

IN THE COURT OF COMMON PLEAS
CLARK COUNTY, OHIO

CASE NO. 06 CR 0008

STATE OF OHIO

PLAINTIFF
VS.

LARRY D. PERKINS

DEFENDANT

E N T R Y

CLERK OF COURT
CLARK COUNTY, OHIO

2008 AUG 19 PM 2:32

This matter is before this Court by assignment of the Presiding Judge of the General Division of the Common Pleas Court of Clark County, Ohio, Richard J. O'Neill; and specifically, now to consider defendant's Motion to Dismiss for lack of being afforded a speedy trial.

The defendant stands charged in the indictment with two counts of felony drug abuse and one count of carrying concealed weapons alleging that the offenses occurred on December 17, 2005. The Court finds that the defendant was incarcerated in the Clark County Jail on these offenses from December 17, 2005 until his release on December 27, 2005. He failed to appear at his arraignment on February 6, 2006 and a bench warrant issued for his arrest. However, on March 13, 2006 the bench warrant was recalled, the defendant appeared for arraignment, and was released on his own recognizance. Thereafter, he failed to appear at a pre-trial scheduled for May 11, 2006. This notwithstanding, a bench warrant did not issue for the defendant's arrest until January 18, 2008- -well over one and one-half years after the date of the defendant's non-appearance. During part of this period of time, the defendant was incarcerated in a state penitentiary on other non-related charges from October 31, 2006 until July 20, 2007. The

defendant was not arrested on the applicable bench warrant in this case until May 20, 2008.

On June 11, 2008, the defendant filed a Motion to Dismiss alleging that his constitutional and statutory rights to have a speedy trial had been violated by reason of the actions of the State. The crux of this motion concerned the State's delay in issuing a bench warrant after the defendant's failure to appear. Defendant's Motion to Dismiss was not assigned for hearing. Rather, Judge O'Neill filed an Entry on June 17, 2008 stating the following, to-wit: "This case is before the Court on the defendant's Motion to Dismiss on the grounds that his right to a speedy trial has been violated. Upon review of the Court's record, the Court finds that the Motion is not well taken and the same is hereby denied."

On July 31, 2008, the matter was assigned to this Court. The Court conducted a telephonic pre-trial conference on August 1, 2008. At that time the Court advised the parties that it would re-entertain defendant's Motion to Dismiss if defense counsel could present a time line which would warrant the Court's reconsideration. Accordingly, the defendant filed his supplemental Motion to Dismiss on August 6, 2008 with said time line and supporting documentation. The State of Ohio failed to respond in writing. This Court conducted a hearing on this Motion to Dismiss on August 13, 2008. At said hearing, the State failed to present any evidence contra to the time line as presented by the defendant in his supplemental Motion to Dismiss. Indeed, the parties stipulated the two significant events of import to the defendant's motion, to-wit: first, that the defendant failed to appear at a properly assigned pre-trial conference scheduled for May 11, 2006; second, that a bench warrant did not issue for his arrest until January 18, 2008.

The State of Ohio first asks this Court to follow the law of the case and abide by Judge O'Neill's June Entry overruling defendant's Motion to Dismiss. This Court,

however, does not believe that it is bound by this decision insofar as the matter in which said decision was made is still pending before this Court, and by assignment. This Court deems this Motion as nothing more than a motion to reconsider. To that extent, this Court believes it appropriate to re-visit this issue.

The State of Ohio then asks this Court to overrule, once again, the defendant's Motion to Dismiss for the principle reason that the defendant failed to appear, as ordered, at a scheduled hearing on May 11, 2006. The State properly argues that defendant's failure to appear tolls the running of time for purposes of an analysis of the defendant's constitutional and statutory rights to a speedy trial. The State contends that its failure to timely issue a bench warrant for the defendant is irrelevant and should have no effect on this tolling of the time.

This matter presents this Court with the interesting task of balancing the responsibilities of the criminal defendant to timely appear before the Court, and the State to exercise due diligence to prosecute its criminal cases. As to this task, the Court observes that when a defendant fails in this responsibility, he normally forfeits or compromises his right to demand a speedy trial. On the other hand, the State's failure to use due diligence has, in the past, inured to the benefit of a defendant's speedy trial rights challenge. See. e.g., State v. Reeser (1980), 63 Ohio St. 2d. 189.

After due consideration, while this Court acknowledges that the defendant failed to appear at this May 11, 2006 hearing, and that this failure would normally toll the running of the speedy trial statute, the Court, nevertheless, finds that the State's failure to execute a bench warrant for over 20 months after this failure, constitutes a breach of its responsibility to exercise due diligence in its efforts to prosecute the defendant for the instant charges. The State has failed to provide this Court with any justification for this lapse of due diligence.

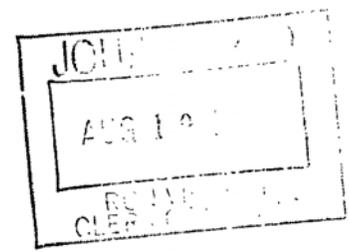
The State contends that its lack of due diligence should not act to excuse a defendant's misfeasance. Indeed, the State argued that it would not matter if the State neglected to act for five (5) years after a defendant's failure to appear.

This Court remains less inclined to forgive the State of its responsibilities. While this Court regrets the ramification of this position- -that a criminal defendant be excused from answering the Grand Jury's indictment¹ -it will not be tempted to condone such lapses of due diligence. This Court reminds the State that the responsibility of ensuring due process for its citizens rests primarily on the shoulders of the State.

And so, though the defendant brought on this issue by his failure to appear, it becomes a violation of due process when the State fails to respond for over one and one-half years.

For the foregoing reasons, the Court believes the defendant's Motion to Dismiss is well taken and orders the same. Costs to the State. The defendant is ordered discharged on the instant charges forthwith.

IT IS SO ORDERED.



Richard P. Carey
JUDGE RICHARD P. CAREY

cc: D. Driscoll
Rion & Rion

¹ This Court notes that a criminal defendant may yet face a separate felony offense for failing to appear when released on his own recognizance. Sec. R.C. 2937.99