

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-001490-OA

SHERMAN LOUIS GENE NOBLE,

PETITIONER

V. ON REMAND FROM SUPREME COURT OF KENTUCKY  
NO. 2000-SC-000907-OA

ORIGINAL ACTION  
REGARDING FROM JEFFERSON CIRCUIT COURT  
ACTION NO. 96-CR-002257

STEPHEN P. RYAN, JEFFERSON  
CIRCUIT COURT JUDGE

RESPONDENT

\* \* \* \* \*

### OPINION AND ORDER

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

GUDGEL, JUDGE: On June 26, 2000, the petitioner, Sherman Louis Gene Noble, filed a *pro se* petition for writ of prohibition with this Court seeking to prohibit the respondent, Hon. Stephen P. Ryan, Jefferson Circuit Court Judge, Sixth Division, from subjecting him to prosecution on several felony counts, including three counts of murder. This Court denied Noble's petition on September 1, 2000 without presenting any legal reasons for its denial. Noble appealed to the Supreme Court of Kentucky. On May 16, 2002, the Supreme Court reversed and remand the petition to this Court with instructions to provide an opinion and order setting forth legal reasons for this Court's denial of Noble's

petition for writ of prohibition.

On August 6, 1987, Noble was indicted and charged with murder in Jefferson Circuit Court Indictment 87-CR-001185. This indictment was dismissed on February 8, 1989. On December 2, 1992, Noble was again indicted and in Jefferson Circuit Court Indictment 92-CR-003135 was charged with four counts of murder, three counts of robbery in the first degree and three counts of burglary in the first degree. This indictment was dismissed on July 8, 1994. On October 2, 1996, Noble was indicted yet again. In Jefferson Circuit Court Indictment 96-CR-002257, Noble was again charged with four counts of murder, three counts of robbery in the first degree and three counts of burglary in the first degree. The record reflects that Noble's competency to stand trial was at issue.

In his petition, Noble argues that his right to a speedy trial has been violated because he was originally charged fourteen years ago. In his petition, Noble does not differentiate between Jefferson Circuit Court Indictment 87-CR-001185, Jefferson Circuit Court Indictment 92-CR-003135 and Jefferson Circuit Court Indictment 96-CR-002257, and he refers to them as one case. Noble argues that on August 26, 1991, the Jefferson Circuit Court granted him a speedy trial and he attached an order from the Jefferson Circuit Court styled Indictment 87-CR-001185. This order, which apparently was entered after the indictment was dismissed, set the case for pre-trial conference on October 4, 1991 and set the case for trial on February 25, 1992. However, the record reflects that Indictment 87-CR-001185 was dismissed. Noble also claims that he has made

several motions to dismiss based on the alleged violation of his right to receive a speedy trial.

Noble argues that in 1991 he was involuntarily committed to the Kentucky Correctional Psychiatric Center for sixty days. He claims that the Commonwealth moved to have him evaluated, presumably for competency to stand trial, on May 17, 1993 and that he was involuntarily committed to Central State hospital for a period three hundred and sixty days. Apparently, Noble spent the next few years at Central State since he argues that the circuit court failed to enter re-commitment orders for the years 1995 and 1996 as required by KRS 202A.051. Noble argues that he was finally found competent to stand trial on August 4, 1997 but that no trial date was ever set.

Noble cites Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182 (1972) and argues that due to the fourteen year delay he has lost crucial defense witnesses, such as Ms. Wanda Eley, who has died. He argues that due to the delay the Commonwealth has lost exculpatory physical evidence and that it now has an unfair advantage over him. Noble cites Spivey v. Jackson, Ky., 602 S.W.2d 158 (1990) and argues his case should be dismissed. Noble cites Daggett v. U.S., 508 U.S. 647, 112 S.Ct. 2686 (1992) and argues that the Supreme Court of the United States has held that an eight and half year delay violated the right to speedy trial; therefore, a fourteen year delay is presumptively prejudicial. Finally, Noble cites Mann v. Commonwealth, Ky., 561 S.W.2d 335 (1978) and argues that the state speedy trial provision has been violated.

On July 7, 2000, the Commonwealth responded to Noble's

petition for writ of prohibition. The Commonwealth argues that Noble failed to show that the Jefferson Circuit Court acted or is about to act outside its jurisdiction and that Noble failed to show he is entitled to a writ of prohibition because he has an adequate remedy by appeal. The Commonwealth points out that writs are extraordinary remedies which will only be issued "under exceptional circumstances...to prevent a miscarriage of justice." Commonwealth v. Williams, Ky., 995 S.W.2d 400, 401 (1999). The Commonwealth cites Haight v. Williamson, Ky., 833 S.W.2d 821 (1992); Vinson v. Warren, Ky., 425 S.W.2d 562 (1968) and Anderson v. Johnson, Ky., 314 S.W.2d 202 (1958) and argues that a denial of the right to speedy trial is answerable on appeal; therefore, Noble is not entitled to the extraordinary relief of prohibition.

Pursuant to Tipton v. Commonwealth, Ky. App., 770 S.W.2d 239 (1989), to obtain a writ of prohibition, a petitioner must show either:

- 1) that the lower court is proceeding or is about to proceed outside its jurisdiction and the petitioner has no adequate remedy by appeal, or
- 2) that the lower court is about to act incorrectly but within its jurisdiction and the petitioner has no adequate remedy by appeal or, absent the writ, the petitioner will suffer great injustice and irreparable harm.

In his petition, Noble failed to show that the Jefferson Circuit Court proceeded or is about to proceed outside its jurisdiction or that it is acting within its jurisdiction but incorrectly. Noble also failed to show that he will suffer great injustice and irreparable harm absent the writ. Most importantly, Noble failed to show that he has no adequate remedy by appeal. In Haight v.

Commonwealth, Ky., 833 S.W.2d 821, 823 (1992), the Supreme Court of Kentucky stated that, "any violations of constitutional rights in a criminal conviction provide no basis for issuance of a writ." (citation omitted) In fact, in Anderson v. Johnson, Ky., 314 S.W.2d 202 (1958), petitioner was convicted of murder and sentenced to life. Nine years later, he received parole and was promptly indicted for grand larceny because he had stolen a cow during or near the time of the murder. Petitioner filed a petition for writ of prohibition and argued his right to a speedy trial had been violated due to the Commonwealth waiting nine years to indict him. The Kentucky Court of Appeals, now the Supreme Court of Kentucky, held:

We find no merit in the contention that the petitioner would have no adequate remedy should he be convicted because § 172, Criminal Code of Practice, limits his pleas to guilty, not guilty and former jeopardy, and does not provide for any plea by which the defendant may raise the question stated. . . . The defendant may enter his claim of a violation of his constitutional rights by an appropriate motion to abate or dismiss the indictment. If such a motion be entered and decided adversely to the defendant and he should be convicted, he will have the right to have the decision reviewed on an appeal.

Therefore, having considered Noble's *pro se* petition for writ of prohibition and being otherwise advised, this Court ORDERS that the petition be, and it is hereby, DENIED for the reasons stated above.

ENTERED: September 13, 2002

/s/ Paul D. Gudgel

JUDGE, COURT OF APPEALS