



Willowick Bldg. Dept. v. Shoregate Towers NS, L.L.C.

2024-Ohio-5263 (2024) | Cited 0 times | Ohio Court of Appeals | November 4, 2024

IN THE COURT OF APPEALS OF OHIO ELEVENTH APPELLATE DISTRICT LAKE COUNTY

WILLOWICK BUILDING DEPARTMENT, CITY OF WILLOWICK,

Plaintiff-Appellee,

- vs -

SHOREGATE TOWERS NS, LLC,

Defendant-Appellant. CASE NO. 2024-L-007

Criminal Appeal from the Willoughby Municipal Court

Trial Court No. 2023 CRB 02275

O P I N I O N

Decided: November 4, 2024 Judgment: Vacated

Mandy J. Gwirtz, Willowick City Prosecutor, 20050 Lakeshore Boulevard, Euclid, OH 44123 (For Plaintiff-Appellee).

, 12434 Cedar Road, Suite 11, Cleveland Heights, OH 44106 (For Defendant-Appellant).

MATT LYNCH, J.

{¶1} Defendant-appellant, Shoregate Towers NS, LLC, appeals its convictions the following reasons, Shoregate Towers convictions are vacated.

{¶2} On September 8, 2023, a Complaint was filed against Shoregate Towers as it with failure



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requires that properties within Willowick, Lake County, Ohio, must be maintained in good Property Maintenance Inspection Violation(s) was delivered to the property manager on

or about August 29 th , 2023 f correct stated violations, to wit: [COUNT ONE] PM-606.2 Elevators Required- One

elevator in the East building and one elevator in the West building is not operable.

Repair or replace inoperable elevators in East and West buildings. PM-309.1 Infestation- Both East and West buildings have infestations of rodents

(rats) and cockroaches Promptly exterminate rats and insects/roaches

throughout East and West buildings.

{¶3} The case was tried before a jury from January 8 to 12, 2024. Shoregate

Towers was found guilty of Count Two of the Complaint. The sentencing hearing was

held on January 16, 2024. The municipal court imposed a 180-day suspended jail

sentence and a \$1,000 fine. The court additionally placed Shoregate Towers on

community control for a period of three years.

{¶4} On appeal, Shoregate Towers raises the following assignments of error:

-trial motion to dismiss on statutory speedy trial grounds.

[2.] The trial court erred when it refused to include jury instructions that incorporated the concept of reasonable time to correct.

-trial motion to exclude other acts evidence.

of the evidence.

[5.] The trial court committed prejudicial error and violated unusual punishments, when it sentenced him to fines of \$1,000.00, and imposed upon him a jail term of 180 days, relative to each count in the Complaint [sic].

{¶5} In the first assignment of error, Shoregate Towers argues the municipal



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court violated its speedy-trial rights by extending, sua sponte, the statutorily mandated timeframe for holding trial in this matter.

{¶6} The charge against Shoregate Towers was an unclassified misdemeanor.

Accordingly, it its] arrest or the service

on of this code shall,

no .

{¶7}

enforced, R.C. 2945.72 provides a number of events and circumstances that will toll the

- State v. Martin, 2019-Ohio-2010, ¶ 15. In

exercises its discretion to continue

State v. Ramey, 2012-Ohio-2904, ¶ 28; State v. Saffell, 35 Ohio St.3d 90,

-day limit so long

to establish a per se rule of what - Saffell at

Id.

{¶8} charged with a misdemeanor shall be discharged if the person is not brought to trial within

uch a discharge is a bar to any further criminal proceedings against the

Id.

{¶9} In the present case, the Complaint was filed on September 8, 2023, and

service was issued the same day by certified mail. The Complaint and Summons were

personally served on on September 26. Thus, the

ninety-day period for bringing Shoregate Towers to trial expired at the latest on December



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25. On October 11, Shoregate Towers filed a Demand for Jury Trial. On October 16, the municipal court set January 8, 2024, as the trial date. On November 16, Willowick filed a Mot Shoregate Towers filed a Motion to Dismiss pursuant to R.C. 2945.73(B). The court orally denied the motion prior to the commencement of trial on January 8.

