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BARBARA A. WOODRUFF
CLERK OF COURT, COMMON PLEAS COURT
CLERMONT COUNTY, OH

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

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| STATE OF OHIO | : | |
| Plaintiff-Respondent | : | CASE NO. 2004 CR 000643 |
| vs. | : | Judge McBride |
| DONLEY K. GRINDSTAFF | : | DECISION/ENTRY |
| Defendant-Petitioner | : | |

Nick A. Horton, assistant prosecuting attorney for the plaintiff-respondent State of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103.

Laufman & Napolitano, LLC, Paul M. Laufman, counsel for the defendant-petitioner Donley Grindstaff, 4310 Hunt Road, Cincinnati, Ohio 45242.

This cause is before the court for consideration of a petition for post-conviction relief filed by the defendant-petitioner Donley K. Grindstaff.

The court set the petition for an evidentiary hearing and that evidentiary hearing was held on October 2-3, 2014 and November 13, 2014. At the conclusion of the final hearing, the court set a briefing order for counsel to file written post-hearing memoranda. When the final memorandum was filed on December 22, 2014, the court took the issues raised by the petition under advisement.

FACTS OF THE CASE

On June 22, 2003, Officer Ron Robinson of the Goshen Township Police Department initiated a traffic stop of the defendant-petitioner Donley Grindstaff's vehicle.¹ As a result of observations of impairment made by Officer Robinson during the traffic stop, Grindstaff was summoned to appear at the Clermont County Municipal Court on June 25, 2003 on charges of a misdemeanor OVI with a refusal to submit to a breathalyzer test, driving under suspension, a license plate violation, and a speeding violation.²

On the ticket given to Grindstaff, the address listed is 1785 SR 28, Lot 366H, Goshen, Ohio 45122.³

Grindstaff failed to appear at the June 25th hearing and a bench warrant was issued.⁴ In a judgment entry dated June 26, 2013, the misdemeanor OVI charge was dismissed by the Municipal Court at the request of the prosecution, based on the representation that this charge had been refiled as a felony in case number 2003 CRA 03343.⁵ The court also reduced the bond in the Municipal Court case to \$10,000 cash or professional.⁶

The Clermont County Sheriff's Office's warrant shuck dated July 2, 2003 indicates that there was an attempt at service by Deputy Jarman of the Clermont County Sheriff's Office on the 2003 CRA 03343 case, and the handwritten notation next

¹ *State v. Grindstaff*, 12th Dist. Clermont No. CA2013-09-074, 2014-Ohio-2581, ¶ 2.

² *Id.* at ¶ 3 and State's Exhibit 14.

³ State's Exhibit 14.

⁴ *Id.* at ¶ 4.

⁵ State's Exhibit 6.

⁶ *Id.*

to the State Route 28 address on the shuck is "Vacant."⁷ The warrant shuck also contains a section titled "LEADS-NCIC ENTRY" and in that section there is a LID# DI8236HG.⁸ The LEADS driving record printout generated on July 3, 2003 lists the defendant's address as "1210 Fawn Court, Loveland, Ohio 45140" and lists the county as "Warren."⁹

A warrant shuck dated July 15, 2003 also indicates an attempt at service by Deputy Jarman, and a handwritten notation on the shuck near the address states "Appears Vacant."¹⁰ In the LEADS-NCIC section, there is a handwritten notation stating "Already Entered on Warrant felony."¹¹

The LEADS printout generated on July 16, 2003 again lists the defendant's address as "1210 Fawn Court, Loveland, Ohio 45140" and lists the county as "Warren."¹² An index card, which was used to track warrants prior to the use of computers, generated on July 17, 2003, includes the Fawn Court address and states that the charge was a "Probation violation" for "Warren Co. SO."¹³

On August 25, 2004, the indictment was filed in the present case charging Grindstaff with one count of operating a vehicle while under the influence of alcohol and/or a drug of abuse in violation of R.C. 4511.19(A)(1), a felony of the third degree, and one count of operating a vehicle under suspension in violation of R.C. 4507.02(D)(1), a misdemeanor of the first degree. A warrant on indictment was filed that same day and the address on the praecipe for the warrant on indictment is 1785

⁷ State's Exhibit 9A.

