis of the statute and

the facts of this case, we hold that Moore substantially complied with R.C. 2941.401. But because his motion was not initially served upon the proper prosecutor and the appropriate court, we cannot use the date of filing, January 23, 2013, as the date when the 180-day period begins to run. Although the record does not disclose when Moore's request was delivered to the State, it is apparent that the State received the request by March 27, 2013, at the latest, because that is when the State responded to Moore's motion. According to the Ohio Supreme Court's mandate, the delivery to the prosecuting attorney and the appropriate court triggers the state's duty. *See Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶ 26. Thus, March 27, 2013, was the date from which the 180-day period began to run. Moore's trial did not start within the next 180-days, and no continuances "for good cause shown in open court, with the prisoner or his counsel present" were granted. *See* R.C. 2941.401. Therefore, Moore's speedy trial rights were violated and the trial court should have granted his motion to dismiss.

{ ¶ 36} For the foregoing reasons, Moore's assignment of error is sustained.

### Footnotes

- 1 In their captions, Moore's motions included additional trial court cases, labeled as CRB 1200322, CRB 1200358, and TRD 1202112. These additional cases are not included in the current appeal.
- 2 The filings relevant to this appeal were the same in all five cases in the trial court. Therefore, for simplicity of this opinion, we cite to one record, from case CRB 1200323.
- 3 Article III of IAD states:
  - (a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his

### Conclusion

{ ¶ 37} Having reviewed the arguments, the briefs, and the record in this case, we find error prejudicial to Appellant in the particulars assigned and argued. The judgments of the Marysville Municipal Court of Union County, Ohio are therefore reversed.

### Judgments Reversed.

ROGERS, J., concurs.

PRESTON, J., dissents.

### Parallel Citations

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counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time 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 state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) \* \* \* If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

\* \* \*

R.C. 2963.30.

4 But see *Wells*, 110 Ohio App.3d at 281, 673 N.E.2d 1008, fn. 1 (“R.C. 2941.401 is merely a state statute, which Ohio courts have the ultimate authority to interpret. Because the IAD is a congressionally sanctioned interstate compact under the Compact Clause of Section 10, Article I of the United States Constitution, its interpretation presents a question of federal law.”)

5 Moore does not assert that he was denied his speedy trial rights in any manner other than through the violation of R.C. 2941.401.

6 Three justices disagreed with this decision and would require notification to the prosecuting attorney and the court, with the additional information, as mandated by R.C. 2963.30, Article III(a). *Mourey* at 489, 597 N.E.2d 101 (Resnick, J., Moyer, C.J., and Holmes, J., dissenting).

7 The Ohio Supreme Court remanded the case with instructions to review it under IAD “[b]ecause appellee was incarcerated in a federal prison in Ohio rather than in a ‘correctional institution of this state.’ ” *State v. Centafanti*, 120 Ohio St.3d 275, 2008-Ohio-6102, 898 N.E.2d 45. The relevant reasoning of the court of appeals was not criticized.

8 The inmate’s letters requesting speedy trial or dismissal were written in 1964, before the enactment of the Ohio IAD, in 1969. See R.C. 2963.30, 1969 S 356, cff. 11–18–69.

9 Although, as stated above, part of this holding has been effectively overruled in *Fex*, 507 U.S. at 52, 113 S.Ct. 1085, the remainder of *Mourey* reasoning continues to be governing law in Ohio.

10 The *Mourey* dissenters noted the requirement of the certificate, which provides “vital” information to the prosecuting attorney. *Mourey* at 489, 597 N.E.2d 101 (Resnick, J., Moyer, C.J., and Holmes, J., dissenting).

## **APPENDIX E**

41 Ohio App.3d 306  
Court of Appeals of Ohio, Tenth District,  
Franklin County.

The STATE of Ohio, Appellant,  
v.  
FERGUSON, Appellee.\*  
No. 87AP-65. | Sept. 15, 1987.

