

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000538-MR

JEANNE LYNN STARR

APPELLANT

v. APPEAL FROM JESSAMINE CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 99-CR-00142

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GUDGEL, CHIEF JUDGE; COMBS AND KNOPF, JUDGES.

KNOPF, JUDGE. Jeanne Lynn Starr appeals from a judgment of the Jessamine Circuit Court entered on February 29, 2000, sentencing her to imprisonment for two years for theft by deception over \$300 and forgery in the second degree on a conditional plea of guilty under CR¹ 8.09. Under the conditional plea, Starr reserved the right to appeal the circuit court's decision denying her motion to dismiss the indictment on speedy trial grounds

¹Kentucky Rules of Criminal Procedure.

pursuant to KRS² 500.110. After reviewing the record and the arguments of counsel, we find no error and, therefore affirm.

On June 9, 1998, Starr obtained possession of a 1998 Subaru Forester through a lease agreement using a false identity supported by a fictitious driver's license and credit card. On July 2, 1998, Detective Chris Hinerman filed a criminal complaint in Jessamine District Court charging Starr with theft by deception over \$300³ and forgery in the second degree⁴. The district court issued an arrest warrant the same day and the warrants were served on Starr in Lexington, Kentucky, on July 3, 1998.

Starr subsequently was incarcerated at the Kentucky Correctional Institution for Women (KCIW) at Peewee Valley, Kentucky, in December 1998. A detainer for Starr issued by the Jessamine District Court was lodged with KCIW in either December 1998 or February 1999.⁵

On April 30, 1999, Starr filed a handwritten pro se motion entitled "Motion to Include Charges Pursuant to Federal Rule 40.1; or Dismiss Charges Due to Non-Reply/Response of Fast and Speedy Trial Request." In the motion, she asked the district

²Kentucky Revised Statute.

³KRS 514.040.

⁴KRS 516.030.

⁵The record is unclear on exactly when Starr was received at KCIW and when the first district court detainer was lodged by the prison. Starr alleges she was incarcerated at KCIW on December 21, 1998, and a detainer was received by the prison on the same date. An Acknowledgement of Detainer document in the record indicates that a district court detainer was lodged at KCIW on February 24, 1999.

court to allow the federal court⁶ to resolve the pending Kentucky state felony charges or alternatively to dismiss the indictment based on two speedy trial requests she alleged to have made on September 21, 1998, and December 23, 1998. The district court issued an order of transport to the KCIW for arraignment scheduled for May 19, 1999, but Starr was not available because she had been transported to Detroit, Michigan, on federal criminal charges.

On July 6, 1999, Starr filed a pro se motion to dismiss the indictment under KRS 500.110 stating she had filed a previous motion for final disposition more than 180 days earlier and had received no response. The certificate of service states a copy of the July 6 motion was mailed to the Jessamine County Commonwealth's Attorney.

On July 13, 1999, Starr appeared before the district court for a preliminary hearing, which resulted in the court waiving the case to the grand jury. The detainer issued by the Jessamine District Court was released on September 24, 1999.

On August 27, 1999, the Jessamine County grand jury issued an indictment charging Starr with theft by deception over \$300 and forgery in the second degree. The Jessamine Circuit Court issued a bench warrant for her arrest and scheduled arraignment for September 24, 1999. On that date, Starr did not appear and the court was informed she was incarcerated in either Michigan or KCIW. On September 27, 1999, KCIW lodged a detainer

⁶Starr apparently had fraud charges pending against her in federal court in Michigan at the time.

based on the indictment and bench warrant out of Jessamine Circuit Court.