⁸ Id.

⁹ State's Exhibit 9B.

¹⁰ State's Exhibit 10A.

¹¹ Id.

¹² State's Exhibit 10B.

¹³ State's Exhibit 12.

S.R. 28, Lot 366, Milford, Ohio 45150. There is no indication in the record why the address was listed as being in Milford, as opposed to Goshen.

Another warrant shuck was generated by the Clermont County Sheriff's Office on August 26, 2004, which is stamped "Warrant on Indictment."¹⁴ The address listed on that warrant shuck is the State Route 28 address but also lists the city as being Milford and the zip code as 45150, which corresponds to the information on the warrant on indictment.¹⁵ The handwritten notation by Deputy Jarman on this warrant shuck states "Not a good address. No trailer."¹⁶ In the LEADS-NCIC section there is a LID# 06435988 and a NIC# W847055992.¹⁷ The front of the shuck contains a handwritten notation, likely written years later based on other evidence that will be discussed below, that states "New Address: 303 Pleasant View Dr., Aurora, IN 47001. TTY sent to Aurora IN and Dearborn IN."¹⁸ On the back of the shuck, there are two handwritten notations. The first states "12/15/04 √ DS + RS to see if any new address."¹⁹ The other handwritten notation is "Parents 1210 Fawn Ct. Loveland OH 4510[.]"²⁰ There is no indication when this notation was written on the warrant shuck and Captain Paul Kamphaus testified that he did not have any information as to when that notation was written. The LEADS printout generated on August 26, 2004 again lists the defendant's address as "1210 Fawn Court, Loveland, Ohio 45140" and lists the county as "Warren."²¹

¹⁴ State's Exhibit 11A.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

The matter came before the court for arraignment on September 2, 2004 and that arraignment was continued because the defendant was at large. The entry of continuance also states that the warrant on indictment "is entered in NCIC[.]"²²

A LEADS criminal history printout was generated on March 19, 2013²³, which was the same day the defendant was arrested by the Clermont County Sheriff's Office on the warrant on indictment.²⁴ That same day, an Indiana driver's license query was made which confirmed that the defendant had a valid Indiana driver's license.²⁵ A LEADS TTY was sent by the Clermont County Sheriff's Office to the Dearborn County Sheriff's Office asking that the defendant be picked up on his active warrant on indictment.²⁶ Captain Kamphaus testified that the Clermont County Sheriff's Office never received a response from Dearborn County. However, this is not surprising given that the defendant was ultimately arrested in Clermont County that same day.

Attorney Joshua Crousey was hired to represent the defendant after the defendant was picked up in 2013. Crousey testified at the hearing on this matter that he believed that he had a good defense at trial regarding the ability of the officer, Sergeant Ron Robinson, to identify the defendant given the ten year gap since the night the defendant was cited. Approximately one week prior to trial, the defendant provided Crousey with an Ohio ID card ostensibly belonging to Chad Grindstaff, the defendant's brother, with a picture of an individual who looked very similar to the defendant. Crousey was excited to get this piece of evidence because it would make the argument questioning Sgt. Robinson's ability to identify the defendant that much stronger, and he

²² Entry of Continuance, filed September 3, 2004.

²³ State's Exhibit 11C.

²⁴ Sheriff's Return, filed March 20, 2013.

²⁵ State's Exhibit 13A.

²⁶ State's Exhibit 13B.

disclosed the evidence to the prosecution and indicated an intention to use the ID card at trial.

