

RENDERED: DECEMBER 5, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000186-MR

JUSTIN DARLAND

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE JEAN CHENAULT LOGUE, JUDGE
ACTION NO. 13-CR-00449

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: DIXON, JONES, AND VANMETER, JUDGES.

VANMETER, JUDGE: Justin Darland appeals from a Madison Circuit Court order denying his motion to dismiss for failure to grant a speedy trial. We affirm because Darland waived his right to a speedy trial, and has failed to show that he was prejudiced by the delay.

On June 3, 2010, the Madison District Court issued an arrest warrant for Darland on a third-degree burglary charge. He was arrested but subsequently failed to appear for his arraignment on April 24, 2012. The district court issued a bench warrant on a charge of contempt of court. It was served on Darland on May 4, 2012.

On June 27, 2012, a detainer was lodged against Darland on the burglary and contempt of court charges. At that time, he was incarcerated in the Fayette County jail on other charges. He was sentenced on charges in Fayette County on September 20, 2012, and in Jessamine County on December 3, 2012.

On May 30, 2013, Darland filed a pro se motion for a speedy trial in the Madison District Court, requesting a trial within 180 days. Darland's preliminary hearing on the burglary charge was delayed twice, on July 10, 2013, and on July 24, 2013. The first delay was caused by the county attorney's failure to subpoena the investigating officer to testify. The county attorney offered, in light of the speedy trial motion, to proceed with the hearing using hearsay testimony, but Darland's attorney objected, and also stated that the defendant was not withdrawing the speedy trial motion. The second delay was caused by the court's failure to issue a transport order for Darland.

The preliminary hearing was finally held on September 18, 2013, and the case was bound over to the Madison County Grand Jury, which returned an indictment on October 30, 2013, on charges of third-degree burglary and first-degree persistent felony offender (PFO).

On November 14, 2013, twelve days prior to the expiration of the 180 days specified in his speedy trial motion, Darland was arraigned in the Madison Circuit Court. His attorney made no mention of the motion for a speedy trial, however, and agreed to a pretrial conference on December 12, 2013.

On December 10, 2013, Darland filed a motion to dismiss for lack of a fast and speedy trial, pursuant to Kentucky Revised Statutes (KRS) 500.110. The trial court held a hearing on the motion, at which it determined that Darland waived the right to a speedy trial when defense counsel permitted the circuit court to set the pretrial date of December 12, 2013, without any objection. Darland then entered a guilty plea conditioned on his right to appeal the decision regarding the speedy trial motion. Darland was sentenced to serve five years on charges of third-degree burglary and second-degree persistent felony offender. On January 10, 2014, the trial court entered a written order denying the motion to dismiss, on the grounds that Darland had waived his right to a speedy trial, and that in any event, the delay had not prejudiced Darland. This appeal followed.

The right to a speedy trial for incarcerated individuals is codified in KRS 500.110, which 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.

“KRS 500.110 only applies when a defendant is incarcerated for one offense and a detainer has been lodged against him for another offense. The purpose of the statute is to expedite criminal proceedings against incarcerated individuals.” *Stacy v. Commonwealth*, 396 S.W.3d 787, 794 (Ky. 2013) (internal citations and quotation marks omitted). The right to a speedy trial may be waived implicitly or by affirmative conduct. In *New York v. Hill*, 528 U.S. 110, 120 S.Ct. 659, 145 L.Ed.2d 560 (2000), the United States Supreme Court held that a defendant implicitly waived the time limits of the federal Interstate Agreement on Detainers when his counsel agreed to a trial date outside those limits. *See Parks v. Commonwealth*, 89 S.W.3d 395, 398 (Ky. 2002).

While Darland claims that the initial delays in the case were caused by the Commonwealth, *i.e.*, the county attorney's failure to subpoena the investigator for July 10, 2013, and the district court's failure to order transport for July 24, 2013, we note that the county attorney offered to conduct the preliminary hearing using hearsay testimony. Under KRE 1101(d)(5), the Kentucky Rules of Evidence do not apply to preliminary hearings, so the Madison District Court could have proceeded with that hearing on July 10, presumably saving 60 days in the presentation of this case to the grand jury. At defense counsel's request, however,

the hearing was delayed so that counsel could speak to the investigator. In other words, a portion of the delay is attributable to Darland.

Darland did appear in court with his attorney on November 14, 2013, within the 180-day period, and agreed, without objection and without any mention of his outstanding motion for a speedy trial, to schedule his pretrial conference outside the 180-day period. Darland nonetheless argues that his right to a speedy trial was not waived because a first-degree persistent felony offender charge had been added to the indictment only twelve days before the expiration of the 180-day period, leaving his trial counsel with insufficient time to prepare for a trial if it had been scheduled within the 180-day period. He contends that only twelve days in which to receive and review discovery on this new charge would have resulted in excessive prejudice, giving as an example the requirement of KRS 504.070, that a defendant intending to introduce evidence of mental illness or insanity must give twenty days' notice. This argument is unpreserved, because he did not raise the issue of adequate preparation time before the trial court. Moreover, Darland does not explain specifically why the PFO charge would have required lengthy additional preparation time, or why he would try to raise a mental illness or insanity defense when faced with the PFO charge.

Darland has also failed to show that the delay was prejudicial. The United States Supreme Court has identified three interests relevant that the Sixth Amendment's speedy trial right was designed to protect: (1) to prevent oppressive pretrial incarceration, (2) to minimize anxiety and concern of the accused; (3) and

to limit the possibility that the defense will be impaired. *Stacy*, 396 S.W.3d at 798-99 (citing *Barker v. Wingo*, 407 U.S. 514, 532, 92 S.Ct. 2182, 2193, 33 L.Ed.2d 101 (1972)). Of the interests enumerated, “the last is the most serious.” *Id.* According to Darland, he is currently serving a thirteen-year sentence. In his motion for a speedy trial, he stated that the detainer affected his prison classification and might hamper his ability to “participate in various programs while incarcerated.” He also stated that the detainer would affect his “ability to be granted parole.” On appeal, he contends that the delay in resolving the case affected his experience in prison and “likely kept him incarcerated longer than he would have been otherwise.” These vague allegations are not sufficient, however, to show any specific prejudice under any of the three interests outlined above.

The order denying the motion to dismiss on speedy trial grounds is hereby affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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