Starr sent another pro se motion to dismiss the indictment to the Jessamine Circuit Court dated October 15, 1999 (and filed October 20, 1999) seeking dismissal pursuant to KRS 500.110 for failure to bring her to trial within 180 days under the time limits in the statute. In the motion, she alleged that she had "filed" with the Jessamine County courts a motion for speedy trial pursuant to KRS 500.110 in December 1998, and a motion to dismiss the indictment in July 1999, but had received no response. She also stated that she had raised the issue of these motions with the district court judge at the preliminary hearing but was told she needed to bring the matter before the circuit court. The certificate of service on the October 1999 motion indicated a copy of the motion had been sent to the Jessamine County Commonwealth's Attorney. On November 2, 1999, circuit court Judge Robert Jackson entered an order denying the motion to dismiss stating that Starr had not complied with the procedural requirements of KRS 500.110. The court said Starr needed to notify the Jessamine County Commonwealth's Attorney of her request for a speedy trial under the statute. On November 29, 1999, Starr was arraigned in Jessamine Circuit Court and an attorney was appointed to represent her.

On January 24, 2000, Starr's attorney filed a motion to dismiss the indictment pursuant to KRS 500.110. In the memorandum, counsel alleged that Starr had been incarcerated at KCIW on December 21, 1998. Attached to the motion was a document

from the KCIW records supervisor indicating that the prison had received a district court detainer on December 21, 1998. Relying on Huddleston v. Jennings,⁷ counsel argued that Starr's motions for speedy trial in September 1998 and December 1998 were sufficient to invoke the requirements of KRS 500.110. In February 2000, Starr sent a pro se motion for dismissal under KRS 500.110 to the circuit court and the Commonwealth's Attorney in which she cited Huddleston, supra, based on her earlier motions of December 1998 and July 1999. She attached handwritten copies of letters she allegedly sent to the Jessamine County Commonwealth's Attorney dated April 5, 1999, April 16, 1999, and April 27, 1999, discussing her attempts to raise the speedy trial issue in her motions of December 1998 and April 1999.

On February 1, 2000, the circuit court conducted a hearing on Starr's motion to dismiss the indictment under KRS 500.110. The Commonwealth argued that Starr had failed to establish that she had complied with the filing requirements of the statute. Copies of the various motions and correspondence from Starr to the Commonwealth's Attorney were entered into the circuit court record at the hearing. The court denied the motion stating Starr had failed to properly notify the County Attorney of her speedy trial request and that trial had been scheduled within the 180 day period once the request was properly lodged with the Commonwealth's Attorney and circuit court.

Following denial of her motion to dismiss, Starr entered a conditional plea of guilty pursuant to CR 8.09 to the

⁷Ky. App., 723 S.W.2d 381 (1986).

two offenses reserving the right to appeal the circuit court's denial of the motion to dismiss. The court sentenced Starr in accordance with the Commonwealth's recommendation to two years on each of the two counts of theft by deception over \$300 and forgery in the second degree to run concurrently for a total sentence of two years. This appeal followed.

Starr contends that the circuit court erred in holding that she was not entitled to dismissal of the indictment because she had been brought to trial within the 180 day period prescribed by KRS 500.110, which states 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 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.

Starr sets forth a time sequence in her appellate brief for her correspondence and alleged requests for a speedy trial beginning with December 23, 1998, and including April 5, 1999, April 16, 1999, April 30, 1999, July 1, 1999, July 6, 1999, and

October 20, 1999.⁸ She argues that because a detainer out of Jessamine District Court was lodged against her on December 21, 1999, any of the above-noted requests, other than the last, would support dismissal under the statute. She relies on the leading case interpreting KRS 500.110, Huddleston v. Jennings, where the court indicated that a defendant need not make an additional request for a speedy trial in circuit court following indictment by a grand jury where a proper request was made in district court in a felony case that begins in district court. The court felt it was not an unreasonable burden to require the county attorney and district court to forward the request for final disposition to the Commonwealth's Attorney and circuit court, respectively, following transfer of the case to the circuit court for indictment.⁹ The court stated:

We believe the intent of the statute is that the 180 days begin to run once an otherwise proper request is made to the court in which the detainer charge was pending when lodged and to the normal prosecutor in that court. An indictment on the same charge subsequent to the lodging of the detainer would not require that the request be made to the circuit court and the Commonwealth Attorney unless the indictment had become the basis for the detainer. If, however, the subsequent indictment is known to the prisoner, there appears no sound reason why he should not be entitled to make his request

⁸Counsel has not included the September 1998 request perhaps because it would not qualify under the statute because it preceded the earliest alleged date of the district court detainer. See note 11.