David McCune, one of the prosecutors trying the defendant's case, spoke with Edward Eckert, an investigator with the Ohio Bureau of Motor Vehicles. After some investigation, Eckert, who testified at the hearing on this matter, was able to determine that the ID card was fraudulent and that the person in the picture on the ID card was not Chad Grindstaff but was actually the defendant.²⁷ Cathy Adams, the other prosecutor trying the case, passed this information along to Crousey, who was shocked that the identification card was fraudulent. Crousey was then put in the position of having to abandon his identification defense because, in ruling on a motion made by the defense to exclude the identification card, the court indicated that if identification was challenged, the ID card would likely be allowed to be used by the state. Crousey testified that this obviously hampered the defense he had intended to present at trial and that he then had to try to case more like a typical OVI case, which involves attacking the field sobriety tests and trying to raise doubts about the veracity of the arresting officer's testimony.

Prior to that situation, earlier in the pendency of the present case, the defendant told Attorney Crousey that he had lived in Clermont County the entire time between his citation for the OVI in 2003 and his arrest in 2013. Crousey spoke to Sgt. Robinson about attempts at service and subsequently filed a motion to modify bond.²⁸ Later, Crousey discovered that the defendant had not been truthful with him and that, in fact, he had lived in Indiana for some time during the relevant time period. It is unclear

²⁷ State's Exhibits 15 and 16.

²⁸ Defendant's Exhibit B.

whether Crousey was ever told about a two year period in which the defendant also lived in Kentucky.

Around this same time, Attorney Crousey discussed the issue of post-indictment delay with the defendant on at least two occasions. Crousey explained to the defendant that, if a motion to dismiss was successful, it would amount to an acquittal and the defendant said "Forget all that legal mumbo-jumbo, I want you to just focus on this trial." The defendant asked if he thought making the motion to dismiss would help them at trial, and Crousey explained that he did not think that having a hearing on everything that happened ten years ago would uncover anything that would help the defendant at trial. They discussed the issue at length, and the defendant stated that if it wasn't going to help them at trial, he didn't want to do it. Crousey told the defendant he believed that there was a decent chance of success on the motion but the defendant continued to provide a clear directive to Crousey to focus on the trial and put him in the best position to win at trial. Crousey and the defendant also discussed challenging the state's motion to amend the indictment and Crousey indicated that he thought he had a good argument on that issue. Again, the defendant said he did not want to object to the amendment and that he just wanted counsel to focus on the trial.

When asked why he didn't file the motion later when the identification defense was no longer available without the state being able to use the fraudulent ID card, Crousey indicated that he was aware that the defendant had not been truthful when he said that he lived in Clermont County the entire time between 2003 and 2013 because Crousey was by that time aware that the defendant lived in Indiana for some period of time. Crousey had also just gone through the entire situation with the ID card provided

by the defendant being revealed to be fraudulent. He did not know if there were any further residence locations that he was not made aware of and he was leery to put himself and his client in the position where such evidence could potentially be used as evidence of flight.

The case ultimately went to trial before a jury on July 16-19, 2013, and the jury returned a verdict of guilty as to both charges set forth in the amended indictment.²⁹ The court sentenced the defendant to a prison term of three years on the felony OVI offense offense and a jail term of 180 days on the driving under suspension offense to be served concurrently with the prison term on the OVI.³⁰

At the evidentiary hearing on this matter, Sadie Grindstaff, the defendant's mother, testified that the defendant lived at the Fawn Court address with his parents during much of the time after the issuance of the warrant on indictment. She estimated that from 2007 to 2010, the defendant was gone from that address for two years when he was going to school in Kentucky and approximately nine months when he was living in Indiana. When asked about the address the defendant gave Sgt. Robinson when he was cited for the OVI offense, she indicated that the defendant lived with a friend for two months but moved back to Fawn Court the day after the OVI incident.

The court would note that it did not find the testimony of either of the defendant's parents to be entirely credible. For example, the defendant's father, who is also named Donley Grindstaff, testified that the fraudulent ID card was provided by the defendant to the defendant's trial attorney because the attorney asked for a photograph of Chad Grindstaff. When the prosecutor incredulously pointed out that the photograph on that

²⁹ Verdict on Count # 1 and Verdict on Count #2, filed July 19, 2013.

³⁰ Judgment Entry Sentencing Defendant to Prison, August 21, 2013.

