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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000229-MR

MAURICE R. JEFFERSON II

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE GREGORY M. BARTLETT, JUDGE
ACTION NO. 13-CR-00756

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING

** ** * * * * *

BEFORE: KRAMER, CHIEF JUDGE; ACREE AND CLAYTON, JUDGES.

ACREE, JUDGE: The issue is whether the Kenton Circuit Court erred when it refused to dismiss the indictment against Appellant Maurice Jefferson based upon a violation of the 180-day speedy trial requirement of Article III of the Interstate Agreement on Detainers (IAD). We find no error, and affirm.

The IAD is a compact, entered into by the federal government, the vast majority of states, including Kentucky, and the District of Columbia. *Parks v.*

Commonwealth, 89 S.W.3d 395, 397 (Ky. 2002). Its purpose is to establish uniform “procedures for resolution of one State’s outstanding charges against a prisoner of another State.” *Id.* Article III of the IAD, codified at Kentucky Revised Statute (KRS) 440.450, requires:

Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party 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 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[.]

KRS 440.450, Article III(1).

In August 2009, Jefferson robbed a tobacco store using a handgun. A few months later, in September 2009, Jefferson used a black BB handgun to threaten the owner of a car, ultimately stealing the keys and the car. Two warrants were issued for his arrest.

Law enforcement discovered Jefferson was incarcerated in an Ohio correctional facility and, on April 17, 2013, the Commonwealth allegedly lodged a

detainer in Ohio.¹ Jefferson then initiated a request for a final disposition to be made of the outstanding Kentucky charges. Jefferson claims the Southern Ohio Correctional Facility sent his paperwork by way of certified mail to the required parties, and it was received May 6, 2013; 180 days from that delivery date was November 2, 2013.

Neither the detainer nor Jefferson's disposition request are contained in the record. This Court is unable to verify: if and when a detainer was lodged; who lodged the detainer; and when and to whom Jefferson's paperwork was delivered. This is problematic, and appreciably hinders our review of this case, particularly in light of our Supreme Court's recent affirmation that a prisoner must strictly comply "with the procedures of Article III of the IAD." *Johnson v. Commonwealth*, 450 S.W.3d 696, 701 (Ky. 2014).

In any event, Jefferson was returned to Kentucky and appeared before the Kenton District Court for arraignment on August 16, 2013. A preliminary hearing was held on August 21, 2013, at which Jefferson was represented by appointed counsel.² The matter was referred to the Kenton County Grand Jury; it returned an indictment in September 2013 charging Jefferson with two counts of

¹ "A detainer is 'a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking the institution to either hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent.'" *St. Clair v. Commonwealth*, 140 S.W.3d 510, 527 (Ky. 2004) (citation omitted).

² The preliminary hearing as to one charge was continued to the next day, August 22, 2013.

second-degree robbery. Jefferson then filed a written motion for discovery, which the Commonwealth answered.

Jefferson was arraigned in circuit court on October 7, 2013. He appeared before the circuit court by way of video conferencing. Jefferson's counsel³ was present and argued on his behalf. Defense counsel requested a status conference, which the circuit court scheduled for November 4, 2013. Counsel made no response to the circuit court's proposed hearing date.

At the status call on November 4, 2013, Jefferson's counsel made an oral motion to dismiss the indictment on grounds that Jefferson had not been brought to trial within 180 days of May 6, 2013. This was the circuit court's first notice of the pendency of a demand under the IAD. The Commonwealth also appeared unaware of Jefferson's IAD request, and defense counsel admitted he had no notice of the fact that this case was one to be litigated under the IAD until his own efforts yielded this information on or about October 31, 2013.⁴

The circuit court granted the parties a limited continuance to brief the issue. After holding a hearing, the circuit court denied Jefferson's motion by order entered December 3, 2013. It found Jefferson had waived his right to be tried

³ Substitute counsel stood in for Jefferson's appointed counsel.

⁴ It is not entirely clear how defense counsel became aware of Jefferson's IAD request. In any event, upon learning of this information, defense counsel contacted the Ohio Department of Corrections. It, in turn, faxed Jefferson's IAD paperwork to defense counsel.

within 180 days when he acquiesced in the scheduling of a status hearing at least two days beyond the 180-day limit. Despite counsel's early involvement in this matter, neither counsel nor Jefferson made mention of the IAD or the 180-day deadline until that deadline had passed. It further concluded Jefferson had failed to demonstrate any prejudice by a trial beyond the 180-day limit.

The circuit court then offered to set an immediate trial date, but Jefferson declined. He, instead, entered a conditional guilty plea to the charges on December 19, 2013, reserving his right to appeal the circuit court's denial of his dismissal motion. The circuit court sentenced Jefferson to eight-years' imprisonment, to be served concurrently with his Ohio sentence. This appeal followed.

Under the IAD, either the prisoner himself (under Article III) or the prosecutor in the jurisdiction where the charge is pending (under Article IV) can initiate proceedings to bring the prisoner to trial. KRS 440.450, Article III(1) and Article IV(1). If the request originates with the prisoner, "he shall be brought to trial within one hundred eighty (180) days" of the Commonwealth's receipt of the prisoner's written request. KRS 440.450, Article III(1). "The 180-day time period established by the IAD does not commence until a detainee's request for final disposition of the charges against him has actually been delivered to the appropriate court and to the prosecuting officer that lodged the detainer against

him.” *Johnson*, 450 S.W.3d at 700; *Fex v. Michigan*, 507 U.S. 43, 52, 113 S.Ct. 1085, 122 L.Ed.2d 406 (1993).