State appealed from the dismissal by the Court of Common Pleas, Franklin County, of defendant's indictment for complicity to commit aggravated robbery based on violation of Interstate Agreement on Detainers. The Court of Appeals, Edwin T. Hofstetter, J., held that: (1) defendant incarcerated in another state, is not required to strictly comply with requirements under Agreement to request disposition of pending charges, and substantial compliance will suffice; (2) defendant substantially complied with Agreement by completing request form and forwarding it to Wisconsin prison officials, even though Wisconsin prison officials improperly mailed request to city police department, rather than Ohio prosecutor and court and failed to send certificate of inmate's status; and (3) running of time under Agreement would be tolled for period that defendant was serving as a witness or on trial in Wisconsin, but running of time would not be tolled for periods when defendant was incarcerated in Minnesota prison under prisoner housing agreement with Wisconsin, notwithstanding Wisconsin prison officials' failure to notify Ohio officials that defendant had been moved to Minnesota.

Affirmed.

West Headnotes (6)

<sup>[1]</sup> **Extradition and Detainers**  
⇌ Request by Prisoner for Final  
Disposition and Proceedings  
Thereon

Defendant is not required to strictly comply with requirements of Interstate Agreement on Detainers in making request for speedy trial; all that is required is that defendant substantially comply. R.C. § 2963.30, Art. III.

4 Cases that cite this headnote

<sup>[2]</sup> **Extradition and Detainers**  
⇌ Request by Prisoner for Final  
Disposition and Proceedings  
Thereon  
**Extradition and Detainers**  
⇌ Time for Trial

Under Interstate Agreement on Detainers, there is first burden on defendant to substantially comply with IAD request requirements by doing everything that could reasonably be expected to make request for speedy trial of pending

charges; once defendant fulfills this burden, however, burden is then placed upon states to cooperate and bring accused to trial within 180 days. R.C. § 2963.30, Art. III.

23 Cases that cite this headnote

- [3] **Extradition and Detainers**  
⌚Request by Prisoner for Final Disposition and Proceedings Thereon

Defendant substantially complied with Interstate Agreement on Detainers by completing request form for disposition of pending charges and forwarding it to prison officials, notwithstanding that prison authorities improperly mailed request to city police department, rather proper prosecutor and court and failed to send certificate of inmate status; prosecutor's actual receipt of request effectively cured mistake of mismailing. R.C. § 2963.30, Art. III.

9 Cases that cite this headnote

- [4] **Extradition and Detainers**  
⌚Request by Prisoner for Final Disposition and Proceedings Thereon

Under Interstate Agreement on Detainers, prison official's failure to send certificate of inmate status will not vitiate inmate's right to speedy trial once requested. R.C. § 2963.30, Art. III.

10 Cases that cite this headnote

- [5] **Extradition and Detainers**  
⌚Time for Trial

Running of time under Interstate Agreement of Detainers should have been tolled for periods when defendant was serving as witness or on trial in Wisconsin because during those periods he was unable to stand trial in Ohio. R.C. § 2963.30, Art. VI(a).

1 Cases that cite this headnote

- [6] **Extradition and Detainers**  
⌚Time for Trial

Running of time under Interstate Agreement on Detainers with respect to pending Ohio charges would not be tolled for periods when Wisconsin inmate was in Minnesota under prisoner housing agreement between two states, notwithstanding that Wisconsin prison officials failed to notify Ohio officials that

defendant had been moved to Minnesota; burden was on Ohio officials to locate defendant during that time period in order to bring him to trial within 180 days as required by Agreement. R.C. § 2963.30, Art. VI(a).

Cases that cite this headnote

**\*\*709 Syllabus by the Court**

**\*306** 1. The one-hundred-eighty-day period, set forth in R.C. 2963.30, within which a criminal defendant incarcerated in another jurisdiction must be tried does not begin to run until the defendant files the request for disposition of the detainer.

2. There is first a burden on the defendant to *substantially* comply with the Interstate Agreement on Detainers request requirements by doing everything that could reasonably be expected. Once the defendant fulfills this burden, however, the burden is then placed upon the states to cooperate and bring the accused to trial within one hundred eighty days.

**Attorneys and Law Firms**

Michael Miller, Pros. Atty., and Bonnie L. Maxton, Columbus, for appellant.

James Kura, County Public Defender, and

Barbara J. Slutsky, for appellee.

**Opinion**

EDWIN T. HOFSTETTER, Judge, Court of Appeals.

This is an appeal from the Franklin County Court of Common Pleas' dismissal of appellee's indictment for complicity to commit aggravated robbery because appellee's right to a speedy trial was violated under Article III of the Interstate Agreement on Detainers ("IAD"), adopted under R.C. 2963.30.