ID card was not of Chad Grindstaff but was instead of the defendant, the defendant's father said he knew that and did not say anything else that appeared to be credible. The court found Sadie Grindstaff to also be evasive at times during her testimony and that her testimony did not always appear to be credible either. The court will find for the purposes of this motion, however, that the testimony given by Sadie Grindstaff that is set forth in the paragraph immediately preceding this paragraph was credible.

When asked why a Clermont County Sheriff's Office deputy did not attempt to serve the defendant at the Fawn Court address until 2013, Captain Kamphaus noted that the LEADS printout indicated that the Fawn Court address was in Loveland, which spans three counties, and the printout indicated that the address was in Warren County. Clermont County deputies do not travel outside their jurisdiction to other counties to serve warrants.

The defendant was issued a driver's license in Indiana in 2010³¹ and was also successfully terminated from community control in Warren County, Ohio on February 16, 2010.³² There is no explanation as to how the defendant was able to obtain the Indiana driver's license or a clearance letter from the Ohio BMV with an active warrant outstanding or why the Warren County Sheriff's Office did not hold the defendant in 2010 on the Clermont County warrant on indictment.

LEGAL ANALYSIS

R.C. 2953.21 provides in relevant part as follows:

³¹ State's Exhibit 13A.

³² Defendant's Exhibit A.

"(A)(1)(a) Any person who has been convicted of a criminal offense or adjudicated a delinquent child and who claims that there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States, and any person who has been convicted of a criminal offense that is a felony and who is an offender for whom DNA testing that was performed under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the person's case as described in division (D) of section 2953.74 of the Revised Code provided results that establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death, may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief. The petitioner may file a supporting affidavit and other documentary evidence in support of the claim for relief.

(b) As used in division (A)(1)(a) of this section, 'actual innocence' means that, had the results of the DNA testing conducted under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code been presented at trial, and had those results been analyzed in the context of and upon consideration of all available admissible evidence related to the person's case as described in division (D) of section 2953.74 of the Revised Code, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted, or, if the person was sentenced to death, no reasonable factfinder would have found the petitioner guilty of the aggravating circumstance or circumstances the petitioner was found guilty of committing and that is or are the basis of that sentence of death.

*** * ***

(2) Except as otherwise provided in section 2953.23 of the Revised Code, a petition under division (A)(1) of this section

shall be filed no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication or, if the direct appeal involves a sentence of death, the date on which the trial transcript is filed in the supreme court. If no appeal is taken, except as otherwise provided in section 2953.23 of the Revised Code, the petition shall be filed no later than one hundred eighty days after the expiration of the time for filing the appeal.

* * *

(C) The court shall consider a petition that is timely filed under division (A)(2) of this section even if a direct appeal of the judgment is pending. Before granting a hearing on a petition filed under division (A) of this section, the court shall determine whether there are substantive grounds for relief. In making such a determination, the court shall consider, in addition to the petition, the supporting affidavits, and the documentary evidence, all the files and records pertaining to the proceedings against the petitioner, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript. The court reporter's transcript, if ordered and certified by the court, shall be taxed as court costs. If the court dismisses the petition, it shall make and file findings of fact and conclusions of law with respect to such dismissal.

* * *

(E) Unless the petition and the files and records of the case show the petitioner is not entitled to relief, the court shall proceed to a prompt hearing on the issues even if a direct appeal of the case is pending. If the court notifies the parties that it has found grounds for granting relief, either party may request an appellate court in which a direct appeal of the judgment is pending to remand the pending case to the court."

As stated in this court's previous decision filed on September 15, 2014, the present petition was filed within one hundred eighty days of the date on which the trial

transcript was filed in the court of appeals in the direct appeal of the judgment of conviction. As such, the petition is timely.