The record, as it stands, indicates the Commonwealth received Jefferson’s IAD request on May 6, 2013. Jefferson was not tried before November 2, 2013, the date the 180-day period expired. Therefore, he contends that his Article III right to a speedy trial within 180 days was violated; that dismissal of the indictment was compulsory under the IAD; and that he in no manner explicitly or implicitly waived the 180-day requirement. In response, the Commonwealth argues the circuit court correctly found Jefferson waived his Article III speedy-trial right when he requested a status hearing and failed to object to a proposed hearing date outside the 180-day period.

In *New York v. Hill*, 528 U.S. 110, 120 S. Ct. 659, 145 L. Ed. 2d 560 (2000), the United States Supreme Court found that a defendant, or his counsel, may waive the defendant’s right to a speedy trial where the defendant, or counsel, makes a request that is “inconsistent with the IAD’s time limits.” *Id.* at 118, 120 S. Ct. at 666. Even “the most basic rights of criminal defendants are . . . subject to waiver.” *Id.* at 114, 120 S. Ct. at 663 (citing *Peretz v. United States*, 501 U.S. 923, 936, 111 S. Ct. 2661, 2669, 115 L.Ed.2d 808 (1991)). A defendant’s right to a speedy trial under the IAD is no different. *See id.* This is especially true when the waiver results from a scheduling matter, because “[s]cheduling matters are plainly

among those for which agreement by counsel generally controls.” *Id.* at 115, 120 S. Ct. at 664.

The Supreme Court further rejected the argument that defense counsel must affirmatively waive speedy trial rights. “Nothing in the IAD requires or even suggests a distinction between waiver proposed and waiver agreed to.” *Id.* at 118, 120 S. Ct. at 666. To adopt a contrary view would cause “dismissal of the indictment [to] turn on a hypertechnical distinction that should play no part.” *Id.*

Jefferson argues this matter is substantially distinguishable from *Hill*. We acknowledge *Hill* is not entirely “on four” with this case. In *Hill*, counsel agreed to a trial date outside of the time period. In this case, Jefferson requested, and later submitted to, a status conference outside of the time period. We think this a distinction without significance.

The record reflects that at the October 7, 2013 arraignment, Jefferson acquiesced to a pre-trial status conference on November 4, 2013. Indeed, Jefferson’s counsel requested the pre-trial hearing, and counsel made no response to the circuit court’s proposed hearing date. Defense counsel’s conduct resulted in a pre-trial, and by logical extension a trial, beyond the IAD’s 180-day limit. As in *Hill*, Jefferson waived his right to a trial within the statutory time period.

Support for our decision is also found in *Ward v. Commonwealth*, 62 S.W.3d 404 (Ky. App. 2001). In that case, the defendant was not brought to trial

within 120 days of his arrival in Kentucky, as required by Article IV of the IAD. KRS 440.450 Art. IV(2). Relying on *Hill*, this Court found “that [the defendant] waived his right to complain of the violation by acquiescing to be tried outside the required time period and by failing to raise the issue of alleged noncompliance with the IAD on the numerous occasions when he was before the trial court prior to the expiration of the 120 days.” *Id.* at 404.

Jefferson, like the defendant in *Ward*, had also come before a Kentucky court on at least four occasions before the expiration of the 180-day period. At no point did he raise a speedy-trial concern. Further, Jefferson’s counsel first appeared in circuit court shortly after the indictment, yet he made no mention of the IAD or Jefferson’s speedy-trial request. Under the authority of *Hill* and *Ward*, we find Jefferson waived his right to a trial within the 180-day time limit. *See also Parks*, 89 S.W.3d at 398 (defendant’s right to a speedy trial under the IAD was waived when defense counsel made no response to the trial judge’s proposed trial date outside of the IAD time limits).

What sets this case apart from others involving waiver under the IAD, Jefferson argues, is his counsel’s lack of knowledge. Jefferson freely admits his counsel was unaware that this case was to proceed under IAD rules until shortly before the November 4th hearing. As such, defense counsel could not knowingly

waive Jefferson's speedy-trial rights, and Jefferson never willingly accepted treatment inconsistent with the IAD's time limits.

The IAD's primary purpose is to protect the prisoners against whom detainees are lodged. *Cuyler v. Adams*, 449 U.S. 433, 449, 101 S. Ct. 703, 712, 66 L. Ed. 2d 641 (1981). We recognize this. But a defendant who *requests* speedy disposition under Article III cannot sit on his rights. Article III is unique in that, unlike Article IV, proceedings under Article III originate with the prisoner. For that reason, Article III of the IAD "contemplate[s] a degree of party control that is consonant with the background presumption of waivability." *Hill*, 528 U.S. at 117-18, 120 S. Ct. at 665-66.

Jefferson was present at the October 7, 2013, arraignment. Yet, he said nothing when the status conference was set outside of the speedy trial time limit. Jefferson was certainly aware, even if his counsel was not, that this case was governed by the IAD. After all, he initiated the IAD proceeding. A defendant may not "escape justice by willingly accepting treatment inconsistent with the IAD's time limits, and then recanting later on." *Hill*, 528 U.S. at 188, 120 S.Ct. at 666. We find Jefferson personally waived his right to a speedy trial when he acquiesced to the pre-trial hearing outside of the 180-day time period.

For the foregoing reasons, we affirm the Kenton Circuit Court's December 3, 2013, Order denying Jefferson's motion to dismiss the indictment.

ALL CONCUR.

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