

ORIGINAL

**IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO**

STATE OF OHIO)
Plaintiff-Appellee,)
)
-vs-)
)
LARoyal JONES)
)
Defendant- Appellant)

CASE NO **09-1563**
On Appeal from Cuyahoga County Court of
Appeals Eighth Appellate District
C.A. Case No. 90903

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT LARoyal JONES**

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SUPREME COURT OF OHIO

TABLE OF CONTENTS

EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION..... 1

STATEMENT OF THE CASE AND FACTS.....

PROPOSITION OF LAW.....

CONCLUSION.....

CERTIFICATE OF SERVICE

APPENDIX

Judgment Entry and Opinion, Court of Appeals Cuyahoga County July 20, 2009

EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case should be reviewed by this court because a very important issue of constitutional rights is raised, the right to bear arms and protect oneself. The weapons disability "ORC 2913.13" takes this right away from anyone "who is under indictment for or has been convicted of any type of offense of violence or is under indictment or has been convicted of any offense involving the illegal possession, use sale, administration, distribution, or trafficking in any drug of abuse. Yet this is not told to the defendants that their constitutional right to bear arms is being taken from them as part of the sentence for the crime they have just been convicted of. These people have lost the constitutional right to protect themselves and bear arms yet they are not even made aware of it. They are not even told they have the option to request from the courts that this disability be removed under ORC 2913.14. This law should be revised to include that the defendant be made aware of the disability as well as how they can have the disability removed, it is the responsibility of the courts to notify all defendants of all aspects of the sentence and this is part of the sentence that should be handed down to all the defendants it affects. This issue is raised in the appeal yet the eighth district has disregarded this as frivolous however knowledge of law is not the issue this is a constitutional right that all American citizens have, and it is being taken away from some of them without their knowledge, this is not a knowledge of law this is a knowledge of constitutional rights. In school every American learns the Bill of rights and so every American is aware of their right to bear arms, how is not knowing you are no longer able to own or bear arms not a defense this was part of sentence that should have been presented when he was sentenced along with how the defendant could have it lifted or removed. This should fall under the rule of telling the defendant that they will be serving so many years in jail and whether they can get parole as well as notify them they have the right to appeal a case, the court is obligated to notify and explain these all to a defendant this disability should fall under that same category and it should become part of the court record that a defendant is made aware that they are no longer able to use the 2nd amendment and protect themselves unless they follow through and

request from the court to have the disability uplifted. Mr Jones plead to Guilty to a misdemeanor drug abuse in 1994 and the courts state "Drug abuse, although it is a drug abuse offense does not constitute an offense involving the illegal possession or use of a drug, therefore the court errs when it convicts a defendant of having a weapon under disability based on the prior conviction of drug abuse. State v Moaning No 14572 1995 WL 232456 (2nd Dist court App. Montgomery, 4-19-95)

STATEMENT OF THE CASE AND THE FACTS

First stated in the indictment from the Grand Jury was made on November 7, 2006 and the trial did not start until November 13, 2007 over a year later Mr. Jones was not giving a speedy trial that is his right under the law in the State of Ohio pursuant RC2945.71(C)(2) “ if a defendant is incarcerated the trial must begin within 90 days if the defendant is out on bond the trial must begin within 270 days.” Mr. Jones trial began over 365 days after the indictment.

The court had several continuances; one on April 19, 2007 with no reason given, one on September 6, 2007 because court was engaged in a different trial, and again on September 20, 2007, court was engaged in a different trial. The prosecution had several continuances as well. On July 25, 2007, the prosecutor was engaged in different trial and one on November 7, 2007 the prosecution was unprepared with no witness' present.