{¶10} When, as here, the defendant has demonstrated that he was not brought to trial within the applicable statutory period, he has established a prima facie case for (Citation omitted.) State v. Paolucci, 2024-Ohio-1349, ¶ 14 (11th Dist.). Willowick argues maintains that the municipal cou Court did not have any jurors summoned prior to that date, that it fell on Christmas Day, the surrounding holidays and that the trial is scheduled merely 14 days after the December 25 th -appellee at 5.

{¶11} Shoregate Towers trial date, erroneously determined that it was authorized by the exceptions statute to keep

Willowick State v. Cutcher, 56 Ohio St.2d

Id. at syllabus. In so holding, the court rejected the

contention (similar to that advanced by Willowick and the municipal court in the present

Id. at 384, following State v. McRae, 55 Ohio St.2d 149 (1978). Consistent with the holding in Cutcher, Ohio jurisprudence had consistently

Ramey, 2012-Ohio- an exhaustive list of events and circumstances that extend the time within which a

only (Emphasis added.) Id. at ¶ 24. Shoregate Towers

statutory justification for extending the trial date. 1



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{¶12} State

v. Glass, 2004-Ohio-4402, ¶ 11 (3d Dist.) (cases cited). Such precedents do not benefit Willowick in the present case, however, as the municipal court never asserted that the case could not have been set within the 90-day period on account of scheduling and docketing conflicts. In its December 5, 2023 Judgment Entry, the municipal court only The 1 court did not provide any explanation for the initial failure to set a trial date within the 90-day period.

{¶13} Lastly, we find the case of State v. Pudlock, 44 Ohio St.2d 104 (1975), to be instructive although distinguishable in certain nonmaterial respects. Pudlock stands provisions within R.C. 2945.71 and 2945.73 must not be employed to extend the requisite Id. at 106. In Pudlock 90- expire, and thereafter, sua sponte, rules that the presence of a crowded docket warranted a Id. required time period under the above circumstances would render meaningly the provisions of R.C. 2945.71, and thwart the intent of the General Assembly to provide specified time limits wi Id.

{¶14} The present circumstances are even more egregious than those in Pudlock. Here, the municipal court set a trial date outside of the 90-day period without explanation or justification. Then, on December 5, 2023, only 20 days before that period expired, the court issued an entry stating that it was too late to correct its failure to set a proper trial date because no jury had been summoned. We emphasize that, in this entry, the court



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did not justify its failure to schedule trial before the expiration of the 90-day period, only that, as of December 5, it was unable to remedy the failure. Certainly, the court could have done several things to comply with R.C. 2945.72(H) but did none of those things.

The important point is not whether the court acted before the statutory deadline expired, but whether in so acting the court complied with the statutory provisions. Here, the court injunction that its provisions are mandatory and require strict compliance. To justify the

l period in the

present circumstances renders the provisions of R.C. 2945.71 just as meaningless as it

would have in Pudlock the prosecution and the courts would be to assure that a trial is scheduled within the

appropriate time limit as long as it could subsequently be explained why the defendant

State v. Mincy, 2 Ohio St.3d 6, 8

(1982). Whether that explanation occurs twenty days before trial or after trial is not

material, particularly where the explanation does not actually explain why trial was not scheduled within that statutory time frame in the first place.

{¶15} The first assignment of error is with merit.

{¶16} remaining assignments of error are rendered moot. App.R. 12(A)(1)(c).

{¶17} appellee.

JOHN J. EKLUND, J., concurs,

MARY JANE TRAPP, J., dissents with a Dissenting Opinion.

_____ MARY JANE TRAPP, J., dissents with a Dissenting Opinion.



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{¶18}

misapplies the governing law to the unique procedural facts of this case.

