

[Cite as *State v. Porter*, 2015-Ohio-589.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 100745

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

QUANDRELL PORTER

DEFENDANT-APPELLANT

JUDGMENT:
VACATED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-13-572625-A and CR-13-572966-A

BEFORE: Blackmon, J., E.A. Gallagher, P.J., and Kilbane, J.

RELEASED AND JOURNALIZED: February 19, 2015

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PATRICIA ANN BLACKMON, J.:

{¶1} Appellant Quandrell Porter (“Porter”) appeals his conviction and sentence.

Porter assigns the following errors for our review:

I. Quandrell Porter’s prosecution in this case was time barred by the statute of limitations and the trial court erred when it did not dismiss the indictment. R.C. 2901.13(A)(3)(a). (March 29, 2013 Indictment; T.pp. 32-88).[sic]

II. Quandrell Porter was denied his right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Section 10, Article I of the Ohio Constitution when counsel failed to object to the trial court’s finding that Mr. Porter departed the state while under investigation in an attempt to avoid prosecution.

III. Quandrell Porter was denied his right to due process when the trial court failed to dismiss the indictment that was prosecuted after an unjustified pre-indictment delay of over twenty years. Fifth and Fourteenth Amendments, United States Constitution; Section 16, Article I, Ohio Constitution; *State v. Luck*, 15 Ohio St.3d 150, 473 N.E.2d 1097 (1984). (August 26, 2013 Entry; T.pp. 55-57). [sic]

IV. Quandrell Porter was improperly classified as a Tier III sex offender when the trial court retroactively applied the Adam Walsh Act. Section 28 Article II, Ohio Constitution; *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-2274, 952 N.E.2d 1108. (August 26, 2013 Entry; T.pp. 1264-1291). [sic]

V. Quandrell Porter was improperly sentenced to a five year period of postrelease control because the offense occurred before postrelease control existed. *State v. Rush*, 83 Ohio St.3d 53, 697 N.E.2d 634 (1998). (August 26, 2013 Entry; T.pp. 1264-1291). [sic]

{¶2} Having reviewed the record and pertinent law, we vacate Porter’s conviction.

The apposite facts follow.

{¶3} The Cuyahoga County Grand Jury indicted Porter on two separate occasions for one count of rape and kidnapping. Both indictments involved the same incident, same time, same victim, and same crimes; they were identical except the second included the name of the codefendant.

{¶4} The first indictment, in Case Number CR-13-572625-A, issued March 18, 2013, charged Porter with the rape and kidnapping of M.L.¹ on March 19, 1993. The first indictment was issued one day prior to the expiration of the statute of limitations for rape.

{¶5} The second indictment, in Case Number CR-13-572966-A, issued March 29, 2013, charged Porter and codefendant, Roosevelt Martin,² with the rape and kidnapping of the same victim, M.L., on the same date of March 19, 1993. The second indictment was issued 11 days after the expiration of the statute of limitations for rape.

{¶6} The record reveals that following the allegations involving a number of Job Corps³ students who were drinking 40-ounce bottles of beer at a park near the campus, a rape kit was completed at Mt. Sinai Medical Center. The hospital subsequently forwarded the rape kit to the Cleveland Police Department, who conducted a brief investigation and then closed the case on March 21, 1993.

{¶7} In 2011, under Project CODIS, implemented to “clean up” cold cases, untested rape kits, including M.L.’s, were sent to the Bureau of Criminal Investigation (“BCI”) for DNA testing. After DNA analysis on the rape kit collected from M.L. had been conducted, Porter’s DNA was found in the underwear sample.

{¶8} On October 8, 2013, a jury trial commenced. Porter and Martin were tried together and were both convicted of rape. The trial court sentence Porter to ten to 25 years in

¹The victim is referred herein by her initials in accordance with this court’s established policy regarding non-disclosure of the victim’s identity in sexual assault cases.

²This appeal is a companion case arising out of the same events as contained in *State v. Martin*, 8th Dist. Cuyahoga No. 100753.

³ Cleveland Job Corps was a residential educational and vocational training program for economically disadvantaged youths.

prison, with five years of mandatory postrelease control. The trial court also classified Porter as a Tier III sex offender and sexually oriented offender.

{¶9} Prior to the commencement of the trial, Porter had filed a motion to dismiss the charges on the grounds that they were barred by the statute and that he was prejudiced by the twenty-year pre-indictment delay. The trial court heard arguments from both the defense and the state, but did not hold an evidentiary hearing. The trial court denied the motion after concluding that Porter, then 17 years old, left Job Corps several weeks after the incident and returned home to Akron, Ohio to avoid prosecution.

{¶10} Subsequent to the trial, on October 21, 2013, the trial court issued a journal entry dismissing the first indictment in Case Number CR-13-572625-A without prejudice. The journal entry also stated that Case Number CR-13-572625-A was consolidated with Case Number CR-13-572966-A.

