

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1997-CA-002599-MR

CHARLES CLIFFORD TURNER

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE ROGER CRITTENDEN, JUDGE  
ACTION NO. 94-CR-000057

COMMONWEALTH OF KENTUCKY

APPELLEE

AND: NO. 1997-CA-002649-MR

CHARLES CLIFFORD TURNER

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE ROGER CRITTENDEN, JUDGE  
ACTION NO. 94-CR-000097

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: COMBS, DYCHE AND GUIDUGLI, JUDGES.  
GUIDUGLI, JUDGE. At the onset, the Court would be remiss if it failed to note that it attempted to the best of its ability to follow the time line set forth in the record for the events occurring in the present cases. However, there are numerous

inconsistencies and gaps that are unaccounted for in the record. Moreover, there are several continuances of appellant's trial without explanation, none of which appear to be the fault of either party. While the record keeping in this case has been shoddy to say the least, there are enough facts in the record that we can establish that appellant's right to a speedy trial was not violated. Thus, we affirm.

On May 12, 1994, the grand jury of the Franklin Circuit Court indicted appellant Charles Clifford Turner ("Turner") charging him with theft of a motor vehicle registration decal in violation of KRS 186.990(6) and being a persistent felony offender in the first degree pursuant to KRS 532.080. On July 6, 1994, Turner was also indicted in Franklin County for three counts of trafficking in a controlled substance in the first degree in violation of KRS 218A.1412.

Turner apparently was to appear in Franklin Circuit Court on July 15, 1994, but failed to do so. Therefore, on July 21, 1994, a bench warrant was issued, but it was not served on Turner. No explanation is included in the record as to why it was not served.

Turner was arraigned and pled not guilty to all charges on September 30, 1994. Apparently at this time Turner was lodged in the Roederer Correctional Complex as he had been arrested in Jefferson County in September of 1994 and thereafter convicted of charges other than those at issue presently. However, the record does not reflect whether Turner made the Franklin Circuit Court aware of this when he was arraigned on September 30, 1994. This

appears to be the last time Turner appeared before the court on the charges currently at issue. The record fails to explain why the bench warrant issued on July 21, 1994, was not served on Turner at this time. Nonetheless, on October 13, 1994, the trial judge ordered that Turner be released on his own recognizance although Turner was incarcerated at the Roederer Correctional Complex at that time.

The record thereafter has a gap of approximately two years when apparently it came to the attention of the Commonwealth Attorney's Office that the July 1994 bench warrant had not been served on Turner. The Jefferson County Sheriff's department attempted to serve it, but returned it on November 12, 1996, with a notation that Turner could not be located.

It later came to the attention of the Commonwealth Attorney's Office that Turner was incarcerated in the Roederer Correctional Complex. In early 1997, a detainer was served against Turner for the charges currently at issue.

On February 13, 1997, Turner filed a pro se "Motion for Fast and Speedy Trial of All Untried Indictments, Informations, or Complaints." The trial judge set both cases for trial on April 10, 1997. Thereafter, for reasons not included in the record, Turner's trial was continued several times.

On May 5, 1997, Turner filed a pro se motion to dismiss the charges for failure to prosecute arguing that over two years had passed since the indictment. The trial judge overruled Turner's motion on May 23, 1997, without explanation.

On August 14, 1997, Turner, through counsel, filed a second motion to dismiss for failure to prosecute arguing that KRS 500.110's 180-day limit had been violated. On August 22, 1997, a hearing was held on this matter. During this hearing, the prosecutor argued that the Commonwealth Attorney's Office had never received a copy of Turner's motion for a speedy trial. The trial judge overruled Turner's motion to dismiss, once again without explanation, and stated that Turner's trial would be held by November or the charges against him would be dismissed. Thereafter, Turner's trial on theft of a motor vehicle registration decal and being a persistent felony offender was set for October 21, 1997. His trial for trafficking in a controlled substance was set for November 11, 1997. On September 26, 1997, pursuant to a plea bargain, Turner conditionally pled guilty, reserving his right to appeal the trial judge's pretrial ruling that he was not denied a fast and speedy trial. Turner was then sentenced to five years' imprisonment for the charges included in 94-CR-00057 to run concurrently with the charges listed in 94-CR-00097. Turner now appeals the trial judge's ruling on his motion to dismiss. The cases have been consolidated sua sponte.

Kentucky Revised Statutes § 500.110 states as follows:

Whenever a person has entered upon terms 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 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. (Emphasis added).

Turner filed his motion for a speedy trial pursuant to KRS 500.110 on February 13, 1997. However, the 180-day time period did not commence until Turner's request for final disposition of the charges against him had actually been delivered to the prosecuting officer. Wright v. Commonwealth, Ky. App., 953 S.W.2d 611, 615 (1997) (citing Fex v. Michigan, 597 U.S. 43, 113 S.Ct. 1085, 122 L.Ed. 406 (1993)). During the hearing on Turner's motion to dismiss, the prosecutor stated that the Commonwealth Attorney's Office had never received a copy of Turner's motion for a speedy trial invoking the 180-day time period. Nothing in the record indicates otherwise. Thus, pursuant to the controlling precedent set in Wright and Fex, we find that the 180-day time period did not commence to run in February of 1997 when Turner filed his motion. Hence, we find no violation of KRS 500.110.

Furthermore, we are not swayed by Turner's arguments concerning a speedy trial in the nearly three year delay between his indictment and the final trial date. Although the record is a poor example of court administration and following the time line in this case is almost an exercise in futility, it cannot be disputed that Turner was at least in part responsible for the delays. It is undisputed that he failed to appear before the

court in July of 1994 and a bench warrant was thereafter issued for his arrest. Moreover, he appeared in Franklin Circuit Court on September 30, 1994, and at that time could have informed the court of his incarceration, but apparently failed to do so. Thus, Turner was in part responsible for the delay. Hence, we find no error in the trial court's overruling Turner's motion to dismiss. For the foregoing reasons, we affirm.

COMBS, JUDGE, CONCURS.

DYCHE, JUDGE, CONCURS IN RESULT ONLY.

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