Appellee, Joe Franklin Ferguson, was indicted by the Franklin County **\*307** Grand Jury on April 5, 1983 for complicity to commit aggravated robbery. Appellant, the state of Ohio, claims that, because appellee was standing trial, serving as a witness, or incarcerated in many different jurisdictions, Ohio could not obtain temporary custody of him until April 1986, and the Franklin County trial could not be scheduled until June 4, 1986. The appellee also requested and received three continuances of the trial until August 28, 1986. On August 27, 1986, appellee filed a motion to dismiss the indictment based on appellant's alleged violation of appellee's speedy trial rights under the United States and Ohio Constitutions and Articles III and IV of the IAD, which gives criminal defendants charged with crimes in several states certain speedy trial rights.

On October 9, 1986, a hearing on appellee's motion was held. The trial court held that appellant had violated R.C. 2963.30, Article

III of the IAD, by not bringing appellee to trial within one hundred eighty \*\*710 days of receiving appellee's request for disposition of the Franklin County charges. Therefore, the trial court dismissed the indictment pursuant to R.C. 2963.30. Appellant has appealed that decision.

Originally, the robbery complaint against appellee was filed in Franklin County Municipal Court on November 22, 1982. The Columbus Police Department, on December 23, 1982, then issued a detainer on appellee with the Rock County, Wisconsin, Sheriff's Department, where appellee was being tried on robbery charges. Rock County informed the Columbus Police Department that appellee had been transferred to Waupun State Correctional Facility in Wisconsin where he was serving three concurrent ten-year sentences for the Rock County crimes. Thereafter, the Columbus Police Department, on January 3, 1983, issued another detainer on appellee with Waupun prison.

The appellee then executed a request on January 12, 1983, on a form entitled "Agreement on Detainers: Form I," which acknowledged notice of the Columbus detainer and requested that "a final disposition be made of the above-stated untried indictments, informations or complaints." Appellee forwarded the request form to the Waupun prison records officer, who sent the request to the Columbus Police Department instead of the Franklin County Prosecutor and court as required by R.C. 2963.30. The certificate of inmate status, which the Waupun prison was also required to send with the request pursuant to R.C. 2963.30, was either never sent or lost.

A Franklin County assistant prosecutor, however, discovered appellee's request for disposition of the charges around March 28, 1983 while reviewing the Columbus Police Department's summary of the case in preparation for grand jury proceedings. The prosecutor noted on the case file, " \* Note-Demand to be brought to trial signed 1-12-83." After appellee was indicted on April 5, 1983, the Franklin County Sheriff's Department wrote to Waupun prison and also placed a detainer on appellee pursuant to R.C. 2963.30 based upon the warrant on the indictment.

Neither appellant the state of Ohio nor Wisconsin, however, took any further action to bring appellee to trial on the Franklin County charges until appellee executed a second request for final disposition of the charges on September 27, 1985, which was sent to the Franklin County Prosecutor's office. At this time, appellee was incarcerated in Minnesota as part of a prisoner housing agreement with Wisconsin, and Minnesota offered Franklin County temporary custody of appellee. Franklin County accepted the offer, \*308 but did not obtain temporary custody of appellee until April 10, 1986, because appellee was in the temporary custody of Illinois in December and February 1986 standing trial there on robbery charges.

In addition to the foregoing, the trial court found that:

*"On December 20, 1982, the appellee was sentenced in Rock County, Wisconsin to Waupun prison to three concurrent ten-year sentences for armed robbery. As part of his*

sentence, appellee agreed to testify for the prosecution in Rock County for crimes in which he participated. Appellee was transported from Waupun prison to Rock County several times for this purpose.

*“From January 17, 1983 to January 27, 1983, appellee was in Rock County, Wisconsin.*

*“From February 1, 1983 to February 18, 1983, appellee was transferred from Waupun prison to Dane County, Wisconsin for his appearance on local charges.*

*“From February 28, 1983 to March 4, 1983, appellee was in Dane County, Wisconsin again.*

*“From April 19, 1983 to December 20, 1983, appellee was incarcerated in Shelby County, Tennessee where he pleaded guilty and was given a ten-year sentence for armed robbery to be served consecutively to the Wisconsin sentence.*

*“From April 3, 1984 to April 12, 1984, appellee was in Rock County, Wisconsin.*

*“From May 8, 1984 to May 11, 1984, appellee was in Rock County, Wisconsin again.*

**\*\*711** *“On August 15, 1984, Wisconsin sent the appellee to Minnesota as part of a housing agreement between the two states. Franklin County was never notified of the movement, nor was the appellee made available to Franklin County at that time.*

*“From December 17, 1985 until March 5, 1986, the appellee was unavailable because*

he was in Waukeegon, Illinois where he was tried and sentenced to twenty-five years imprisonment concurrent with the Wisconsin sentences.”