Mr. Jones' attorney was well aware that every time there was a trial date set he was prepared to go to trial and he was ready to have this case completed, he didn't request any of the continuances. However, the time that passed from the time of his arrest to the time his trial began was over a year later. The fact that he went through several attorneys has no bearing on the court not granting him a speedy trial. He went through the attorneys because he would not plea and that was what they wanted him to do. The attorney's did not want to go to trial and were not willing to defend Mr. Jones to the best of their ability. The first attorney that was court appointed was racist and Mr. Jones did not appreciate the way he spoke to him. The attorney didn't want to fight a trial case that he felt was a lost cause. He also did not want to hear the story of what happened thereby making it impossible for him to defend Mr. Jones.

The second attorney was responsible for requesting a psychiatric review, which he requested because again Mr. Jones would not plea. There was one visit in February of 2007 for the psychiatric evaluation which gave no cause for the hold-up that continued to follow. The second attorney withdrew himself because Mr. Jones would not plea. He felt Mr. Jones was being uncooperative because he wouldn't plea. Mr. Jones went into court on April 24, 2007 prepared to go to trial and his attorney had withdrawn without even notifying him. At this point, Mr. Jones met with the last attorney who took his case. From this point on the trial should have begun rather quickly, instead that is when it seemed to slow down even more.

The testimony of Mr. Favors in regarding his conversation with Carol Dixon, brings up why didn't

prosecution call Carol Dixon or Sarah Dixon to the stand? Because Sarah Dixon, along with her 30 something boyfriend Greg Favors, is a minor who is living at her mother Carol Dixon's home. Mr. Jones met the Dixon through a friend not through Mr. Favors he met Mr. Favors through the Dixon's. Mr. Jones did give Carol, Sarah and their cousin a ride to the west side on September 22, 2006. but the time they left for the west side it was around 7-7:30pm. Mr. Jones' wife, Lisa Jones, didn't get home from work until 4pm and he had his girls until then. Once his wife was home he left about 6pm to go to another friends house (located Lakeshore and E260th) to see if he wanted to hang out. When Mr. Jones was walking home, he walked past the Dixon's residence, he stopped and Greg Favors was there. Mr. Favors asked if Mr. Jones wanted to hang with him, Mr. Jones said no he was going west. Carol asked for a ride. Mr. Jones went to his house to get the car and gave them a ride west.

When they reached the house of Carol Dixon's friend, who was to be the witness stating of the threats from Mr. Favors and of his relationship to Sarah Dixon that Mr. Jones attorney failed to call, Mrs. Dixon asked him to go to the liquor store. The liquor store was not located around the corner. Sarah came out and got in the car stating that her mom didn't trust Mr. Jones would come back with the money or with what she had wanted from the store. Mr. Jones said fine and they drove to the store located on W25 off 90 which was closed. Mr. Jones drove Sarah Dixon to the one on Lorain which was also closed. By this time Sarah had to go to the bathroom so they stopped at Mr. Jones friend's house. Sarah wanted to stay, Mr. Jones said no and took her back to her mother. When they got back, Mr. Favors started to call with threats to Mr. Jones and his family.

Mr. Favors stated that he went to Mr. Jones home at Carol Dixon's request, Mrs. Jones his wife was home and he never came. Mr. Jones attorney failed to ask these questions. Mr. Favors stated the next night he walked to Mr. Jones house. Noone asked his purpose for going to Mr. Jones house. In his statement to police it was to talk about a friend, yet when he came he was going on about his 15 year old girlfriend Sarah Dixon with whom he has had a baby with while Mr. Jones was going to court. Mr. Favors denies any involvement with Sarah Dixon though it is patently obvious and evidence to that fact. While Mr. Favors was going on about his girlfriend Mr. Jones said "I have nothing to do with that, go take that back down there, get off my property."

