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COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

2020 MAY 26 AM 11:44

ANGELICA M. KELIN
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OH

STATE OF OHIO	:	
Plaintiff	:	CASE NO. 1996 CR 05204
vs.	:	Judge Jerry R. McBride
STEPHEN P. REYNOLDS,	:	
Defendant	:	DECISION/ENTRY

Dorothy Smith, assistant prosecuting attorney for the state of Ohio, 76 South Riverside Drive, 2nd Floor, Batavia, Ohio 45103.

Christopher Feldhaus, assistant public defender and attorney for the defendant Stephen P. Reynolds, 302 East Main Street, Batavia, Ohio 45103.

This cause is before the court for consideration of a motion to dismiss filed by the defendant Stephen P. Reynolds on November 14, 2019.

Upon consideration of the motion, the written and oral arguments of counsel, the evidence submitted, the record of this case, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE AND PROCEDURAL BACKGROUND

On July 3, 1996, the defendant was indicted on one count of non-support of dependents in violation of R.C. 2919.21(A)(2), a felony of the fifth degree. The indictment alleges that the crime was committed from September 26, 1980 until July 3, 1996. A

warrant for the defendant's arrest was issued the same day. The address listed for the defendant was not in Clermont County but was in Montgomery County.

On July 5, 1996, the Clermont County Sheriff's Office sent a "teletype" to the Montgomery County Sheriff's Office. This document listed two locations where the defendant could be, both of which were in Montgomery County. It requested that Montgomery County "attempt pick up" on the defendant. That same day, the Clermont County Sheriff's Office issued a "holder" to the Montgomery County Jail. It indicated that Clermont County was aware that the defendant was currently in the state's custody in the Montgomery County Jail. The holder requested the Montgomery County Jail to acknowledge that the defendant was in its custody and to contact a particular sergeant when the defendant was ready for pick-up.

The defendant's arraignment was scheduled for July 11, 1996. However, it was continued for service of the arrest warrant.

What happened in Montgomery County with the defendant after this point is not entirely clear. It appears Montgomery County never contacted Clermont County for the defendant to be picked-up from its jail. Montgomery County experienced flooding and lost all records from 1994 until 1999. So it is unknown what sort of attempts, if any, the Montgomery County Sheriff's Office made to serve or arrest the defendant.

However, the defendant was in custody in Montgomery County on several occasions over the subsequent years related to multiple criminal charges. Significantly, there is no evidence that he was served related to this case during that time.

The defendant's warrant for this case was finally executed upon him on September 27, 2019. The defendant filed a motion to dismiss based on a lapsed statute of limitations on November 11th. The state did not file a response in opposition.

The court held a hearing on the matter on January 9, 2020, at which time the state and defense submitted Joint Exhibit A. Following the hearing the court took the motion under advisement.

LEGAL STANDARD

Courts are authorized to consider a defendant's motion to dismiss pursuant to Crim.R. 12(C), which allows for pretrial motions.¹ More specifically, under Crim.R. 12(C), before trial "any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue."² Further, Crim.R. 12(F) provides that "[t]he court may adjudicate a motion based upon briefs, affidavits, the proffer of testimony and exhibits, a hearing, or other appropriate means."³ Under Crim.R. 12(F), the court is charged with stating "its essential findings on the record" when a motion involves "factual issues" that must be determined.⁴

"Crim.R. 12(C) 'makes clear that a pretrial motion to dismiss can only raise matters that are capable of determination without a trial on the general issue.'"⁵ Accordingly, a motion to dismiss under Crim.R. 12(C) "cannot reach the merits or substance of the

¹ *State v. Gaines*, 193 Ohio App.3d 260, 2011-Ohio-1475, 951 N.E.2d 814, ¶¶ 15-16 (12th Dist.).

² Crim.R. 12(C).

³ Crim.R. 12(F).

⁴ Crim.R. 12(F).

