

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001123-MR

JAMES GRIM

APPELLANT

v. APPEAL FROM MARTIN CIRCUIT COURT
HONORABLE STEPHEN N. FRAZIER, JUDGE
ACTION NO. 99-CR-00001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BUCKINGHAM, COMBS, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Appellant, James Grim, appeals from his conviction of first-degree wanton endangerment and driving under the influence, third offense, pursuant to a conditional guilty plea reserving the right to appeal the trial court's denial of his motion to dismiss pursuant to the Interstate Agreement on Detainers (IAD), KRS 440.450. Having determined that the time limitations of the IAD were not violated, we affirm.

On April 10, 1997, appellant, while driving under the influence of drugs, struck a school bus containing the driver and 23 children. No one was seriously injured in the collision. On January 11, 1999, appellant was indicted by the Martin County

Grand Jury on 24 counts of first-degree wanton endangerment, operating a motor vehicle while under the influence of alcohol or other substance, third offense within five years, along with charges of no insurance, and no registration receipt.

While the charges were still pending against appellant, he left Kentucky and went to Colorado. On March 10, 1999, the Martin County Commonwealth Attorney filed an application for the requisition of appellant, stating that appellant could be found in the Routt County Jail located in the City of Steamboat Springs, Colorado. On June 24, 1999, the public defender in Steamboat Springs, Colorado, sent a letter to the Clerk of the Circuit Court of Martin County in which he stated that appellant was incarcerated in the Colorado Department of Corrections.¹ The letter further advised that appellant "hereby formally requests a final disposition of [] Martin County Indictment No. 99-CR-00001 on the basis of which a detainer has been lodged against [appellant] in Colorado."² The letter was received by the Martin Circuit Court Clerk on June 28, 1999.

On July 7, 1999, the public defender sent a letter to the Commonwealth Attorney stating that the Commonwealth had not received IAD Forms II, III, or IV from appellant because the prison officials in Colorado had failed to promptly comply with their obligations under the IAD to provide appellant with these

¹A copy of this letter was also sent by the public defender to the Martin County Commonwealth Attorney.

²Contrary to the public defender's letter, the record indicates that, while there was an indictment against appellant and an arrest warrant issued, no detainer had been officially lodged at this time.

documents. The public defender further stated that because appellant had given the Commonwealth Attorney and the courts "written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment[s], [C.R.S. § 24-60-501], it is Mr. Grim's position that he has substantially complied with *his* obligations under the IAD, and that he has therefore triggered his rights under, and the speedy trial provisions in the Interstate Agreement on Detainers despite the Colorado prison officials' failure to promptly comply with *their* obligations under the IAD." [emphasis original].

On July 20, 1999, a detainer, executed by the Commonwealth Attorney was received at the Colorado Department of Corrections. On July 27, 1999, appellant signed the request for final disposition of the detainer. On August 13, 1999, the Commonwealth Attorney received the necessary IAD forms from appellant. Appellant arrived in Kentucky on September 15, 1999. On January 27, 2000, appellant moved the court to dismiss Indictment No. 99-CR-00001 on grounds that the Commonwealth had failed to prosecute within 180 days of his request for final disposition per KRS 500.110. On February 4, 1999, appellant filed an amended motion to dismiss Indictment No. 99-CR-00001 on the basis of KRS 440.450, the Interstate Agreement on Detainers, stating that the Commonwealth had failed to try him within 180 days of his request for final disposition per Article III of the IAD, or within 120 days of his arrival in Kentucky per Article IV.

On February 24, 2000, appellant entered a conditional guilty plea to 24 counts of first-degree wanton endangerment and driving under the influence of intoxicants, third offense, as well as charges of no insurance, and no registration receipt, reserving the right to appeal any adverse determination by the trial court on the amended motion to dismiss. In an order dated February 24, 2000, and entered March 6, 2000, the trial court denied the motion. The trial court found that because appellant requested disposition of the charges, Article III of the IAD applied, rather than Article IV which applies when the Commonwealth requests the disposition. The court found that Article III's 180-day time limit began to run on August 13, 1999, on which date the Commonwealth received the IAD forms from appellant. Thus, the Commonwealth was required to dispose of the charges by February 9, 2000. The court further stated that "on February 3, 2000, [appellant's attorney] requested in the presence of and consent of the [appellant], a trial date without the 180 day period to afford new counsel 'time to get ready'". On April 6, 2000, the court entered its final judgment/sentence of imprisonment in accordance with the plea agreement. Appellant was sentenced to one year's imprisonment on each count of wanton endangerment, merged into one count, and six month's imprisonment on the DUI III, with the sentences to run concurrently for a total of one year's imprisonment.³ This appeal followed.

³Appellant received fines on the no insurance and no registration receipt charges.