" 'To establish a claim of ineffective assistance of counsel, a defendant must show that his or her counsel's actions were outside the wide range of professionally competent assistance, and that prejudice resulted by reason of counsel's actions.'"³³

"Accordingly, counsel's performance will not be deemed ineffective unless (1) his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and (2) he was prejudiced by that deficient performance in that there is a reasonable probability that, but for his counsel's deficient performance, the outcome of his trial would have been different."³⁴ "On the issue of counsel's ineffectiveness, the petitioner has the burden of proof, since in Ohio a properly licensed attorney is presumably competent."³⁵

In the case at bar, the sole basis for the claim of ineffective assistance is the failure to file a motion to dismiss based on an alleged violation of the constitutional right to speedy trial.

"In order to show that counsel's conduct was deficient or unreasonable, the defendant must overcome the presumption that counsel provided competent representation and must show that counsel's actions were not trial strategies prompted

³³ *State v. Graham*, 12th Dist. Warren No. CA2013-07-066, 2014-Ohio-1891, ¶ 19, quoting *State v. Ullman*, 12th Dist. Warren No. CA2002-10-110, 2003-Ohio-4003, ¶ 43, citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984).

³⁴ *Id.*, citing, *State v. Russell*, 12th Dist. Butler No. CA2012-08-156, 2013-Ohio-3079, ¶ 49, citing *Strickland* at 687.

³⁵ *State v. Calhoun*, 86 Ohio St.3d 279, 289, 714 N.E.2d 905 (1999), citing *Vaughn v. Maxwell*, 2 Ohio St.2d 299, 209 N.E.2d 164 (1965).

by reasonable professional judgment.”³⁶ “Counsel is entitled to a strong presumption that all decisions fall within the wide range of reasonable professional assistance.”³⁷

In the case at bar, the representation provided to the defendant by Joshua Crousey was competent because the decision to not file a speedy trial motion was a decision rooted in trial strategy based on counsel’s reasonable professional judgment.

First, it is somewhat surprising that the defendant feels he was denied effective assistance of counsel due to the failure to file a motion to dismiss for an alleged speedy trial violation when he himself had two discussions with his trial attorney, with at least one discussion described as “lengthy,” after which he told his counsel that he did not want the motion filed and that he wanted his counsel to focus solely on the trial and how to win that trial. Attorney Joshua Crousey explained to the defendant that he believed they had a good argument on the speedy trial motion (and in opposing the state’s motion to amend the indictment) and that, if they were successful on the speedy trial motion, it would result in a complete acquittal. The defendant asked Crousey if filing the motion could potentially hurt his chances at trial and Crousey astutely recognized that evidence that came out at an evidentiary hearing on the motion could actually end up helping the state, and he explained to the defendant that the evidentiary hearing would not bring to light any evidence that could help them at trial. Mr. Crousey did not know it at the time but, in fact, the evidentiary hearing would have done exactly that and demonstrated that the defendant (1) gave an address to Sgt. Robinson the night he was pulled over and promptly left that address the very next day, (2) that he lived in Indiana for at least nine months during the time at issue, and (3) that he lived in Kentucky for

³⁶ *State v. Battle*, 5th Dist. Morgan No. 09-AP-0001, 2010-Ohio-4327, ¶ 132, citing *Strickland*, supra, 466 U.S. at 687.

³⁷ *Id.*, citing *State v. Sallie*, 81 Ohio St.3d 673, 675, 693 N.E.2d 267 (1998).

two years during the relevant time period. Even though he understood that a motion to dismiss could result in dismissal of the case, the defendant gave Crousey the directive to "forget all that" and to simply focus on winning at trial.

Furthermore, after the defendant made the unfortunate and ill-advised choice to provide his trial counsel with a fraudulent state ID card, Crousey's sensible trial tactic of challenging Sgt. Robinson's identification of the defendant after ten years became effectively unavailable as a defense, since raising that defense would result in the fraudulent ID card being used at trial, and this undoubtedly would have been very detrimental to the defendant's chances of success at trial and likely seen as evidence of guilt since the fraudulent ID card was obtained one day after Sgt. Robinson cited the defendant for the OVI offense.