⁵ *Gaines*, 2011-Ohio-1475 at ¶ 16, quoting *State v. Riley*, 12th Dist. Butler No. CA2001-O4-095, 2002 WL 4484, *2.

allegations.”⁶ Moreover, when deciding a motion to dismiss, “a trial court is precluded from considering whether the prosecution could prove the elements of the charged offense.”⁷ Finally, “Crim.R. 12 permits a court to consider evidence beyond the face of the indictment when ruling on a pretrial motion to dismiss an indictment *if the matter is capable of determination without trial of the general issue.*”⁸

LEGAL ANALYSIS

R.C. 2901.13 governs the statute of limitations for criminal offenses. R.C. 2901.13(A)(1) states that a prosecution for a felony, other than aggravated murder or murder, shall be barred unless it is commenced within six years after the offense is committed.⁹ However, the period of limitations is tolled when the accused “purposely avoids prosecution.”¹⁰ The tolling provision in R.C. 2901.13(H) applies to actions taken by the accused once the statute of limitations period has already begun to run — i.e. actions taken by the accused after the crime is completed.¹¹

R.C. 2901.13 provides, in relevant part:

“(A)(1) Except as provided in division (A)(2), (3), or (4) of this section or as otherwise provided in this section, a prosecution shall be barred unless it is commenced within the following periods after an offense is committed:

⁶ *Gaines*, 2011-Ohio-1475 at ¶ 16, citing *State v. Peters*, 8th Dist. Cuyahoga No. 92791, 2009-Ohio-5836, ¶ 7.

⁷ *Gaines*, 2011-Ohio-1475 at ¶ 16, citing *State v. Palmer*, 1st Dist. Franklin Nos. 09AP-956, 09AP-957, 2010-Ohio-2421.

⁸ (Emphasis original.) *Gaines*, 2011-Ohio-1475 at ¶ 17, quoting *Sate v. Brady*, 119 Ohio St.3d 375, 2008-Ohio-4493, 894 N.E.2d 671, ¶ 3.

⁹ *State v. Grant*, 12th Dist. Butler No. CA2003-05-114, 2004-Ohio-2810, ¶ 29.

¹⁰ *Grant*, 2004-Ohio-2810 at ¶ 30, quoting R.C. 2901.13(G).

¹¹ *State v. Asadi-Ousley*, 2018-Ohio-4431, 120 N.E.3d 520, ¶ 31 (8th Dist.).

(a) For a felony, six years;

* * *

(F) A prosecution is commenced on the date an indictment is returned or an information filed, or on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation, or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment or the filing of an information unless reasonable diligence is exercised to issue and execute process on the same. A prosecution is not commenced upon issuance of a warrant, summons, citation, or other process, unless reasonable diligence is exercised to execute the same.

* * *

(H) The period of limitation shall not run during any time when the accused purposely avoids prosecution. Proof that the accused departed this state or concealed the accused's identity or whereabouts is prima-facie evidence of the accused's purpose to avoid prosecution."¹²

Once a warrant is issued, it must be executed by either an arrest or summons using reasonable diligence in compliance with Crim. R. 4(D).¹³ Moreover, "[t]here must be some indication of attempts to serve the warrant by arrest or summons."¹⁴

The state bears the burden of proving an offense was committed within the appropriate statute of limitations.¹⁵ And "[i]f a defendant demonstrates more than six years have elapsed after the warrant was filed, the burden shifts to the prosecution to show reasonable diligence was exercised to execute the warrant."¹⁶

¹² (Emphasis added.) R.C. 2901.13.

¹³ *State v. Pannell*, 5th Dist. No. 16-CA-102, 2017-Ohio-4286, 92 N.E.3d 280, ¶ 18, citing *State v. Greer*, 2 Ohio App.3d 399, 442 N.E.2d 473 (1st Dist. 1981).

¹⁴ *Pannell*, 2017-Ohio-4286 at ¶ 18, citing *State v. Morris*, 20 Ohio App.3d 321, 486 N.E.2d 168 (10th Dist. 1984).

¹⁵ *Grant*, 2004-Ohio-2810 at ¶ 30, citing *State v. Climaco, Climaco, Seminatore, Lefkowitz & Garofoli Co., L.P.A.*, 85 Ohio St.3d 582, 587 (1999).

¹⁶ *Pannell*, 2017-Ohio-4286 at ¶ 19, citing *State v. McNichols*, 5th Dist. Stark No. 2000CA00058, 2000 WL 1275491, *2 (Sept. 5, 2000).

