

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001762-OA

DONALD PUCKETT,

PETITIONER

V. ORIGINAL ACTION
REGARDING BOYLE CIRCUIT COURT
ACTION NO. 01-CR-00052

DARREN W. PECKLER, JUDGE,
BOYLE CIRCUIT COURT, ET AL.

RESPONDENTS

* * * * *

OPINION AND ORDER
DENYING PETITION UNDER CR 76.36

BEFORE: BUCKINGHAM, GUIDUGLI, AND KNOPF, JUDGES.

BUCKINGHAM, JUDGE: In the above-styled original action, petitioner has been charged with a felony in the Boyle Circuit Court, Indictment No. 01-CR-00055. Petitioner is currently serving a prior felony sentence. After he was indicted by the Boyle County grand jury, a detainer was lodged against him. Petitioner then filed a written notice, pursuant to KRS 500.110, to be tried on the Boyle County charge within 180 days. After 180 days had passed without being brought to trial, petitioner joined in a motion to dismiss filed by his co-defendant, pursuant to KRS 500.110, with the Boyle Circuit Court.

In an August 8, 2002 order and opinion, the Boyle Circuit Court denied the motion to dismiss. The circuit court found it was necessary to grant various continuances in petitioner's case because the Department of Public Advocacy had to obtain conflict free counsel for him, petitioner's trial attorney needed obtain discovery, and the circuit court was required to hold an evidentiary hearing to determine whether the Commonwealth had to reveal the identity of its confidential informant. Petitioner then filed this petition for writ of prohibition and requests this court to issue the writ to prohibit the Boyle Circuit Court from trying him.

A petition for writ of prohibition is an extraordinary remedy. This court will only grant such a writ when the petitioner shows the following: 1) the trial court is proceeding or is about to proceed outside its jurisdiction and the petitioner has no adequate remedy by appeal, or 2) the trial court is acting within its jurisdiction but is acting incorrectly or is about to act incorrectly, the petitioner has no adequate remedy by appeal, and the petitioner will suffer great injustice and irreparable injury if the writ is not issued. Fisher v. State Board of Elections, Ky., 847 S.W.2d 718, 720 (1993).

KRS 500.110 states:

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. (Emphasis added)

First, it is clear that the Boyle Circuit Court was acting within its jurisdiction. Also, the Boyle Circuit Court found that the continuances granted in petitioner's case were reasonable and necessary. Petitioner has failed to show that the circuit court was acting within its jurisdiction but acting incorrectly or was about to act incorrectly.

Furthermore, since petitioner has not been convicted, he has failed to show that he has no adequate remedy by appeal. If he is convicted, he may appeal and argue this issue on appeal. Petitioner has failed to show he will be irreparably harmed or suffer great injustice if the writ is not granted.

Furthermore, petitioner in his petition stated he filed his written notice, pursuant to KRS 500.110, on October 3, 2001; however, petitioner states the Boyle County warrant was not served on him until October 9, 2001. This raises the question whether a detainer had been lodged against petitioner when he filed his written notice. KRS 500.110 requires a detainer to be lodged first before a written notice may be filed. However, even if a detainer had been lodged against petitioner when he filed his written notice, petitioner still admitted in his petition that the delays and continuances were necessary to obtain discovery of critical information.

Having considered petitioner's *pro se* petition for writ of prohibition, and being otherwise advised, this Court ORDERS that this petition be, and it is hereby, DENIED.

Further, having considered respondent's motion to consolidate the above-styled original action with the original action 2002-CA-001593, and being otherwise advised, this Court ORDERS that respondent's motion be, and it is hereby, DENIED.

ALL CONCUR

ENTERED: _____

JUDGE, COURT OF APPEALS

PETITION FOR DONALD PUCKETT:

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