⁹ 723 S.W.2d at 383 (emphasis added).

directly to the circuit court and the Commonwealth's Attorney.¹⁰

In the current case, the circuit court found that the October 20, 1999, motion was the first request that complied with the requirements of KRS 500.110. It refused to acknowledge the December 23, 1998, motion because Starr failed to prove that it had been filed with the district court. Starr did not provide a copy of the December 1998 motion, and there was no copy in the record. In addition, we note that there is a conflict in the record concerning whether a detainer was actually lodged in December 1998 as alleged by Starr or in February 1999. If the detainer was not lodged with KCIW until February 1999, the December 1998 request would not qualify under the statute because it would have preceded the district court detainer.¹¹

Similarly, although the district court received notice of Starr's motions and requests in April 1999, the circuit court found that there was nothing in the record indicating that any of the motions or letters requesting final disposition had been served on the county attorney. Indeed, the documents in the record and those provided at the February 2000 hearing indicated that the motions (requests) were sent to the Commonwealth's Attorney. Of course, once the case was transferred to the circuit court and that court's detainer was lodged, Starr had to give notice to the circuit court and the Commonwealth's Attorney,

¹⁰Id.

¹¹Id. (The triggering mechanism bringing the statute into play is the lodging of a detainer against a prisoner); Rushin v. Commonwealth, Ky. App., 931 S.W.2d 456 (1996).

her attempt to notify the district court having failed. We agree with the circuit court's analysis, and a review of the record supports the finding that Starr failed to comply with KRS 500.110 prior to October 1999. She did not notify in writing the proper prosecuting officer (the county attorney) and the appropriate court of the prosecuting officer's jurisdiction (the district court) related to the district court detainer lodged against her.

Starr asserts that the initial November 1999 circuit court order denying her motion to dismiss, which states that the proper prosecuting officer for notice was the Commonwealth's Attorney, and the second February 2000 circuit court order denying the motion, which states that she had to notify the county attorney, are inherently contradictory. The inconsistency can perhaps be explained by the lack of information available to the court when it made the initial ruling. The first order was rendered based on Starr's pro se October 1999 motion without a hearing. It appears that the circuit court may have known of the September 1999 circuit court detainer but was not fully aware of the February 1999 district court detainer.

In any event, the circuit court subsequently appointed counsel for Starr and she was allowed to refile the motion to dismiss. Starr renewed the motion and the court conducted a hearing providing her an opportunity to submit further documentation and evidence to support her position. As the court noted, the situation was complicated by the fact that Starr was transferred from state custody to federal custody on several occasions throughout the period. Despite Starr's numerous

efforts to accelerate the prosecution of her case, she has failed to establish that she complied with the requirements of KRS 500.110. Her notices to the Commonwealth's Attorney prior to the indictment and transfer to circuit court, at which time he became responsible for prosecuting the case, were not sufficient to invoke the statutory time limitations. Although pro se pleadings are generally treated liberally, we cannot say the circuit court erred in finding that Starr failed to comply with requirements of KRS 500.110 and in denying her motion to dismiss the indictment.

For the foregoing reasons, we affirm the judgment of the Jessamine Circuit Court.

GUDGEL, CHIEF JUDGE, CONCURS.

COMBS, JUDGE, DISSENTS BY SEPARATE OPINION.

COMBS, JUDGE, DISSENTING: Respectfully, I dissent. I believe that the appellant is entitled to rely on Huddleston v. Jennings, Ky.App., 723 S.W.2d 381 (1986), for the proposition that she made timely efforts to comply with the notification requirement of KRS 500.110 repeatedly. At the very least, the cumulative import of the numerous notices that she sent should be taken into consideration. Huddleston essentially holds that the intent of the statute is that a prisoner give meaningful notice in timely fashion - not that he or she be held to a hyper-technical standard of compliance requiring repetitious notices to the same authorities. It appears to me that the appellant in this case substantially complied with the statute as construed by Huddleston, supra.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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