“The Supreme Court of Ohio, in adopting Black's Law Dictionary's definition, has defined reasonable diligence as '[the] fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care, or attention as might be expected from a man of ordinary prudence and activity.’”¹⁷
“Therefore, what constitutes reasonable diligence must be determined by the facts and circumstances of each particular case.”¹⁸

“The statute of limitations provides the 'primary guarantee against bringing overly stale criminal charges.’”¹⁹ As such:

“[T]he primary purpose of a criminal statute of limitations such as R.C. 2901.13 'is to limit exposure to prosecution to a certain fixed period of time following the occurrence of acts[.]
* * * [T]he intent of R.C. 2901.13 is to discourage inefficient or dilatory law enforcement rather than to give offenders the chance to avoid criminal responsibility for their conduct. * * *
The rationale for limiting criminal prosecutions is that they should be based on reasonably fresh, and therefore more trustworthy evidence[.]’”²⁰

The Ohio Supreme Court has also explained the importance of the tolling provision in relation to the statute of limitations:

“These statutory purposes are not furthered, however, when the accused purposely avoids prosecution, because it is the conduct of the accused, not a lack of diligence on the part of the state, that causes the delay in the prosecution. Thus, an accused who purposefully avoids prosecution cannot complain of prejudice resulting from the failure of the state to promptly commence the prosecution or from the unavailability of evidence as a result of the passage of time. Just as the statute of limitations creates an incentive for the prompt investigation of suspected criminal activity, tolling of the limitations period during any time when the accused

¹⁷ *Pannell*, 2017-Ohio-4286 at ¶ 19, quoting *McNichols*, 2000 WL 1275491 at *2.

¹⁸ *Pannell*, 2017-Ohio-4286 at ¶ 19, quoting *McNichols*, 2000 WL 1275491 at *2.

¹⁹ *State v. Fox*, 12th Dist. Fayette No. CA2008-03-009, 2009-Ohio-556, ¶ 39, citing *State v. Copeland*, 8th Dist. Cuyahoga No. 89455, 2008-Ohio-234, ¶ 10.

²⁰ *Grant*, 2004-Ohio-2810 at ¶ 33, quoting *Climaco*, 85 Ohio St.3d at 586.

purposely avoids prosecution reduces the incentive for the accused to abscond from justice.”²¹

In examining the instant case, the record reveals an indictment alleging non-support of dependents was issued on July 3, 1996, the same day the crime was allegedly completed. An arrest warrant was issued the same day. Non-support of dependents is a felony of the fifth degree, and thus the applicable statute of limitations is six years. The applicable statute of limitations therefore expired on July 3, 2002.²² However, the defendant was not arrested until September 27, 2019, more than 17 years beyond the statute of limitations.

The state acknowledged at the hearing on this matter that it could not demonstrate what action Montgomery County took, if any, to attempt to execute the defendant’s arrest warrant by either arresting him or serving him with a summons using reasonable diligence in compliance with Crim. R. 4(D). As far as the record and evidence reveal, the last action taken in an attempt to execute the defendant’s warrant occurred on July 5, 1996 when the Clermont County Sheriff’s Office placed a holder on the defendant in the Montgomery County Jail.

Moreover, there is a complete absence of evidence that the defendant purposely avoided prosecution by the state. Indeed, he was prosecuted several times in Montgomery County between the filing of this case and 2015, when his community control in Montgomery County was terminated. During that time, he was in the control of the state on multiple occasions.

²¹ *State v. Bess*, 126 Ohio St.3d 350, 2010-Ohio-3292, 933 N.E.2d 1076, ¶¶ 25-26.

²² See *Grant*, 2004-Ohio-2810 at ¶ 34.

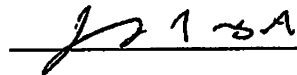
Although it is not the fault of the Clermont County Sheriff's Office that records in Montgomery County were destroyed during a portion of the relevant period, based on the evidence presented the court cannot conclude that the state has satisfied its burden to show reasonable diligence was exercised to execute the warrant. Moreover, the evidence does not show that the defendant purposely avoided prosecution in this case, and as such the statute of limitations cannot be tolled. Accordingly, the court concludes that the time period the state had in which to prosecute the defendant lapsed some 19 years ago. As such, the defendant is entitled to have the present charge dismissed under R.C. 2901.13.

CONCLUSION

For the foregoing reasons, the defendant's motion to dismiss is well-taken and the indictment is hereby dismissed with prejudice.

IT IS SO ORDERED.

DATED: 5-25-20



Judge Jerry R. McBride