Statute of Limitations

{¶11} In the first assigned error, Porter argues the trial court should have dismissed the indictment because it was barred by the statute of limitations.

{¶12} The statute of limitations provides the “primary guarantee against bringing overly stale criminal charges.” *State v. Henley*, 8th Dist. Cuyahoga No. 86591, 2006-Ohio-2728, quoting *United States v. Lovasco*, 431 U.S. 783, 97 S.Ct. 2044, 52 L.Ed.2d 752 (1977).

{¶13} In the instant case, Porter was charged, tried, convicted, and sentenced on an indictment that was filed on March 29, 2013. The March 29, 2013 indictment alleged that the offenses took place on March 19, 1993. As such, the indictment from which Porter’s conviction flows was filed ten days after the expiration of the 20-year statute of limitations under R.C.

2901.13(A)(3)(a). *See* R.C. 2901.13(A)(3)(a).⁴ Consequently, the trial court should have dismissed the March 29, 2013 indictment.

{¶14} Nonetheless, the state argues that they had previously indicted Porter on March 18, 2013, one day prior to the expiration of the statute of limitations and then re-indicted him when Martin was implicated in the offense. However, the record reveals that the March 18, 2013 indictment was later dismissed without prejudice.

{¶15} Further, although the state suggests that the March 18, 2013 indictment is controlling, the state provides no case law that would support a conclusion that the re-indictment of a criminal matter “relates back” to the date of the original indictment for purposes of the statute of limitations. Once the March 18, 2013 indictment in Case Number CR-13-572625-A was dismissed, there was effectively no case pending against Porter, and the statute of limitations expired.

{¶16} More importantly, as previously discussed, Porter was not tried, nor convicted, nor sentenced on the March 18, 2013 indictment. As such, the entire purpose of R.C. 2901.13(A) would be negated if we were to accept the state’s argument as valid.

{¶17} Nevertheless, the state argues that the statute of limitations was tolled as a result of Porter leaving Job Corps several weeks after the incident and returning to Akron, Ohio.

{¶18} R.C. 2901.13(G) provides:

⁴The indictment listed the date of the alleged offense as March 19, 1993. The six-year statute of limitations at the time had not yet expired when the General Assembly extended the statute of limitations for rape from six to 20 years by an amendment of R.C. 2901.13, which became effective March 9, 1999, and applied retroactively for offenses that had not yet expired. *See State v. Copeland*, 8th Dist. Cuyahoga No. 89455, 2008-Ohio-234, ¶ 11, retroactively for offenses that had not yet expired. *Id.* at ¶ 11.

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.

{¶19} Under Ohio law, “[a] prosecution is not commenced * * * unless reasonable diligence is exercised * * *.” R.C. 2901.13(E). Furthermore, it is axiomatic that “the primary purpose of a criminal statute of limitations * * * is to limit exposure to prosecution to a certain fixed period of time following the occurrence of those acts * * *.” *State v. Gallant*, 174 Ohio App.3d 264, 2007-Ohio-6714, 881 N.E.2d 907, ¶ 25. Accordingly, the Ohio Supreme Court has recognized that “the intent of R.C. 2901.13 is to discourage inefficient or dilatory law enforcement * * *.” *State v. Climaco, Climaco, Seminatore, Lefkowitz & Garofoli Co., L.P.A.*, 85 Ohio St.3d 582, 586, 1999-Ohio-408, 709 N.E.2d 1192.

{¶20} In the instant case, the record reveals that Job Corps conducted an investigation into the allegations. According to the police report, the Cleveland Police department's investigation concluded on March 21, 1993; mere days after the allegations. The record also indicates that Porter was not named in the police report regarding the incident.

{¶21} The record further indicates that Porter continued to live at Job Corps for more than a month after the allegation before returning to Akron, Ohio. Job Corps knew Porter's address in Akron, Ohio. Finally, there is no evidence that Porter changed his name or left the state of Ohio to conceal his identity or whereabouts.

{¶22} Thus, contrary to the state's assertion, the record shows that no investigation and no prosecution, pursuant to R.C. 2901.13(E), had commenced against Porter until March 2013. As such, no prosecution existed for Porter to purposefully avoid. Thus, Porter's departure to

Akron, Ohio, where he has ostensibly remained for the past 20 years, could not operate to toll the statute of limitations. More importantly, if this court were to adopt the state's approach, Porter's criminal liability would be potentially infinite, thereby frustrating the statutory scheme.

{¶23} We conclude, inefficient or dilatory law enforcement caused the statute of limitations to expire and not Porter's return to Akron, Ohio. Consequently, the trial court erred when it determined that the statute of limitations had tolled. Accordingly, we sustain the first assigned error.

{¶24} Our resolution of the first assigned error renders the remaining errors moot. App.R. 12(A)(2)(c).

{¶25} Conviction vacated.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

PATRICIA ANN BLACKMON, JUDGE

EILEEN A. GALLAGHER, P.J., and
MARY EILEEN KILBANE, J., CONCUR