Mr. Favors stated that he was six to seven feet away from Mr. Jones when the gun was fired. In the testimony of Detective Grida, if someone was standing 10-12 feet and the gun was pointed towards them they would have a big hole in them. Also in Mr. Grida's statement he said he had searched for bb's from the shot,

however, the gun had been on Mr. Jones left shoulder pointed in the air away from Shoreview. Ms. Blake testified that the bb's went through her yard which was 6 houses and across the street and on Mr. Jones right, so the shot gun was pointed in the air away from her home. She also lives only one house from Mr. Favors

During Officer Niebecker testimony he stated he saw Mr. Jones exit the front door, however, Mr. Jones was already outside sitting on the front steps waiting for the police to arrive. His wife, Mrs. Jones, was the one that had exited the house when they told her not to move. Mr. Jones stated "I am right here". Mr. Jones never stated I fired the gun into the air; he never spoke with any of the Officers until Detective Grida interviewed him four days after he was taken into custody.

Under the disability law it states that he may procure a weapon in defense of immediate threat. Mr. Jones felt very threatened, therefore he went into the house to procure the weapon; most think at this time he should have locked the door and called the police, however his thought was on protecting himself and his family. He felt that Mr. Favors had a weapon on his person that he would use and Mr. Jones had his wife and two girls in the house and if Mr. Favors shot through the house they could have been hit. Mr. Jones first thought was to get him away from his home and then call the police. Regarding to the not knowing if Mr. Favors had a weapon, this was a responsibility of the police. Mr. Favors had time enough to go to his home and secure any weapon he had on his person before the police arrived. As Ms. Blake stated in her testimony, while on the phone with the 911 operator, she saw Mr. Favors walking (not running in fear of his life but calmly walking) back to his house or down the street. And since she lives one house away from Mr. Favors, he had time enough to enter his home and secure any type of weapon he had had. Also the police did not search his person or his home as they did Mr. Jones. That is an error on the police and on Mr. Jones attorney for not questioning as to why this was not done.

Mr. Jones was the one that was assaulted that night not Mr. Favors. Mr. Jones was trying to protect his family and himself from what he deemed a very real danger. Mr. Favors has a record of breaking and entering, drug dealing and so on; he had a conflict with another gentleman regarding his 15 year girlfriend Sarah Dixon. Mr. Jones see him as a danger to his daughters in that he is having a relationship with a girl that is 15 and he has been with her for several years. Ms. Conti lived in the Dixon's garage with her two kids, on the stand she stated she saw Mr. Jones with the gun two years prior to the night then she changed her answer to three years before then when Mr. Jones attorney asked if someone had told her what to say she pointed to the prosecutor.

However this appeal is not about the felonious assault (which Mr. Jones was found not guilty of) it is about the weapons under disability charge.

PROPOSITION OF LAW

Proposition of Law I

Conviction under RC 2923.13(A)(3) was unconstitutional because defendant-appellant never received notice of the underlying disability:

Pursuant to RC 2923.13(A)(3)

Unless relieved from the disability as provided in section 2923.14 of the revised code, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordinance.

In response to the above to have the disability removed under 2923.14 the person under the disability must request from the court of common pleas in the county in which the person resides for relief from such prohibition, however this doesn't seem to be possible to do if the person under the disability is not aware first of the disability and aware of the option to request the relief from the disability. We find this law RC 2923 falls under a 2921.52 "Use Of a Sham Legal Process" under this RC 2921.52(A)(1)(a) the constitutional right to bear arms is remove from his or her rights without lawfully issuing him or her a notice of that removal, and under the 2921.52(A)(1)(a) "Lawfully issued" means adopted, issued, or rendered in accordance with the United State Constitution, the constitution of a state, and the applicable statues, rules, regulation, and ordinances of the United States, a state, and the political subdivisions of the state. This weapon's under disability law is not lawfully issued to the person it is used against if that person is not notified either in writing or in the court room by the judge that his or her constitutional right to bear arms has been removed due to a conviction that they have been found guilty of or plead guilty to.

Proposition of Law II

Defendant-Appellant was denied his right to effective Assistance of Counsel.

Mr. Jones again claims ineffectiveness of counsel in that his counsel's performance was deficient in that he did not call the witnesses that Mr. Jones had presented him with, this he believe falls way below the "objective standard of reasonableness". If his counsel had called his witnesses as was requested, the witnesses would have showed that Mr. Jones had a reasonable fear and was in self defense since Mr. Favors had

threatened him the previous evening with bodily harm.

