

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-003131-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v.

APPEAL FROM LYON CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 97-CR-00025

JAMES DUNAWAY

APPELLEE

OPINION
REVERSING AND REMANDING
** **

BEFORE: DYCHE, GARDNER¹ AND MILLER, JUDGES.

GARDNER, JUDGE: The Commonwealth appeals from an order of the Lyon Circuit Court dismissing the indictment of James Dunaway (Dunaway) for failure to comply with the time constraints imposed by Kentucky Revised Statute (KRS) 500.110. We reverse and remand.

¹Judge Gardner prepared this opinion, and it was concurred in prior to Judge Gardner's leaving the Court on January 2, 2000.

The facts are uncontroverted.² On November 22, 1995, Dunaway was indicted by the Lyon County Grand Jury on charges of criminal syndication, first-degree trafficking in a controlled substance, and with being a persistent felony offender. At the time of indictment, Dunaway was serving time in the Kentucky State Penitentiary on a prior conviction. The following month at hearing, he orally requested a speedy trial. On December 7, 1995, a detainer based on the indictment was lodged with the Kentucky State Penitentiary.

In December 1995, Dunaway mailed a request for a speedy trial pursuant to KRS 500.110 to the Lyon County Commonwealth Attorney. Dunaway again orally requested a speedy trial at a pre-trial hearing conducted on February 2, 1996. After a trial date was set for July 24, 1996, Dunaway filed a formal motion for a speedy trial.

On May 6, 1996, the Commonwealth filed a motion seeking to dismiss the indictment against Dunaway. As a basis for the motion, it stated that it intended to try Dunaway's non-inmate co-defendants first, and in so doing would be unable to bring Dunaway to trial under the time constraints imposed by KRS 500.110. After a hearing on the matter was conducted, the motion was granted and the indictment was dismissed without prejudice.

²The Commonwealth has not provided this Court with any portion of the record prior to July 18, 1997. Our recitation of the facts before this date is derived solely from the order from which the Commonwealth now appeals. As the Commonwealth has accepted the circuit court's rendition of the facts as accurate, we have relied on them to the extent necessary to supplement the record.

On July 17, 1997, the Lyon County Grand Jury re-indicted Dunaway on the same charges set forth in the prior indictment. On September 4, 1997, Dunaway moved to dismiss this new indictment as violative of KRS 500.110. In granting the motion, the circuit court opined that allowing the Commonwealth to dismiss cases to circumvent the time constraints imposed by KRS 500.100 would violate the intent of the statute. The Commonwealth now appeals.

The Commonwealth's sole claim of error is that the circuit court improperly dismissed the 1997 indictment. Specifically, it argues that the dismissal of the 1995 indictment removed the matter from strictures of KRS 500.110 because that statute applies only to persons under indictment. It maintains that without a pending indictment, KRS 500.110 had no bearing on proceedings. As such, it argues that it was entitled to proceed with the 1997 indictment. Dunaway has not filed a responsive brief. We have closely studied the facts, the law, and the arguments of counsel, and must reverse and remand.

KRS 500.110 states that,

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 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.

In construing a statute, the words employed should be given their ordinary meaning, Lynch v. Commonwealth, Ky., 902 S.W.2d 813, 814 (1995), and where the statutory language is clear one should not interpret the statute beyond the text or words used in an attempt to surmise the intent of the legislature. George v. Commonwealth, Ky., 885 S.W.2d 938, 940 (1994); Owensboro Cablevision, Inc. v. Libs, Ky. App., 863 S.W.2d 331, 333 (1993).

The clear language of KRS 500.100 makes its provisions applicable only to persons who are: 1) held under a term of imprisonment in a penal or correctional institution of the Commonwealth, AND 2) are subject to an untried indictment, information or complaint. It is uncontroverted that Dunaway is not subject to an untried indictment, information or complaint. As such, it cannot reasonably be argued that the Commonwealth is bound by the dictates of KRS 500.110. We do not believe that KRS 500.110 bars the Commonwealth from seeking the dismissal of an indictment without prejudice, and accordingly must conclude that the trial court erred on this issue.

For the foregoing reasons, we reverse the order of the Lyon Circuit Court and remand the matter for proceedings consistent with this opinion.

DYCHE, JUDGE, CONCURS.

MILLER, JUDGE, DISSENTS WITHOUT SEPARATE OPINION.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

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