

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002560-MR

JAMES W. HATTON

APPELLANT

v.

APPEAL FROM SCOTT CIRCUIT COURT
HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 00-CR-00015

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BUCKINGHAM, KNOPF, AND SCHRODER, JUDGES.

KNOPF, JUDGE: James Hatton appeals from a conditional guilty plea pursuant to RCr 8.09 to a charge of burglary in the second degree.¹ He argues that the Scott Circuit Court erred by denying his motion to dismiss due to the Commonwealth's failure to bring his case to trial within 180 days from the date he filed his motion pursuant to KRS 500.110. Although certain aspects of this case are troubling, we conclude that Hatton's failure to object to the assignment of a trial date beyond the 180-day limit

¹ KRS 515.030.

constituted a waiver of his rights under the statute. Hence, we affirm.

Although the relevant facts of this action are not seriously in dispute, the procedural time-line of this action before the circuit court is significant. On January 7, 2000, a Scott County grand jury returned an indictment against Hatton charging him with first degree robbery² arising from his participation in the robbery of a convenience store on October 28, 1999. The indictment further charged him with several traffic violations.³

On February 15, 2000, the Department of Corrections, Roederer Correctional Complex lodged a detainer against Hatton based upon a robbery charge arising in Fayette County. On February 24, Hatton filed a motion requesting final disposition of the charges against him within 180 days, as provided by KRS 500.110. On March 6, Hatton was arraigned in Scott Circuit Court, where he entered pleas of not guilty to all charges. A disposition hearing was scheduled for April 3, but Hatton's counsel was not present and the hearing was continued. On May 1, Hatton appeared before the court to request a trial date. However, the regular presiding circuit judge was not present, and the substitute judge declined to assign a trial date in that judge's absence. Over Hatton's objection, the trial court passed the motion to set a trial date to the following month. When Hatton appeared again on June 5, he had a new public defender.

² KRS 515.020.

³ Driving without a headlight, KRS189.040; operating a motor vehicle without insurance, KRS 304.39-080; operating a motor vehicle with an expired registration, KRS 186.170; and failure to wear seatbelt, KRS 189.125.

The trial court set the case for trial on September 27. However, Hatton's counsel did not object to the court setting a date beyond the 180-day limit.

On September 11, Hatton filed a *pro se* motion to dismiss the indictment for failure to prosecute. Following a hearing on September 27, the trial court denied the motion, finding that Hatton had waived his right to a trial within 180 days by failing to object to the assigned trial date outside that limit. Thereafter, Hatton entered a conditional guilty plea to an amended charge of second degree robbery. The other charges in the indictment were dismissed. The trial court sentenced Hatton to ten years on the robbery conviction, to run concurrently with another robbery conviction from Fayette County. This appeal followed.

KRS 500.110 allows a defendant who is incarcerated for one offense and against whom a detainer has been lodged to answer for another offense, to request a trial within 180 days.⁴ There

⁴Specifically, KRS 500.110 provides:

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.

is no question that Hatton properly invoked the provisions of KRS 500.110. Similarly, the trial court clearly failed to schedule his trial within 180 days from the date the motion was served on the Commonwealth, and there was no finding of good cause to warrant a continuance. The only question presented in this appeal is whether Hatton should have raised this objection on June 5, 2000, when the trial date was assigned.

KRS 500.110 is nearly identical to the Interstate Agreement on Detainers (IAD), which is adopted in Kentucky through KRS 440.450. Thus, case law interpreting the IAD is equally applicable to KRS 500.110.⁵ The IAD requires that a prisoner against whom an interstate detainer has been filed must be promptly notified of that fact and of his right to demand a trial, and if he demands a trial then a trial must be held within 180 days. The request is a waiver of extradition by the prisoner. If a trial is not held within 180 days and good cause for delay is not shown, the charges are dismissed with prejudice.⁶ The time limits set in the IAD are to be strictly applied, and harmless error analysis is not applicable.⁷

In New York v. Hill,⁸ the United States Supreme Court held that a defendant implicitly waives the IAD's time limits where he or his counsel agrees to a trial date outside those

⁵ Rushin v. Commonwealth, Ky. App., 931 S.W.2d 456, 459-60 (1996).

⁶ Dunaway v. Commonwealth, Ky., 60 S.W.3d 563, 566-67 (2001).

⁷ Alabama v. Bozeman, 533 U.S. 146, 153-57, 150 L. Ed. 2d 188, 196-97, 121 S. Ct. 2079, 2084-86 (2001).

⁸ 528 U.S. 100, 145 L. Ed. 2d 560, 120 S. Ct. 659 (2000).

limits. In rejecting the argument that waiver is possible only by affirmative conduct, the Hill court stated:

Finally, respondent argues that even if waiver of the IAD's time limits is possible, it can be effected only by affirmative conduct not present here. The New York Court of Appeals adopted a similar view, stating that the speedy trial rights guaranteed by the IAD may be waived either "explicitly or by an affirmative request for treatment that is contrary to or inconsistent with those speedy trial rights." 92 N.Y.2d at 411, 704 N.E.2d, at 545. The court concluded that defense counsel's agreement to the trial date here was not an "affirmative request" and therefore did not constitute a waiver. Id. at 412, 704 N.E.2d at 546. We agree with the State that this makes dismissal of the indictment turn on a hypertechnical distinction that should play no part. As illustrated by this case, such an approach would enable defendants to escape justice by willingly accepting treatment inconsistent with the IAD's time limits, and then recanting later on. Nothing in the IAD requires or even suggests a distinction between waiver proposed and waiver agreed to. In light of its potential for abuse--and given the harsh remedy of dismissal with prejudice--we decline to adopt it.⁹

Hatton contends that the facts presented in Hill are distinguishable from his case because the trial date was not the product of any negotiation between the parties. Rather, the trial court assigned the September 27 trial date because it was the earliest available date. Thus, Hatton asserts that his failure to object was not evidence of acquiescence, because any objection to the trial date would have been fruitless.¹⁰

⁹ Id., 528 U.S. at 118, 145 L. Ed. 2d at 569, 120 S. Ct. at 666.

¹⁰ See Commonwealth v. Mayle, 2001 Pa. Super 202, 780 A.2d 677 (Pa. Super., 2001).

It is apparent that Hatton's motion for a speedy trial was not handled in an ideal manner. The Commonwealth conceded that it misfiled Hatton's motion after it had been served. For reasons which are not clear from the record, the substitute judge declined to set a trial date and passed the motion, even over Hatton's objection. And the disqualification of Hatton's first two public defenders, for reasons which were not related to any conduct by Hatton, undoubtedly led to his motion for a speedy trial being overlooked. Nonetheless, if Hatton had raised his objection on June 5, 2000, when the September 27 trial date was set, the trial court might have been able to transfer the case or have a special judge assigned for an earlier date. The Commonwealth might also have made a timely motion for a continuance. In any event, neither Hatton nor his trial counsel objected to the assignment of a trial date beyond the 180-day limit. Pursuant to Hill, Hatton's agreement to a trial date beyond the 180-day limit constituted a waiver of his speedy trial rights.

Accordingly, the judgment of the Scott Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Richard Hoffman
Assistant Appellate Advocate
Department of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler, III
Attorney General of Kentucky

Wm. Robert Long, Jr.
Assistant Attorney General
Frankfort, Kentucky