

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001467-MR

CRAIG EASTER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY PAYNE, JUDGE
ACTION NO. 97-CR-781

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: GARDNER, MILLER AND SCHRODER, JUDGES.

GARDNER, JUDGE: Craig Easter (Easter) appeals from a conviction on one count of bail jumping with a one-year sentence enhanced to five years as a persistent felony offender. We affirm.

On July 7, 1997 Easter was indicted on one count of first-degree bail jumping and as a second-degree persistent felony offender (PFO). The matter proceeded to trial, where the jury returned a guilty verdict on the bail jumping charge. Easter then entered a plea of guilty on the PFO charge, subject to his right to appeal. He received a sentence of one year in

prison, which was enhanced to five years as a result of the plea on the PFO charge. This appeal followed.

Easter now offers a single claim of error. Prior to trial, he successfully moved to have certain discoverable items produced by the Commonwealth. Among those items was a document from Ohio relating to a prior felony conviction in that state which the Commonwealth intended to offer to support the PFO charge. Easter argued below that this document was not produced by the Commonwealth until the day of trial, and that he was in no position to rebut an out-of-state matter on so short a notice. Easter moved to have said document excluded from the evidence, and it is the denial of this motion which serves as the basis for the instant appeal. He now maintains that the trial court committed reversible error in denying his motion, and seeks to have the PFO conviction reversed.

We have closely studied the record, the law, and the arguments of counsel, and find no error. Of particular importance to our resolution of the instant appeal is the videotaped record of a hearing conducted on the matter on April 24, 1998.¹ As the Commonwealth notes in its brief, on this videotaped record the Commonwealth produced a copy of the Ohio conviction in question and offered Easter's trial counsel the opportunity both to inspect that copy in open court (which he did) and to receive an additional copy made from the Commonwealth's copy. Both parties noted that Easter had been represented on this matter by no less than four prior trial

¹Tape 1, 4/24/98, at about 10:52.

counsels, and the Commonwealth stated that a copy of the document in question had been previously produced for one of these counsels. The Commonwealth later stated on the record that a follow-up letter was mailed to Easter's trial counsel on May 1, 1998.

On or about the day of trial, the matter was again addressed at hearing. Upon considering the motion to exclude, the trial judge opined that Easter's counsel had been availed of the opportunity to examine the document at issue and that no prejudice to Easter had resulted. The trial judge also noted that Easter was raising a challenge to the date of release as set forth on the Ohio document, and that Easter should have raised this issue in a more timely manner.

The motion to exclude was denied, and we find no basis for tampering with this denial. Arguendo, even if the document at issue had not been produced for one of Easter's prior counsels, or for whatever reason it was not in the record, Easter's fifth and final trial counsel is shown on the record examining the document on April 24, 1998. He apparently did not accept the Commonwealth's oral and written offers to obtain a copy for his records, and we cannot conclude that the trial court erred in denying his motion to exclude the document from trial.

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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