While Attorney Crousey understandably tried to be diplomatic and delicate regarding his former client's actions during his testimony at the evidentiary hearing on this matter, the fact is that Crousey was lied to by his client on two different occasions, both when he stated that he had lived in Clermont County the entire time the warrant on indictment was waiting to be served and when he provided Crousey with a fraudulent ID card. At that point, Crousey knew that the defendant had lived in Indiana for some period of time. To file a speedy trial motion at that point would have resulted in Mr. Crousey, as the defendant's counsel, going into an evidentiary hearing without knowing exactly what information could be or would be exposed during that hearing. Additionally, the defendant and Crousey continued to have discussions looking ahead to trial and the defendant never indicated that he had changed his opinion about wanting

Crousey to focus solely on winning the trial and to not consider other legal arguments that could be raised.

The decision not to file a motion to dismiss on speedy trial grounds was a strategic decision made by defense counsel and the defendant in concert, after discussing the matter fully and with Crousey explaining that there was a decent chance that they could be successful on the motion and that success would mean a complete dismissal of the case. The decision was based on valid reasoning and on the directive given to counsel by his client that he wanted counsel to focus solely and completely on the trial and how to win at trial. As such, there was nothing ineffective about the assistance provided to the defendant by his trial counsel Joshua Crousey.

While the court need not analyze the speedy trial motion based on its findings above, the court notes and will discuss below that, even if it were to examine the possible motion to dismiss on its merits, the failure to file the motion would not deem counsel's performance ineffective because the motion would have been unsuccessful.

“ The Sixth Amendment right to a speedy trial is * * * not primarily intended to prevent prejudice to the defense caused by passage of time; that interest is protected primarily by the Due Process Clause and by statutes of limitations. The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges.”³⁸

³⁸ *State v. Triplett*, 78 Ohio St.3d 566, 568, 679 N.E.2d 290 (1997), quoting *United States v. MacDonald* (1982), 456 U.S. 1, 8, 102 S.Ct. 1497, 1502, 71 L.Ed.2d 696.

" 'In *Barker v. Wingo* (1972), 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101, the court set forth a four-part test to determine whether the state has violated an accused's right to a speedy trial. The four factors include (1) the length of the delay, (2) the reason the government assigns to justify the delay, (3) the defendant's responsibility to assert his right to a speedy trial, and (4) the prejudice to the defendant."³⁹

"The first factor, the length of the delay, is a 'triggering mechanism,' determining the necessity of inquiry into the other factors."⁴⁰ One year is generally considered a sufficient delay to move on to the other factors.⁴¹ In this case, the post-indictment delay of approximately eight and a half years is sufficient to trigger the necessity of inquiry in to the other factors.

However, this first factor regarding the length of the delay involves a "dual inquiry."⁴² After the threshold determination is made that the delay is presumptively prejudicial, "the length of the delay is again considered and balanced against the other factors."⁴³ This second portion of the inquiry is generally tied to the idea that "delay [which] has prejudiced the accused intensifies over time."⁴⁴ Therefore, this factor's further significance beyond the triggering mechanism will be dealt with later as it relates to the prejudice suffered by the defendant.

The second factor is the reason for the delay. "The weight given to the second factor, the reason for the delay, depends on whether the government acted diligently,

³⁹ *Id.*, quoting, *Barker v. Wingo*, *supra*, 407 U.S. at 530-532.

⁴⁰ *Id.* at 569, citing *Barker* at 530.

⁴¹ *Id.*

⁴² *State v. Carter*, 5th Dist. Richland No. 07-CA-4, 2007-Ohio-5259, ¶ 13, citing *Triplett*, *supra*, at 558.

⁴³ *Id.*

⁴⁴ *Doggett v. United States* (1992), 505 U.S. 647, 652, 112 S.Ct. 2686, 120 L.Ed.2d 520.

negligently, or in bad faith."⁴⁵ There is no evidence of bad faith in the case at bar so the defendant must demonstrate that the delay was the result of official negligence.