On appeal, appellant argues that the trial court erred in denying his motion to dismiss as he was not tried within the time limitations of KRS 440.450. Appellant contends that the proper date for calculating the 180-day time period under Article III of KRS 440.450 was the receipt of the public defender's letter by the Martin Circuit Court Clerk and the Commonwealth Attorney on June 28, 1999. Thus, appellant argues that the 180-day time period expired on December 25, 1999. Additionally, appellant contends that the 120-day time limit per Article IV of KRS 440.450 would have run from the receipt of appellant in Kentucky on September 15, 1999, and expired on January 13, 2000. Therefore, under either Article III or Article IV of KRS 440.450, the Commonwealth was outside the statutorily imposed time limitations.

KRS 440.450, Article III(1), sets forth the procedure to be followed when a request for disposition is made by the detainee, and states in pertinent part as follows:

(1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty (180) days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant

any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. (emphasis added).

Alternatively, Article IV of KRS 440.450 applies in situations where action is initiated by the Commonwealth, and requires that the prisoner be brought to trial within 120 days of his arrival in the receiving state. As appellant made the request for final disposition, Article III and its 180-day time limit apply.

KRS 440.450 is not triggered until a "detainer has been lodged against the prisoner . . ." KRS 440.450; Rushin v. Commonwealth, Ky. App., 931 S.W.2d 456, 459 (1996); Schneider v. Commonwealth, Ky. App., 17 S.W.3d 530 (1999).

The purpose of the statute is not to ensure the speedy disposition of every charge, or even of those charges which potentially could form the basis for a detainer being lodged. Its purpose is to provide for the speedy disposition *only of such charges as have actually resulted in a detainer being lodged* (emphasis original).

Rushin, 931 S.W.2d at 459, quoting, Huddleston v. Jennings, Ky. App., 723 S.W.2d 381 (1986); Schneider v. Commonwealth, 17 S.W.3d at 534. The record before us shows that a detainer was not officially lodged against appellant until July 20, 1999. Therefore, appellant had not acquired any right to proceed under the IAD at the time the June 24, 1999 letter requesting final disposition was written or received by the Commonwealth on

June 28, 1999.⁴ Schneider, 17 S.W.3d at 534. Hence, we conclude the time did not begin to run until August 13, 1999, when the IAD forms were received subsequent to the detainer being lodged. As such, the Commonwealth was required to dispose of the charges by February 9, 2000. KRS 440.450, Article III(1).

On February 3, 2000, appellant's counsel, in open court, requested a trial date outside of the 180-day period to afford new counsel time to prepare.⁵ See, Roberson v. Commonwealth, Ky., 913 S.W.2d 310, 313-314 (1994). Article III of the IAD authorizes the court to grant, for good cause, necessary and reasonable continuances beyond the statutory time limit. KRS 440.450, Article III(1); Roberson, 913 S.W.2d at 313; Wright v. Commonwealth, Ky. App., 953 S.W.2d 611 (1997). Based on the limited record before us, we cannot disagree with the trial court's determination that appellant's request for

⁴Therefore, we need not address the issue of whether the June 24, 1999 letter was sufficient to commence the running of the 180 days.

⁵Appellant's designation of record on appeal did not include any portion of the February 3, 2000 proceedings. Appellant's brief states that he does not question the trial court's finding that a continuance was requested by defense counsel on February 3, 2000. Appellant contends that by February 3, 2000, the time limitations under either Article III or IV of KRS 440.450 had expired. On February 4, 2000, the Commonwealth moved the Court for an order continuing the IAD time for the trial of the action during the pendency of appellant's motion to dismiss, or, in the alternative, requested that the case be set for trial during the week of February 7, 2000. The trial court's order denying appellant's amended motion to dismiss also noted that "The parties were engaged in negotiations and the defendant filed with the Court a copy of his attorney's correspondence with the Commonwealth Attorney which stated, among other plea bargain terms, that 'this matter shall be continued for the purpose of re-arraignment and plea date, and that *any speedy trial time that may still exist in this cause shall be tolled until then*'. (emphasis original).

additional time for preparation constituted good cause. Further, in United States v. Eaddy, 595 F.2d 341, 344 (6th Cir. 1979), the court held that if "a prisoner is aware of and understands the provisions of [the IAD], as well as his rights thereunder, a prisoner can waive those rights, so long as the waiver is voluntary." A prisoner may also waive his rights even though he is not aware of those rights "where there is an affirmative request to be treated in a manner contrary to [the] procedures". Wright, 953 S.W.2d at 615, quoting Eaddy, 595 F.2d at 344. For the aforementioned reasons, we conclude that the 180-day time period per Article III of the IAD was not violated, and hence the Martin Circuit Court did not lose jurisdiction over the appellant. Wright, 953 S.W.2d at 614. Accordingly, the trial court did not err in denying appellant's amended motion to dismiss.

The judgment of the Martin Circuit Court is affirmed.

ALL CONCUR.

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