

NO. 19-8723

IN THE SUPREME COURT OF THE UNITED STATES

SHANE P. IRISH

Petitioner

-vs-

STATE OF OHIO,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE OHIO SUPREME COURT

BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI

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Whether the speedy trial guarantee of the Sixth Amendment to the U.S. Constitution applies to an accused service a prison sentence on a prior offense?

Petitioner’s Second Question Presented

Whether for speedy trial purposes under the Sixth Amendment to the U.S. Constitution, the issuance of a formal indictment engages speedy trial protections for an accused serving a prison sentence on a prior offense?

Petitioner’s Third Question Presented

Whether the state can presume that an accused serving a prison sentence on a prior offense has waived by inaction the speedy trial protections of the Sixth Amendment to the U.S. Constitution when the state has not served said accused with the pending indictment?

Respondent’s Response to Petitioner’s Questions Presented

Under clear Ohio law, Ohio’s speedy trial statute, ORC 2941.71 applies to offenders while their case is pending before the trial court, and ORC 2941.401 applies to offenders who are incarcerated and facing additional criminal charges.

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SUMMARY OF THE ARGUMENT

Petitioner Irish argues that speedy trial guarantees of the Sixth Amendment to the U.S. Constitution apply to an accused serving prison time on an unrelated matter, that the indictment for a new charge “triggers” the speedy time guarantees, and that the State should not be able to infer Defendant has waived his speedy trial protections by inactions.

By Defendant’s phrasing of the “Question(s) Presented” in such a manner, Defendant attempts to mask his claims for jurisdiction as Sixth Amendment Constitutional issue, when they are not. Ohio has two separate and constitutionally valid statutes protecting speedy trial time rights, one for offenders who face charges regardless of whether the offender is held in jail or released to bond while that case pends before the trial court , and the other regarding the obligations for offenders to trigger speedy rights when they are in prison and face other charges.

Specifically, Irish argues that Ohio Revised Code 2945.71, Ohio’s general speedy trial statute, applies to individuals who are incarcerated for another offense, despite the existence of a statute governing speedy trial time specifically for such individuals, ORC 2941.401. In doing so, Irish makes several errors. First, he inappropriately characterizes ORC 2945.71 as a “codification” of the speedy trial rights guaranteed by the United States and Ohio Constitutions. This simply isn’t true, as the time frames applicable under ORC 2945.71 and the constitutional provisions are different - 270 days for ORC 2945.71, and at least one year under the constitutional provisions. Doggett v. United States, 505 U.S. 647, 652, fn. 1 (1992). In addition, different analyses are conducted under the statutory and constitutional provisions: ORC 2945.71 requires a simple accounting of days accumulated, with dismissal after a violation of the 270-day limit; the constitutional provisions require weighing additional factors, including the length of the delay, the reason for the delay, whether the defendant

asserted his right to a speedy trial, and prejudice to the defendant from the delay. Barker v. Wingo, 407 U.S. 514, 530 (1972). Throughout the proceedings below, the State has maintained that the appropriate provisions governing this case were both the Speedy Trial Clause, and ORC 2941.401, while Irish has consistently sought to improperly conflate the two.

Irish's second error is in reading the general language of ORC 2945.71 as taking precedence over the specific language of ORC 2941.401. This is contrary to well-established rules of statutory construction. State v. Conyers, 87 Ohio St. 3d 246, 249 (1999). In fact, ORC 2945.71(F) expressly states that that section does not modify ORC 2941.401.

Finally, the Third District's conclusion, overruling its prior line of cases, is the consistent opinion of lower courts throughout the State, a fact that the Third District recognized, stating, "'The weight of authority...advises that once a defendant is admitted to prison, R.C. 2945.71, et. seq. ceases to apply and R.C. 2941.401 takes over,'" State v. Irish, 2019-Ohio-2765, at ¶15 (3rd Dist. Ct. App.). The Third District then proceeded to cite to cases from the Second, Fourth, Fifth, Seventh, Eighth, Ninth, Eleventh, and Twelfth Districts. This issue is settled law, and does not require this Court to weigh in.