" 'Between diligent prosecution and bad-faith delay, official negligence in bringing an accused to trial occupies the middle ground.' "⁴⁶ "Negligence, however, 'still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun.' "⁴⁷ "The longer the delay in this regard, the less tolerable it becomes."⁴⁸

The defendant gave the State Route 28 address to Sgt. Robinson on the night of the OVI offense and then, if the court assumes it was true that he was living there at the time, he moved out of that residence the very next day. The Clermont County Sheriff's Office made several attempts to serve him at that address but found the residence to be vacant. The LEADS printout of the defendant's official records does list the defendant's address as the Fawn Court address but also states that the county of said address was Warren County. The court sees no reason why the Clermont County Sheriff's Office would assume the LEADS printout was wrong or feel the need to double-check the county in which the address was located, especially when LEADS contained information that the defendant had a conviction in Warren County.⁴⁹ It is further not negligent that the Clermont County deputies did not go outside their jurisdiction to another county to try to serve the warrant on indictment.

Captain Kamphaus testified that the Clermont County Sheriff's Office entered the active warrant for the defendant into LEADS in 2003, which would have been for the

⁴⁵ *Cleveland v. White*, 8th Dist. Cuyahoga No. 99375, 2013-Ohio-5423, ¶ 13, citing *Barker* at 531.

⁴⁶ *State v. Smith*, 8th Dist. Cuyahoga No. 81808, 2003-Ohio-3524, ¶ 15, quoting *Doggett* at 656-657.

⁴⁷ *Id.*, quoting, *Doggett* at 657.

⁴⁸ *Id.*

⁴⁹ State's Exhibit 9B.

original case in the Municipal Court, and there is a LID number on the July 2, 2003 warrant shuck. Additionally, the warrant shuck for the warrant on indictment contains a new LID number as well as a NIC number in the LEADS-NCIC Entry section.

There is no explanation as to why the Indiana BMV, the Warren County Sheriff's Office, and the Ohio BMV, where the defendant was allowed to pay off a fine in 2010 and receive a clearance letter, did not take any action upon the outstanding warrant on indictment. It is possible that there was a mistake in entering the warrant on indictment into the LEADS system, but it is also possible that these three entities missed the warrant in their records. The court does note that the criminal history LEADS printout from March 19, 2013⁵⁰, the date of the defendant's arrest, does not contain a notation of an active warrant on indictment but this court was not provided with testimony as to whether an active warrant would be on this type of LEADS report or if this report only contains prior arrests and/or convictions.

The Clermont County Sheriff's Office made attempts to serve the defendant with the various warrants at the address he provided to Sgt. Robinson. The fact that the defendant moved away from that address the day after the offense and elected to not appear at his hearing in the Municipal Court is not any fault that can be attributed to the state. The LEADS printouts that were generated and kept with the warrant shucks indicated that the Fawn Court address was in Warren County and the Clermont County deputies were not negligent in following the policy of not going to another county to serve a warrant. After the initial attempt at service of the warrant on indictment, a deputy checked several months later to see if any new addresses appeared.

⁵⁰ State's Exhibit 11C.

The court finds that the state was not negligent in its attempts to serve the defendant with the warrant on indictment in the case at bar. As such, the second factor does not weigh in favor of either party.

The third factor is the defendant's responsibility to assert his right to a speedy trial. He did not assert his speedy trial rights at any point during the trial phase of this case; however, he has now filed a motion claiming ineffective assistance based on that failure. Furthermore, by the time he was arrested, the delay at issue in this motion had already occurred, making his responsibility to raise the issue at that point more academic than a real duty. The court finds that the third factor weighs negligibly in favor of the defendant.

The final factor is the prejudice to the defendant. The first two Sixth Amendment considerations that the right to speedy trial is designed to protect – the possibility of lengthy incarceration prior to trial and to reduce the impairment of liberty imposed on an accused while released on bail - are not applicable here. The defendant was not incarcerated on these charges prior to his 2013 arrest and he was also never released on bail prior to that time.

The final Sixth Amendment consideration to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges also does not indicate prejudice in this case. In his jail phone call, which was the subject of an assignment of error on appeal, the defendant stated "I figured they just dropped it or whatever * * * - I never even thought anything about it."⁵¹ He later appears to contradict himself somewhat when he says "[n]ow this is the one I was worried about * * *. And they didn't

⁵¹ *Grindstaff* at ¶ 19. See also, State's Exhibit 3B.

