

RENDERED: August 21, 1998; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 97-CA-0739-MR

KEVIN DEWAYNE ROZELLE

APPELLANT

V. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE JOHN MINTON, JR., JUDGE
ACTION NO. 94-CR-0631

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: COMBS, KNOFF, and KNOX, Judges.

COMBS, JUDGE: The appellant, Kevin Rozelle, appeals from the judgment of the Warren Circuit Court convicting him of Burglary in the Second Degree, Theft by Unlawful Taking under \$300, and Fraudulent Use of a Credit Card over \$100. He was sentenced to eight years' imprisonment to run consecutively to the sentence he is currently serving in Texas. On appeal, Rozelle seeks to have his conviction and sentence set aside on the grounds that the Commonwealth failed to bring him to trial within the time period set forth in the Interstate Agreement on Detainers (IAD). KRS

440.450. Having examined the record, we find no merit to his contention; hence, we affirm the judgment of the circuit court.

In November 1994, the Warren County Grand Jury issued two indictments against Rozelle, charging him with burglary in the second degree; theft by unlawful taking over \$300, fraudulent use of a bank/credit card over \$100; two counts of forgery in the second degree, or, alternatively, two counts of criminal possession of a forged instrument, second degree. At the time the indictments were issued, Rozelle was serving a sentence of imprisonment in Texas. In June 1995, the Commonwealth filed a detainer against Rozelle. Subsequently, in April 1996, the Commonwealth received IAD forms signed by Rozelle requesting disposition of the charges against him. Two months after the Commonwealth received his request, Rozelle was brought to Kentucky. His trial was originally scheduled for August 8, 1996. However, the trial was rescheduled and continued several times. Ultimately, Rozelle entered a conditional plea of guilty to two counts of possession of a forged instrument in the second degree and one count of fraudulent use of a bank/credit card over \$100; he reserved the right to challenge on appeal the trial court's disposition of the issues he had raised regarding the Commonwealth's alleged violation of time periods set forth in the IAD.

At the time he entered his guilty plea, Rozelle filed a motion with the court to dismiss the charges against him, maintaining that the Commonwealth had failed to bring him to

trial within 180 days of his formal request for disposition as required by the IAD. On December 18, 1996, the circuit court entered an order denying Rozelle's motion to dismiss the charges. The circuit court found that 180-day time period was triggered on April 11, 1996, the date the Commonwealth received Rozelle's formal request for disposition. Thus, the Commonwealth was required to dispose of the charges against Rozelle by October 9, 1996. Although ultimate disposition of Rozelle's charges exceeded the 180-day period, the circuit court found that the delays in bringing him to trial were for good cause and that, therefore, the IAD had not been violated. Consequently, on January 3, 1997, the court sentenced Rozelle to eight years' imprisonment to run consecutively to the sentencing he is currently serving in Texas. This appeal followed.

Rozelle argues on appeal that the circuit court erroneously denied his motion to dismiss the charges against him. He contends that the Commonwealth failed to bring him to trial and to dispose of the charges against him within the 180-day time period set out in the IAD and that he did not waive his rights under the IAD. We disagree.

The IAD encourages the expeditious disposition of outstanding charges against persons incarcerated in other jurisdictions by providing the prisoner a method of disposing of the outstanding charges. Yost v. Smith, Ky., 862 S.W.2d 852 (1993). The IAD sets forth two separate time frames within which a defendant must be tried. The applicable time period is

determined according to whether action under the IAD was initiated by the prosecutor or by the prisoner against whom a detainer has been lodged.

In this case, since Rozelle initiated action under the IAD by his formal request for disposition of the charges against him, KRS 440.450 Article III governs his case and sets forth the relevant time. When a prisoner makes a request for final disposition, the IAD requires that he or she be brought to trial within one hundred eight (180) days "after he shall have caused to be delivered to the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition." KRS 440.450 Article III. The 180-day time period is triggered when the prisoner's request for final disposition has been delivered to the court and to the prosecuting officer of the jurisdiction that lodged the detainer. Fex v. Michigan, 507 U.S. 43, 122 L. Ed. 2d 406, 113 S.Ct. 1085 (1993). If the prisoner is not brought to trial within the applicable time period, the court loses jurisdiction of the case and must dismiss it with prejudice. Spivey v. Jackson, Ky., 602 S.W.2d 158 (1980). However, the IAD provides that "for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction may grant any necessary or reasonable continuances." A prisoner may also waive his or her rights under the IAD expressly or impliedly through "an affirmative request to be treated in manner contrary to procedures." Wright v. Commonwealth, Ky. App., 953 S.W.2d

611, 615 (1997), (quoting United States v. Eaddy, 595 F.2d 341, 344 (6th Cir. 1979)).

In the case at bar, the 180-day time period set out in the IAD was exceeded. The Commonwealth received Rozelle's formal request for disposition of the charges against him on April 11, 1996 -- the date that triggered the 180-day time period. Thus, the Commonwealth was required to bring Rozelle to trial and to dispose of the charges against him by October 9, 1996; Rozelle pled guilty to the charges against him on October 28, 1996. However, the record indicates that delay in bringing Rozelle to trial was attributable to him. His trial was originally scheduled for August 8, 1996, but it was re-scheduled because defense counsel was out of town on vacation. Subsequently, the trial was continued several more times at Rozelle's request to allow his attorney to explore issues related to the IAD. His motions to continue his trial constituted affirmative requests to be treated in a manner contrary to the procedures set out in the IAD -- an implied waiver of his right to be brought to trial within the 180-day time period. It would create an impermissible conundrum in the criminal justice system to permit a defendant to delay his trial and then to complain when that delay results in exceeding the IAD's time limits.

As we find that the trial court correctly found that the 180-day time period had not been violated due to Rozelle's own actions, we hold that the delay accrued necessarily and

reasonably for good cause. We therefore affirm the judgment of the circuit court.

ALL CONCUR.

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