Ohio's Third Appellate District finally abandoned its minority view of applicable law. The Ohio Supreme declined to review the decision This Court should also decline to exercise jurisdiction over Irish's appeal, deny the Petition for Writ of Certiorari, and permit the decision of the Third District Court of Appeals to stand.

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STATEMENT OF THE FACTS AND OF THE CASE

The Stipulation of Facts on No Contest Plea filed August 21, 2017, contains the following statement of facts relevant to this case:

On or about June 18, 2015, the Celina Police Department received a phone call from Randy L. Williams, of 537 Touvelle St., Lot A, Celina, Mercer County, Ohio. He reported that his residence at that address had been broken into.

When Sergeant Dan Harting of the Celina Police Department arrived on scene, he observed that the window on the porch, next to the front door, had been broken. He also observed what appeared to be dried blood on the drapes, likely from the offender cutting themselves on the broken glass. The door had scrapes on it, and was not functioning, as if somebody had damaged it while attempting to force it open. The rear door was unlocked, but Williams said that he kept it locked, indicating that whoever had entered the residence left through the unlocked back door.

Williams indicated that a banjo, a mandolin, an electric guitar, a small amp for the electric guitar, a laptop computer, a metal case with two 35mm cameras with lenses and filters, and a lot of old coins were all missing from the residence. Detective Ronald Waltmire indicated that he had seen that some similar items were recently pawned in Wapakoneta, Ohio. Harting and Waltmire also located a wooden stake or boundary marker between the couch and the wall, which also had some blood on it, and appeared to have been used to force entry through the window.

Detective Waltmire interviewed Jennifer Hoelscher at the Mercer County Jail, where she was incarcerated on another matter. She claimed that she had not broken into the residence, but did admit to pawning several of the items in Wapak, so as to receive money to purchase heroin. She claimed that she had never been at the residence before.

Cigarette butts were also located at the scene and later collected.

Items collected from the scene were submitted to the Bureau of Criminal Investigation (BCI) for testing. BCI indicated that it had preliminary matches based on samples already in its database of DNA profiles. Those matches were for Shane Irish and Jennifer Hoelscher. A search warrant was executed to collect the DNA of Shane Irish, and based thereon, BCI confirmed the DNA profile belonged to Shane Irish.

A stipulation of facts, filed on July 17, 2018, covers much of the procedural history of this case. That reads as follows:

1. On June 18, 2015, the Celina Police Department began its investigation into a burglary that occurred at the residence of Randy Williams, located at 537 Touvelle Street, Lot A, Celina, Ohio.

2. While this investigation into the burglary was proceeding, the Defendant, Shane Irish (hereinafter Mr. Irish) was sentenced to forty-four (44) months in prison by the Mercer County Court of Common Pleas in Case Number 15-CRM-065 on an unrelated charge. He was sentenced on July 22, 2015, and a copy of the sentencing entry was filed on July 27, 2015.

3. During the course of the investigation, DNA evidence was obtained from the scene and delivered to the Ohio Bureau of Criminal Investigation (BCI) for analysis. Initial results from BCI's tests alleged that Mr. Irish was involved with the burglary.

4. In response to the initial findings of BCI, Detective Ron Waltmire of the Celina Police department decided to apply for a search warrant to collect additional DNA evidence from Mr. Irish, in the form of Buccal Swabs from the interior of Mr. Irish's mouth.

5. Detective Waltmire determined that Mr. Irish was located at the Madison County Correctional Institution and applied for a search warrant through the Madison County Municipal Court. The search warrant was granted sometime on May 10, 2016, and was executed that same day on Mr. Irish.

6. On June 16, 2016, the Mercer County Grand Jury indicted Mr. Irish on the following offenses: Count I: Burglary in violation of R.C. 2911(A)(2)&(D), a felony of the Second Degree, and Count II: Theft in violation of R.C.2913.02(A)(1)&(B)(2), a Felony of the Fifth Degree.