The second is that his counsel representation prejudiced the defense when he had several conversations with the judge and prosecution without Mr. Jones present and these conversations seem to all revolve around a plea even though from the time he was hired he was told Mr. Jones was not going to plea he wanted to go to Trial.

Mr. Jones counsel was also ineffective in that he did not defend against the weapons under disability charge even though he had been told Mr. Jones was only defending himself.

In court records it states that it was stipulated to the prior conviction of drug abuse, that because Mr. Jones failed to challenge the stipulation when presented with the opportunity at sentencing hearing belies his claim that the stipulation was without his consent. He was not given the opportunity to challenge the stipulation he was not even aware that the stipulation had been made. He is not a lawyer and if his counsel did not explain what he was doing how was he to understand that his counsel was not defending him against the charges. He was made aware of the stipulation in the briefs in this appeal process.

Mr. Jones believed that the trial outcome would have most definitely been different if the Jury had been presented with the fact that Mr. Jones procured the weapon in self defense, he believed they would have found him not guilty of all charges against him.

In that his counsel did not call Mr. Jones witnesses, the court may not have been aware of those witnesses because his counsel did not call them. He asked his counsel on every single court date if he requested her to come and bear witness, he told Mr. Jones that there was no need. Mr. Jones feels that there was a need because her testimony would have reiterated that he was in defense and had a very real fear of what Mr. Favors would do.

Proposition of Law III

Defendant-Appellant was denied his right to a Speedy Trial

Finally Mr. Jones counsel did not pursue a dismissal of the case on the ground of a speedy trial even though it had been requested of him. The four factor's of the United States four-part test for determining whether an accused has been deprived of his or her constitutional right:

1. The Length of the Delay: Mr. Jones was ready for a trial from the beginning the attorney appointed to him had issues with seeing him as not guilty, much less wanting to defend him against the charges, the second attorney wanted him to take a plea and when Mr. Jones would not he withdrew himself as his attorney because Mr. Jones wanted to fight the charges against him. The third and final attorney was hired on April 24, 2007. What was the reason for the delay to continue until November 13, 2007 eight months later, Mr. Jones and his wife had come to court every time they were scheduled and ready for the trial to begin. Mrs. Jones consequently lost her job because of the amount of times they had to come back to court.

2. The reason the government assigns to justify delay: On November 7, 2007 Mr. Jones was extremely tired of going to court and again his counsel tried to come at him with a plea and when he again said no the attorney said he would get it continued, Mr. Jones told him no he wanted to start the trial today. He was there and ready and wanted to get on with his life. The attorney went to the judge with this, however, the prosecution did not have any of his witnesses there. They went before the judge for the first time and it is on the record asking for a dismissal because the prosecution was not ready on a trial date. However, the judges bailiff said that Mr. Jones had asked for all the continuances in the past and that was false testimony because as Mr. Jones has stated above there were multiple dates that the prosecution and the Court had requested continuances.

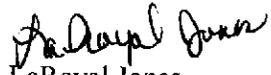
3. The Defendant's responsibility to assert his rights to a speedy trial: Mr. Jones let his attorney know from the beginning that he was ready for trial and since he was never allowed in front of the judge prior to November 7, 2007 it is not on record except at this point.

4. The prejudice on the defendant: Mr. Jones life was put on hold for over a year and it should have not been, under the Speedy Trial Law it states that in the event of a violation, the "indictment shall be dismissed" and We find that the Prosecution should have been ready for trial on November 7, 2007 and because he was not the court was in error when the case was not dismissed.

CONCLUSION

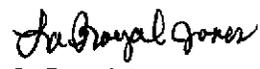
For the above stated reasons, this court should accept jurisdiction.