After the presentation of this information at the hearing on appellee’s motion to dismiss, the Franklin County Common Pleas Court ruled that appellant had violated R.C. 2963.30, Article III of the IAD, because appellant failed to bring appellee to trial within one hundred eighty days of appellee’s January 12, 1983 request for disposition of the detainer. The court found that the Franklin County Prosecutor’s office had notice of the request around March 28, 1983 and that appellee substantially complied with R.C. 2963.30, Article III of the IAD. In determining whether the one hundred eighty days had elapsed from the appellee’s request until the trial date, the trial court did not count all the times that appellee was in Dane County or Rock County, Wisconsin.<sup>1</sup> The court also found that appellant exceeded the one-hundred-eighty-day limitation on or about June 4, 1985—one year before the case was set for trial. Therefore, the trial court dismissed the indictment against appellee.

Appellant has timely appealed the lower court’s decision and asserts the following assignment of error:

*“The trial court erred in dismissing appellant’s [sic] indictment and in finding that appellant’s [sic] speedy \*309 trial rights under Article III of the Interstate Agreement on Detainers were violated.”*

R.C. 2963.30, Article III of the IAD, states:

*“(a) Whenever a person has entered upon a*

term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time 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 state parole agency relating to the prisoner.

“(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.”

Appellant has asserted that the trial court

erred in holding appellee's speedy trial rights under Article III of the IAD were violated. (Appellant obviously erroneously stated “appellant's” rather than “appellee's” speedy trial rights in the assignment of error.) Appellant has set forth two arguments: (1) that appellee's request for disposition of the detainer was insufficient as a matter of law, and (2) that the trial court erred in finding that appellee was available for trial during certain time **\*\*712** periods. We will discuss the sufficiency of appellee's request first.

### Sufficiency of Request

<sup>[1]</sup> R.C. 2963.30 adopts the requirements that the accused must make a request under Article III of the IAD for a speedy trial. Ohio law is unclear, however, on what constitutes a request for a speedy trial. The only two reported Ohio decisions<sup>2</sup> discussing prisoner requests for a speedy trial under Article III of the IAD seem to set forth opposing views as to what is required of an accused.

The Court of Appeals for Summit County strictly viewed the accused's responsibilities under the IAD Article III in *State v. Reitz* (1984), 26 Ohio App.3d 1, 26 OBR 168, 498 N.E.2d 163. In *Reitz*, the court held that the one hundred eighty days did not begin to run until the prosecutor received the **\*310** request and the certificate of inmate status, even though the defendant had filed the request five months earlier.

The United States District Court of Ohio,

however, has taken a more liberal view of the actions a defendant must take to file a request for disposition of a detainer under Article III. In *United States v. Mason* (N.D. Ohio 1973), 372 F.Supp. 651, the defendant was imprisoned in Ohio serving an Ohio sentence when a federal detainer was placed upon him. He then made a request for disposition of the federal detainer. Subsequently, the defendant was paroled in Ohio and was sent to Michigan to serve a sentence there involving Michigan crimes. No one informed the federal government that the defendant had been moved and the one hundred eighty days ran, a situation similar to the case *sub judice*. The court in *Mason* applied the IAD and held that it was not the defendant's duty to inform the federal government that he was now in Michigan; rather, the government had the burden of finding him.

The Supreme Court of Ohio has not considered what constitutes a request for speedy trial under the IAD, but in *Daugherty v. Solicitor for Highland County* (1971), 25 Ohio St.2d 192, 54 O.O.2d 300, 267 N.E.2d 431, the Supreme Court of Ohio held that a federal penitentiary inmate's letters to the appropriate Ohio prosecutor and judge requesting either a trial or dismissal of an Ohio charge, although informal, constituted a general request for a speedy trial. The court stated that "[w]here an inmate in a penal institution has made a diligent, good-faith effort to call to the attention of the proper authorities in another state that he desires a charge pending against him in that state disposed of, by trial or dismissal, he is entitled to have such request acted upon. The failure of the authorities to do so constitutes the denial of a speedy trial."