7. On June 15, 2017, Mr. Irish, in an attempt to comply with R.C. 2941.401, sent the Mercer County Prosecutor's Office a letter requesting disposition of the pending indictment. He was then retrieved from the Belmont Correctional Institution and brought to the Mercer County Jail. A copy of the indictment was served on Mr. Irish on June 26, 2017.

8. An Initial Appearance was held on June 27, 2017, and bond was set for Mr. Irish at \$50,000.00. Attorney Richard Delzeith was appointed to represent Mr. Irish at this time.

9. On July 7, 2017, an arraignment was held, in which Mr. Irish entered a plea of Not Guilty to all charges.

10. On August 18, 2017, Mr. Irish entered a No Contest Plea to an amended count I and the original count II, pursuant to a plea agreement. At no point prior to this did Attorney Delzeith file a motion to dismiss based on a speedy trial violation. The possibility of Mr. Irish waiving speedy trial was a part of pretrial discussions that took place in this case. However, no waiver of Mr. Irish's

speedy trial rights actually occurred, as the waiver was not expressed in the written plea agreement, and was not made in open court on the record.

11. On August 30, 2017, the Mercer County Court of Common Pleas Sentenced Mr. Irish to three years of community control on the offenses.

12. On September 25, 2017, Mr. Irish filed a timely notice of appeal.

13. On May 14, 2018, the Third District Court of Appeals issued a written decision finding that Attorney Delzeith had been ineffective for failing to raise a speedy trial issue and remanded this case back to the Mercer County Court of Common Pleas to address it.

Following that remand, Irish filed a Motion to Dismiss, arguing that speedy trial rights had been violated. After written arguments, an evidentiary hearing was held on September 12, 2018, at which Irish and Investigator Ronald Waltmire testified. The trial court subsequently granted the Defendant's Motion to Dismiss on October 12, 2018.

The State appealed the trial court's dismissal of the case, and on July 8, 2019, the Third District Court of Appeals reversed the trial court and remanded the case for additional proceedings. Irish appealed again, seeking discretionary review to the Ohio Supreme Court by filing a notice of appeal on August 22, 2019, The Ohio Supreme Court rejected the claim for review on November 12, 2019 and also rejected a request for reconsideration on November 21, 2019.

It is from this rejection of claimed jurisdiction that Defendant Irish now seeks review by this Court by this Petition for a Writ of Certiorari.

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REASONS TO DENY WRIT OF CERTIORARI

Petitioner's Question(s) Presented

Whether the speedy trial guarantee of the Sixth Amendment to the U.S. Constitution applies to an accused serving a prison sentence on a prior offense?

Whether for speedy trial purposes under the Sixth Amendment to the U.S. Constitution, the issuance of a formal indictment engages speedy trial protections for an accused serving a prison sentence on a prior offense?

Whether the state can presume that an accused serving a prison sentence on a prior offense has waived by inaction the speedy trial protections of the Sixth Amendment to the U.S. Constitution when the state has not served said accused with the pending indictment?

Respondent's Response to Petitioner's Questions Presented

Under clear Ohio law, Ohio's speedy trial statute, ORC 2941.71 applies to offenders while their case is pending before the trial court, and ORC 2941.401 applies to offenders who are incarcerated and facing additional criminal charges.

Ohio has several statutes that govern the application of speedy trial provisions. The general speedy trial statute is that found at ORC §2945.71. Ohio has established a second, alternative speedy trial statute that applies when a person is incarcerated, which is located at ORC §2941.401. Furthermore, ORC §2945.71(F) states, "This section shall not be construed to modify in any way section 2941.401...of the Revised Code."

It is undisputed that at all times from the time of indictment in this case, until after this Court previously reversed Irish's conviction, that he was incarcerated in prison. Therefore, the appropriate statute under which to analyze Irish's statutory speedy-trial claims is ORC §2941.401, and not the general speedy trial statute. That provision states:

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

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place of his imprisonment and a request for final disposition to be made of the matter.

ORC §2941.401.