{¶19} Shoregate was charged with two misdemeanors that carried a maximum

penalty of six months of imprisonment. See Willowick Cod.Ord. 1367.04, PM- person against whom a charge of misdemeanor, other than a minor misdemeanor, is

pending in a court of record, shall be brought to trial . . . [w]ithin ninety days after the

ons, if the offense charged is a misdemeanor of

the first or second degree, or other misdemeanor for which the maximum penalty is

imprisonment for

{¶20} State v. Mincy, 2 Ohio St.3d 6, 7 (1982). R.C.

2945.72 contains a list of exceptions that toll the time within which the accused must be

tried. State v. Kist, 2007-Ohio-4773, ¶ 26 (11th Dist.). At issue here is R.C. 2945.72(H),

extended . . . by . . . [t]he period of any continuance granted on the ac and own motion

{¶21} The Supreme Court has held that a trial court may sua sponte continue a

trial beyond the statutory speedy- reasonable and only when the continuance[] [is] made by journal entry prior to the expiration of the time limit State v. King, 70 Ohio St.3d 158, 162

(1994); see Mincy at syllabus. For instance, in Mincy, the trial court scheduled the

Id. at 6-7. On the trial date,

the court sua sponte continued the trial but did not record an entry on its journal explaining

the reason for the continuance until after the statutory deadline. Id. The Supreme Court

-the-fact extensio Id. at 8.

{¶22} Here, the trial court originally scheduled trial for January 8, 2024, which was



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its

December 5, 2023 judgment entry, the trial court reaffirmed the original trial date after invoking R.C. 2945.72(H) and stating that a jury was unavailable before the statutory deadline. Thus, the issue is whether the December 2023 entry constituted a sua sponte continuance pursuant to R.C. 2945.72(H). I conclude that it did.

{¶23} def State v. Wentz, 49 Ohio App.2d 96, 98

(5th Dist. 1975), quoting (4th Ed.). According to Shoregate, the

De

{¶24} its {¶25} This reading of the statute also comports with reason and logic. In effect, the trial court accomplished in one entry what it could have lawfully performed in two. For
ance

and scheduled trial for a date before the statutory deadline. Then, it could have filed a second entry sua sponte rescheduling trial for a date after the statutory deadline based on the unavailability of a jury. Instead, the trial court filed a single entry reaching the exact same result. The key factor is that the trial court acted before the statutory deadline. By {¶26} statutory deadline after originally scheduling trial for a date after the deadline. The case it cites, however, does not support that assertion. In State v. Pudlock, 44 Ohio St.2d 104 (1975), the defendant was arrested and demanded a jury trial. Id. at 104. The case was not set for trial, and the statutory deadline passed. Id. The defendant filed a motion to dismiss on statutory speedy trial grounds. Id. The trial court overruled the motion, stating Id. at 106. The



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defendant was later tried and convicted. Id. at 104. On appeal, the Supreme Court of period under the above circumstances would render meaningless the provisions of R.C. 2945.71, and thwart the intent of the General Assembly to provide specified time limits Id. at 106. {¶27} Pudlock is factually distinguishable. The facts of that case illustrate the type -the- See Mincy,

2 Ohio St.3d at 8, citing Pudlock. Here, as stated, the trial court acted before the statutory deadline.

{¶28} Although not cited by Shoregate, I acknowledge the Supreme Court of State v. Cutcher an original trial date beyond the time limits of R.C. 2945.71 does not constitute a Id in Id. at 383. On the trial date, which was the day after the statutory deadline, the defendant moved for discharge, which the trial court denied. Id. The defendant was subsequently convicted. Id. The appellate court discharged the defendant, and the date beyond the statutory deadline constituted a sua sponte continuance under R.C. 2945.72(H). Id. at 383, 384.

{¶29} Cutcher is also factually distinguishable. As stated, this case involves the To the extent the original scheduling order was deficient, the December 2023 entry was sufficient to cure any such deficiency.

{¶30} For these reasons, I would find that the trial court did not err by denying assignment of error. {¶31} assignment of error, I would reach their merits.