*Daugherty, supra*, at 193, 54 O.O.2d at 300, 267 N.E.2d at 432.

Other states have issued varying decisions on what constitutes a request for a speedy trial under the IAD. Some states have held that an accused must strictly comply with the request requirements set forth in Article III. See *State v. Thomas* (Iowa 1979), 275 N.W.2d 211; *Ekis v. Darr* (1975), 217 Kan. 817, 539 P.2d 16; *Johnson v. State* (1980), 154 Ga.App. 512, 268 S.E.2d 782; and *People v. Daily* (1977), 46 Ill.App.3d 195, 4 Ill.Dec. 756, 360 N.E.2d 1131. Whereas, other states have held that the accused may liberally comply with the Article III request requirements. See *Nelms v. State* (Tenn.1976), 532 S.W.2d 923; *Pittman v. State* (Del.1973), 301 A.2d 509; *State v. Arwood* (1980), 46 Ore.App. 653, 612 P.2d 763; *Rockmore v. State* (1974), 21 Ariz.App. 388, 519 P.2d 877; and *State v. Seadin* (1979), 181 Mont. 294, 593 P.2d 451.

We believe the policy reasons for Ohio's enacting the IAD are the key to the approach which should be taken when courts review the sufficiency of an accused's compliance with the IAD. R.C. 2963.30, Article I, states that the IAD's purpose is to eliminate uncertainties which obstruct prisoner treatment and rehabilitation, to encourage \*\*713 the orderly and expeditious disposition of charges, and to provide cooperative procedures between the states. Article IX of the IAD also states that the IAD is intended to be liberally construed.

Given the purpose and liberal policy of the IAD, we do not adopt a test which requires a defendant to strictly comply with Article III of the IAD. A more appropriate test, which

adheres to the liberal policy of the IAD and the Ohio Supreme Court's reasoning in *Daugherty*, is a requirement that the accused substantially comply with Article III of the IAD.

The District of Columbia Court of \*311 Appeals in *McBride v. United States* (D.C.App.1978), 393 A.2d 123, 128, certiorari denied (1979), 440 U.S. 927, 99 S.Ct. 1260, 59 L.Ed.2d 482, explained a defendant's duty to substantially comply with the IAD by stating that the test turns "on whether he or she [the defendant] has done everything that the IAD jurisdictions could reasonably expect, given their [the states'] own degree of compliance with a scheme which they [the states] have the principal responsibility to implement."

The Tennessee Supreme Court also explained the accused's and the states' burden of complying with the IAD in *Nelms, supra*. The *Nelms* court determined that after the defendant requests final disposition of charges, the defendant "should not be charged with the responsibility of insuring that his captors have complied with provisions of the law when he has no control over their activities." *Nelms, supra*, at 926-927. The court stated that the IAD clearly does not place the burden on the defendant to insure that he is temporarily released from custody to stand trial in another state.

The Delaware Supreme Court has agreed with Tennessee that the burden of bringing the defendant to trial once he has requested disposition of the charge lies with the states involved. In *Pittman v. State, supra*, at 514, the Delaware Supreme Court stated that " \*

\* \* the prisoner, who is to benefit by the statute [the IAD], is not to be held accountable for official administrative errors which deprive him of that benefit."

<sup>12]</sup> Thus, we believe there is first a burden on the defendant to substantially comply with the IAD request requirements by doing everything that could reasonably be expected. Once the defendant fulfills this burden, however, the burden is then placed upon the states to cooperate and bring the accused to trial within one hundred eighty days.

<sup>13]</sup> <sup>14]</sup> After reviewing the facts of the case *sub judice*, we believe that the appellee herein substantially complied with the IAD, Article III, by completing the request form and forwarding it to the Waupun prison officials on January 12, 1983. The Waupun prison authorities then had the burden of mailing the request, along with a certificate of inmate status to the proper Ohio prosecutor and court. Waupun prison instead mailed the appellee's January 12, 1983 request to the Columbus Police Department. We do not know whether the certificate of inmate status accompanied the request or was lost. However, many states have held, and we agree, that an official's failure to send the certificate of inmate status should not vitiate an inmate's right to a speedy trial once requested. *Rockmore v. State, supra*; *People v. Esposito* (Queens Cty.Ct.1960), 37 Misc.2d 386, 201 N.Y.S.2d 83; and *State v. Seadin, supra*.