Because Irish had “entered upon a term of imprisonment in a correctional institution of this state,” he was required to provide written notice to the prosecuting attorney and this Court of his place of imprisonment, and request a final disposition of the matter. The State was obligated to bring him to trial within one hundred eighty (180) days from the date of receiving that notice.

The State was not obligated to seek out Irish, to locate him, and to initiate criminal proceedings against him prior to receiving the statutory notice required by ORC §2941.401.

This Court ruled on that issue in State v. Hairston, 101 Ohio St. 3d 308 (2004): This statute is not ambiguous. Far from requiring the State to exercise reasonable diligence to locate an incarcerated defendant, *R.C. 2941.401 places the initial duty on the defendant* to cause written notice to be delivered to the prosecuting attorney and the appropriate court advising of the place of his imprisonment and requesting final disposition; the statute imposes no duty on the state until such time as the incarcerated defendant provides the statutory notice.

Id. at 310 (emphasis added). This Court went on to state that in order to impose a duty of reasonable diligence on the State, it would have to “read into the statute language that does not exist.” Id. at 311.

The governing rule, that ORC 2941.401, rather than 2945.71, applies to incarcerated persons, is more consistent with the applicable statutes, and basic rules of statutory interpretation when confronted with seeming conflicting statutes. One of those rules is that when two statutes are in seeming conflict in both applying to a particular case, the statute that is narrower in the class of cases it deals with is controlling, as opposed to the general provision. State v. Conyers, 87 Ohio St. 3d 246, 249 (1999). In this case, the provisions of ORC §2945.71 are general in nature, applying to all individuals charged with committing a

criminal offense while the case is pending; the provisions of §2941.401 are “special or local” in nature, because they apply only to individuals who are incarcerated in a state correctional institution, and for whom an indictment is pending.

Irish sent an arguably deficient notice of his location to the Mercer County Prosecutor’s Office, and a request for final disposition; the State received that notice and request on June 15, 2017. Despite the deficiency of this notice, the State promptly commenced proceedings – it filed a Motion to Convey Prisoner on June 16, 2017, which the Court granted on June 19, 2017, and the Defendant’s Initial Appearance occurred on June 27, 2017. On August 18, 2017, Irish entered a plea of No Contest to amended charges. After that, due to the appellate practice that has been engaged in, the only provisions that govern the speedy trial right are the constitutional provisions of the Sixth Amendment and Article I, §10. State v. Hull, 110 Ohio St. 3d 183, ¶26 (2006).

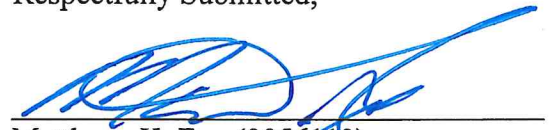
The Third District also concluded that Irish’s constitutional speedy trial rights were not violated, weighing the four Barker factors. It properly concluded that while the length of the delay weighed in Irish’s favor, the delay carried little weight; that the reason for the delay only somewhat weighed in Irish’s favor; that Irish’s failure to quickly assert his speedy trial right weighed slightly in the State’s favor; and the lack of prejudice weighed heavily in favor of the State.

Because the Third District reached a proper conclusion regarding the relationship between ORC 2945.71 and 2941.401, because this understanding is the conclusion of the vast majority of the appellate courts in this state, and because the Ohio Supreme Court declined to exercise jurisdiction, this Court should also decline jurisdiction and deny the Petition for Writ of Certiorari.

CONCLUSION

The Third District Court of Appeals properly concluded that for those individuals incarcerated in this state, while another charge is pending against them, the appropriate statute governing their speedy trial right is ORC 2941.401, rather than ORC 2945.71; this does not preclude their speedy trial rights under the U.S. and Ohio Constitutions, but rather creates a statutory acceleration and legal simplification to those rights. The Third District's conclusion is in accord with the vast majority of appellate courts in this Ohio. Both because the decision was appropriate and correct, because the issue presented by Petitioner Irish is essentially settled at the appellate level, and because the Ohio Supreme Court declined discretionary review, this Court need should reject the petition for a Writ of Certiorari.

Respectfully Submitted,



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