– the Grand Jury didn't I guess indict me until '04."⁵² In that same phone call, when speaking about his bond being \$100,000 cash or professional, his mother said "[w]ell, that's because you ran the last time, Keith."⁵³

The defendant's first statement indicates that he mistakenly believed that these charges had been dismissed. If that is true, then he would not have had the stress or disruption of life caused by unresolved criminal charges because he believed they had been resolved. If the defendant's second statement is true, it indicates he had some stress about these charges but also that he "ran," meaning he did not appear at his Municipal Court hearing as he was ordered to do in the summons. From that point on, the defendant would have been trying to guess about the state of his case because he had actively avoided appearing in the Municipal Court to begin the adjudication process. Therefore, if he had any stress about the possibility of these charges remaining pending, that can be at least equally attributed to his own conduct.

Finally, the court must examine the issue of prejudice as it applies to his ability to mount a defense in this case and as that relates to the length of the delay. The defendant states in one of his memoranda that "the State must show the absence of witnesses who have disappeared or whose memories have eroded."⁵⁴ This was a traffic stop during which the defendant was the only person in his vehicle. The officer who made the stop was still employed by the Goshen Township Police Department in 2013 when the defendant was arrested. The defendant and Officer Robinson are the only known witnesses to the traffic stop and there is no indication by the defendant that he had any further witnesses which he would have wanted to call. Such an argument was

⁵² Id.

⁵³ Id.

⁵⁴ Reply in Support of Petition for Postconviction Relief at pgs. 3-4.

never made during the trial phase of this case nor has it been made in support of the present petition. There has further not been any indication of any evidence which the defendant could have or would have wanted to offer at trial that was unavailable in 2013.

There is no indication that the eight and a half year delay in prosecution of this case prejudiced the defendant in his ability to defend against the two charges brought against him.

The defendant argues that the court should find that the holding in *Doggett v. U.S.* is applicable in this case and that the eight and a half year delay between the indictment and arrest, and the prejudice presumed to result therefrom, is sufficient in and of itself to warrant relief. In that case, the court found that “[w]hen Government’s negligence thus causes delay six times as long as that generally sufficient to trigger judicial review * * * and when the presumption of prejudice, albeit unspecified, is neither extenuated * * * as by the defendant’s acquiescence, * * * not persuasively rebutted, * * * the defendant is entitled to relief.”⁵⁵

However, the *Doggett* court, when discussing the reason for the delay and the government’s negligence, noted that it was due to “inexcusable oversights.”⁵⁶ This is a reference to the fact that the Drug Enforcement Administration knew about the defendant’s whereabouts at certain times, including when he was incarcerated in Panama, but failed to follow up or check into his status further.⁵⁷ In this case, there were not any such egregious “inexcusable oversights.” There is no suggestion that Clermont County officials were aware of the defendant’s hearing in Warren County in 2010 or of

⁵⁵ *Doggett*, supra, 505 U.S. at 658.

⁵⁶ Id. at 657.

⁵⁷ Id. at 649-650.

the fact that he obtained an Indiana driver's license and a clearance letter from the Ohio BMV.

Therefore, there was no prejudice which resulted from the post-indictment delay and, as such, the fourth factor weighs heavily in favor of the State. Additionally, the second phase of weighing the length of the delay and its effect on the defendant, weighs in favor of the State.

In weighing all of the factors above, the court finds that they do not weigh in favor of the defendant. Therefore, the state did not violate the defendant's constitutional right to speedy trial.

Due to the fact that a motion to dismiss on speedy trial grounds would not have been granted, there is no prejudice to the defendant from the failure to file said motion. As a result, Grindstaff's trial counsel's performance was not ineffective.

CONCLUSION

The defendant's petition for post-conviction relief is not well-taken and is hereby denied.

IT IS SO ORDERED.

DATED: 3-3-15



Judge Jerry R. McBride