Respectfully submitted,


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Defendant-Appellant (Pro Se)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction was forwarded by regular U.S. Mail to William Mason, Prosecuting Attorney 8th Floor Justice Center, 1200 Ontario Street, Cleveland, Ohio 44113, on August 28, 2009


LaRoyal Jones
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Defendant-Appellant (Pro Se)

**IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO**

STATE OF OHIO)	CASE NO
Plaintiff-Appellee,)	
)	On Appeal from Cuyahoga County Court of
)	Appeals Eighth Appellate District
-vs-)	
)	
LAROYAL JONES)	C.A. Case No. 90903
Defendant- Appellant)	

**APPENDIX TO
MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT LAROYAL JONES**

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 90903

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LAROYAL D. JONES

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-488186

BEFORE: Cooney, A.J., Boyle, J., and Celebrezze, J.

RELEASED: July 9, 2009

JOURNALIZED: JUL 20 2009

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**FILED AND JOURNALIZED
PER APP. R. 22(E)**

JUL 20 2009

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY *[Signature]* DEP.



**ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED**

JUL 9 - 2009

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY *[Signature]* DEP.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

COLLEEN CONWAY COONEY, A.J.:

Defendant-appellant, LaRoyal Jones ("Jones"), pro se, appeals his conviction for having a weapon while under disability. Finding no merit to the appeal, we affirm.

In November 2006, Jones was charged with felonious assault and having a weapon while under disability.¹ The matter proceeded to a jury trial, at which he was found guilty of having a weapon while under disability and not guilty of felonious assault. The trial court sentenced him to two years of community control sanctions.

Jones now appeals, raising three assignments of error for our review. In the first assignment of error, he argues that his conviction for having a weapon while under disability was unconstitutional because he never received notice of the underlying disability.

In the instant case, Jones was convicted under R.C. 2923.13(A)(3), which provides in pertinent part that: "[u]nless relieved from disability as provided in [R.C.] 2923.14 ***, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if *** [t]he person *** has been convicted of any

¹The felonious assault charge carried one- and three-year firearm specifications.

offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse ***.”

Jones argues that he was not aware of the disability nor was he aware of the option to request relief from disability. But this court has held that when a defendant's disability is based on a prior conviction, the defendant's actual knowledge of the disability is not required. *State v. Gibson* (Nov. 21, 1991), Cuyahoga App. No. 59541, citing *State v. Smith* (1987), 39 Ohio App.3d 24, 25, 528 N.E.2d 1292; see, also, R.C. 2923.13. Rather, “[a]ll that is required is that the person charged ‘knowingly’ do any of the prohibited acts. Ignorance of the law is not a defense to a prosecution under this provision.” *State v. Jackson* (Jan. 15, 1987), Cuyahoga App. No. 51590.

In the instant case, Jones's disability is based on a prior drug conviction. Therefore, his actual knowledge of the disability is not required and his constitutional rights were not violated.

Accordingly, the first assignment of error is overruled.

In the second assignment of error, Jones argues that he was denied his right to effective assistance of counsel. He claims that counsel was ineffective for stipulating to Jones's prior drug abuse conviction and to the operability of the

shotgun, without first obtaining his consent. But in setting forth his arguments, Jones fails to cite to the record and to any authority in support of his claim.²

An appellate court may disregard an assignment of error pursuant to App.R. 12(A)(2): "if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A)." See, also, *Hawley v. Ritley* (1988), 35 Ohio St.3d 157, 519 N.E.2d 390.

App.R. 16(A)(7) requires that appellant include in his brief:

"An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary."

Moreover, it is not the duty of an appellate court to search the record for evidence to support an appellant's argument as to any alleged error. *State v. McGuire* (Apr. 15, 1996), Preble App. No. CA95-01-001. "An appellate court is not a performing bear, required to dance to each and every tune played on an appeal." *State v. Watson* (1998), 126 Ohio App.3d 316, 710 N.E.2d 340, quoting

²In Ohio, pro se litigants are presumed to have knowledge of the law and of correct legal procedure, and are held to the same standard as all other litigants. *Barry v. Barry*, 169 Ohio App.3d 129, 133, 2006-Ohio-5008, 862 N.E.2d 143.