Appellee did everything that could reasonably be expected of him in initiating a request under the IAD, Article III. The fact that Waupun prison did not send the request

to the proper Ohio authorities and that the certificate of status was either not sent by Waupun prison or was lost, will not destroy the appellee's rights under the IAD. The prosecutor's actual receipt of the request on approximately March 28, 1983 also effectively cured the mistake of mailing the request to the wrong Ohio official.<sup>3</sup>

### Tolling of Time

[5] [6] Appellant has also asserted that \*312 the trial court did not correctly toll the \*\*714 running of the time when appellee was in another jurisdiction either on trial or serving as a witness. We agree with appellant that the trial court did not toll the running of time for certain periods of time which should have been tolled under the IAD.

R.C. 2963.30, Article VI of the IAD, states that:

“(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.”

“Unable to stand trial” under the IAD was defined in *United States v. Mason, supra*, 372 F.Supp. 651, to include a time period when the accused is standing trial in another state. According to the federal district court in *Mason*, the running of the time is tolled during this time period. In *State v. Minnick*

(Fla.App.1982), 413 So.2d 168, the court held that the running of the time is also tolled whenever the accused is in the custody of another state and unavailable for trial.

The trial court only tolled the running of the time when the appellee was on trial in Illinois and Tennessee. The running of the time should have also been tolled for the periods when appellee was serving as a witness or on trial in Wisconsin because, according to Article VI(a) of the IAD, appellee was also “unable to stand trial” in Ohio during these periods.

However, this court will not toll the running of the time for the periods when appellee was in Minnesota under a prisoner housing agreement. The period that the appellee was in Minnesota until Ohio retained custody of appellee amounts to approximately seventeen months after deducting the approximate three-month period that the running of the time was tolled while appellee was on trial in Illinois. Appellant alleges that appellant should not be prejudiced by Waupun prison's failure to notify appellant when the appellee was moved to Minnesota. As discussed in *Nelms, supra*, however, the sending state's failure to inform the receiving state of the accused's whereabouts or offer temporary custody does not justify the receiving state's inability to bring the accused to trial within one hundred eighty days. The additional burden must be placed on the receiving state rather than the defendant. *Mason, supra*.

Therefore, since the running of the time for the period that appellee was in Minnesota is not tolled, appellant has failed to bring the

appellee to trial within one hundred eighty days, even if the running of the time for periods not properly tolled by the trial court are tolled. This court finds that there was no reasonable excuse for this delay.

For the foregoing reasons, appellant's assignment of error is overruled, and the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

McCORMAC and BRYANT, JJ., concur.

EDWIN T. HOFSTETTER, J., retired, of the Eleventh Appellate District, was assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

### Parallel Citations

535 N.E.2d 708

### Footnotes

- \* An appeal to the Supreme Court of Ohio was dismissed as improvidently allowed in 40 Ohio St.3d 602, 530 N.E.2d 1327.
- 1 The trial court referee erroneously stated in his conclusions of law that appellee was in "Dane County, Illinois." According to the exhibits introduced at trial, this should be Dane County, Wisconsin.
- 2 Appellant cites the unreported opinion of *State v. Grubb* (Aug. 27, 1981), Franklin App. No. 81AP-217, unreported [1981 WL 3438], and infers that this court considered the present issue in *Grubb* favorable to appellant. But in *Grubb*, the defendant never made any type of request for a disposition of the charges or a speedy trial. The defendant only requested a continuance until a Michigan charge was determined.
- 3 See *State v. Arwood, supra*, which held that the accused has met his burden under the IAD as long as the proper official eventually receives the accused's request.

## DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 90068-0**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

- petitioner Erik Pedersen, DPA  
[skagitappeals@co.skagit.wa.us] [erikp@co.skagit.wa.us]  
Skagit County Prosecutor's Office
- respondent
- Suzanne Elliott – WACDL  
[suzanne-elliott@msn.com]
- Pamela Loginsky – WAPA  
[pamloginsky@waprosecutors.org]



MARIA ANA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: January 16, 2015