

RENDERED: September 12, 1997; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-0875-MR

MICHAEL JONES

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER CRITTENDEN, JUDGE
ACTION NO. 93-CR-0221

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

REVERSING AND REMANDING WITH DIRECTIONS

*** *** *** ***

BEFORE: EMBERTON, HUDDLESTON, and MILLER, Judges.

MILLER, JUDGE: Michael Jones brings this appeal from a March 19, 1996, judgment of the Franklin Circuit Court. We reverse and remand with directions.

On December 4, 1993, appellant shot and injured one Henry Collins in a bar in Frankfort, Kentucky. Robert Dunson, a bartender, was injured by the same bullet. On December 22, 1993, appellant was indicted on one charge of assault in the first-degree (Ky. Rev. Stat. (KRS) 508.010) and one charge of assault in the second-degree (KRS 508.020).

The order reflecting appellant's arraignment was entered on March 2, 1994, and a trial was set for July 26 of the same year. For reasons absent from the record, the trial was continued and set for September 12, 1994. That trial did not take place, but the record indicates that it was continued until April 5, 1995. Once again, the record is void as to the reason for the delay. In the meantime, appellant was incarcerated in the Northpoint Training Center on other charges. On January 25, 1995, prior to the aforementioned trial date, appellant filed a pro se motion for a speedy trial, citing KRS 500.110. Two days later a hearing was held wherein the judge sustained appellant's motion.

According to the record, the next action was a March 30, 1995, hearing on appellant's motion to amend Indictment No. 93-CR-221. The court denied said motion.

The record next reveals that a new trial date was scheduled for May 11, 1995, and that this date replaced the previously scheduled date of April 5, 1995. The reason for this continuance is also not contained in the court record.

Although there is no order reflecting a cancellation of the May 11 trial, we deduce same by noting the next submission in the court record. On August 21 - 22, more than 180 days from the filing of his motion, appellant filed a motion to dismiss based upon a denial of his right to a speedy trial. Whether the court specifically ruled on this motion is unclear.

On October 3, 1995, appellant filed a second motion for a speedy trial. This motion apparently was granted, and a new trial date was set for February 22, 1996. Thereafter, the court record reflects that the trial date was moved to February 26 and then to March 5, 1996, which is when the trial finally took place. A jury found appellant guilty of first-degree and second-degree assault, and he was sentenced to fifteen years and five years, respectively. The sentences were to run concurrently for a total of fifteen years' imprisonment. This appeal followed.

The Sixth Amendment of the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial" This Sixth Amendment right to a speedy trial has been codified in this Commonwealth in KRS 500.110, which provides as follows:

Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of this state, and whenever during the continuance of the term of imprisonment there is pending in any jurisdiction of this 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 and eighty (180) days after he shall have caused to be delivered to the prosecuting officer in 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 reasonable continuance. After a detainer has been lodged and a request for a speedy trial made, a trial must be held within 180 days of the

request provided good cause is not shown requiring reasonable delay.

In the case sub judice, appellant made a pro se motion for a speedy trial on January 25, 1995, and then again on October 3, 1995. The record indicates that the trial did not take place until March 5, 1996. Upon the face of the record, it is clear that the trial occurred outside the 180-day speedy trial requirement. As this Court has not been privileged with the reason(s) for the delay of one year between the initial request for speedy trial and the trial, we are unable to conclude that any good reason exists to justify such a delay. The Commonwealth points to delays caused by appellant; however, these delays took place before appellant's initial April 1995 motion for a speedy trial and are, thus, irrelevant.

Upon the whole, we are of the opinion that appellant was denied his right to a speedy trial. We believe the appropriate remedy for appellant's denial of a speedy trial is the dismissal of the indictment. Strunk v. United States, 411 U.S. 434, 93 S. Ct. 2260, 37 L. Ed. 2d 56 (1973). Thus, we reverse and remand this cause to the Franklin Circuit Court with directions to set aside appellant's judgment, vacate the sentence, and dismiss the indictment.

As to appellant's remaining contentions, we deem them moot.

For the foregoing reasons, the judgment of the Franklin Circuit Court is reversed, and this cause is remanded for proceedings consistent with this opinion.

HUDDLESTON, JUDGE, CONCURS.

EMBERTON, JUDGE, DISSENTS.

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