McGuire. See, also, *Citta-Pietrolungo v. Pietrolungo*, Cuyahoga App. No. 85536, 2005-Ohio-4814, ¶35.

Because Jones failed to cite any legal authority and failed to cite to the record in support of his argument, we decline to review the second assignment of error.

Thus, the second assignment of error is overruled.

In the third assignment of error, Jones argues that he was denied his right to a speedy trial. He claims that trial counsel was deficient for failing to pursue a dismissal of his case for lack of a speedy trial.

Jones failed to raise his speedy trial claim except as part of a claim on appeal alleging ineffective assistance of trial counsel; therefore, he has waived all but plain error. *State v. Stewart*, Cuyahoga App. No. 86411, 2006-Ohio-813; *State v. Hinson*, Cuyahoga App. No. 87132, 2006-Ohio-3831.³

Plain error consists of an obvious error or defect in the trial proceeding that affects a substantial right. Crim.R. 52(B). The Ohio Supreme Court has stated that for a reviewing court to find plain error, the court must find error, the error must be plain, which means an obvious defect in trial proceedings, and

³Jones maintains that he requested on numerous occasions that his case be dismissed for lack of speedy trial. But, Jones failed to cite to the record when these requests were made. Therefore, we cannot consider this argument.

the error must have affected the defendant's substantial rights. *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002-Ohio-68, 759 N.E.2d 1240. Plain error must be obvious as well as outcome-determinative. *Barnes*, citing *State v. Sanders*, 92 Ohio St.3d 245, 2001-Ohio-189, 750 N.E.2d 90. Therefore, plain error occurs only when, but for the error, the outcome of the trial clearly would have been different. *State v. Long* (1978), 53 Ohio St.2d 91, 372 N.E.2d 804; *State v. Hill*, 92 Ohio St.3d 191, 203, 2001-Ohio-141, 749 N.E.2d 274.

Jones claims that his speedy trial rights were violated because 416 days had elapsed between the date of his arrest on September 23, 2006 and the date of his trial on November 13, 2007.

R.C. 2945.71(C)(2) provides that a person against whom a felony charge is pending shall be brought to trial within 270 after the person's arrest. For purposes of computing time under R.C. 2945.71(C)(2), each day the accused is held in jail in lieu of bail on the pending charge shall be counted as three days. See R.C. 2945.71(E). In other words, "[a] felony defendant in Ohio must be tried within ninety days if incarcerated on the pending charge or within two hundred seventy days if on bail." *State v. Pond*, Cuyahoga App. No. 91061, 2009-Ohio-849, quoting *State v. Coleman* (1989), 45 Ohio St.3d 298, 304, 544 N.E.2d 622.

Jones was arrested on September 23, 2006, and was formally charged with felonious assault on September 26, 2006. "[T]he right to speedy trial arises after

one is charged with a crime.” *Click v. Eckle* (1962), 174 Ohio St. 88, 91, 186 N.E.2d 731. Prior to being charged with a crime, the person “is in no position to demand a speedy trial.” *State v. Meeker* (1971), 26 Ohio St.2d 9, 18, 268 N.E.2d 589. Therefore, Jones’s speedy trial time started to run on September 26, 2006.

Jones posted bond on October 3, 2006, and remained out on bail until the commencement of his trial on November 13, 2007. As a result, from September 26, 2006 to October 3, 2006, his time ran three-for-one for a total of 21 days. After October 3, 2006, his speedy trial time ran one-for-one. Therefore, Jones should have been brought to trial by June 11, 2007, unless the time was tolled by one of the circumstances identified in R.C. 2945.72.

R.C. 2945.72 provides that the time within which an accused must be brought to trial may be extended for:

“(B) Any period during which the accused is mentally incompetent to stand trial or during which his mental competence to stand trial is being determined, or any period during which the accused is physically incapable of standing trial;

“(C) Any period of delay necessitated by the accused’s lack of counsel, provided that such delay is not occasioned by any lack of diligence in providing counsel to an indigent accused upon his request as required by law;

“(E) Any period of delay necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused;

“(H) The period of any continuance granted on the accused’s own motion, and the period of any reasonable continuance granted other than upon the accused’s own motion ***.”

A review of the record in the instant case reveals that many of the circumstances in R.C. 2945.72 extended the time within which Jones should have been brought to trial. Defense counsel was concerned with Jones’s competency and sanity and requested a psychiatric evaluation that tolled Jones’s speedy trial time. Furthermore, Jones filed motions for discovery and several motions for a continuance. Some of the continuances were attributed to his change in counsel. He changed counsel twice (one assigned and one retained) before obtaining trial counsel.

The trial court continued the matter at the State’s request in two instances because the prosecutor was in trial and the victim failed to appear at the November 7, 2007 trial date. Because the competency evaluations and his motions for discovery and continuance tolled his speedy trial time under R.C. 2945.72, the court brought Jones to trial within the 270-day time period.

Thus, we find that Jones’s statutory right to speedy trial was not violated.

Jones also argues that his constitutional right to speedy trial was violated under the test outlined in *Barker v. Wingo* (1972), 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101.

In *Barker*, the United States Supreme Court developed a balancing test to determine whether a defendant's constitutional right to a speedy trial has been violated, even though the statutory time frame had not been exceeded. In the application of this test, the behavior of both the prosecution and defense is compared and contrasted. *Id.* The test requires a court to weigh the following four factors: (1) length of delay; (2) the reason for it; (3) assertion by defendant of his right; and (4) amount of prejudice to the defendant. *Id.*

In interpreting the first *Barker* factor, the Ohio Supreme Court recognized that this factor performs a gate-keeping function, insofar as a delay approaching one year typically is required to establish "presumed prejudice," the existence of which is necessary to trigger an inquiry into the other three factors. *State v. Triplett*, 78 Ohio St.3d 566, 1997-Ohio-182, 679 N.E.2d 290. Jones's 13-month delay triggers a review of the other three factors.

The second *Barker* factor examines the justification claimed by the State for the delay. The State claims that Jones's constitutional right to a speedy trial was not violated because the majority of the delay was at Jones's request. We agree.

A review of the record reveals that Jones requested several continuances and requested a referral to the court psychiatric clinic. He also requested

continuances because his court-appointed attorney and first retained attorney withdrew. As a result, this factor weighs heavily against Jones.

The third *Barker* factor, assertion by the defendant of his right, also weighs heavily against Jones. Jones claims that he informed his attorneys from the beginning that he was ready for trial. He claims that defense counsel asked for a dismissal on November 7, 2007 because the victim was not present. But Jones failed to cite to the record in support of his speedy trial assertions. Thus, we decline to review this argument.⁴

The last *Barker* factor requires this court to consider the prejudice to Jones as a result of the delay between his arrest and trial. In *Barker and Doggett v. United States* (1992), 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520, the Supreme Court identified three types of prejudice that may arise from a lengthy delay: (1) oppressive pretrial incarceration; (2) anxiety and concern of the accused; and (3) the possibility that the accused's defense will be impaired by dimming memories and the loss of exculpatory evidence.

In reviewing the record, we do not find any prejudice that resulted to Jones. The majority of the continuances were at Jones's request. His repeated

⁴We also note that the court speaks through its journal. *State, ex rel. Foxall v. Cossairt* (1946), 146 Ohio St. 328, 65 N.E.2d 870. A review of the docket reveals no motion to dismiss for lack of speedy trial was filed by Jones pro se.

requests for continuances and his attorney changes, along with the court's concern for his competency to stand trial, outweigh any prejudice that he claims to have sustained.

Thus, we conclude that Jones's constitutional right to speedy trial was not violated.

Accordingly, the third assignment of error is overruled.

Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.


COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

MARY J. BOYLE, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR