

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

Supreme Court of Kentucky **FINAL**

2007-SC-000901-OA

DATE 7-10-08 En A Ground PC.
APPELLANT

MICHAEL D. ST. CLAIR

V. ON APPEAL FROM HARDIN CIRCUIT COURT
NUMBERS 91-CR-00207-002 & 92-CR-00002-002

HON. JANET P. COLEMAN, JUDGE,
HARDIN CIRCUIT COURT, DIV. II, ET AL.

APPELLEES

MEMORANDUM OPINION OF THE COURT

DENYING WRIT OF PROHIBITION

This matter comes before this Court on a petition for a writ of prohibition, pursuant to CR 76.36. Petitioner Michael D. St. Clair seeks a writ prohibiting the Hardin Circuit Court from retrying him on charges of capital kidnapping, attempted murder, arson and receiving stolen property on grounds that such a trial would violate both the Interstate Agreement on Detainers and his federal and state constitutional right to a speedy trial. As Petitioner has not shown that he is without an adequate remedy by appeal, the petition will be denied.

In September, 1991, Petitioner Michael D. St. Clair broke out of jail in Oklahoma, along with fellow inmate Dennis Gene Reece. At that time, Petitioner was awaiting sentencing for two murder convictions. When Reece was recaptured months later, he

provided authorities with details of the crime spree he and Appellant had undertaken after their escape.

According to Reece, after breaking out of prison in a truck stolen from a jail employee, he and Petitioner stole another truck and a handgun and ammunition from an Oklahoma home-owner before moving on to Dallas, Texas. In Dallas, they met up with St. Clair's wife, who provided them with clothing and money. Reece and St. Clair traveled by Greyhound bus to Colorado where Petitioner kidnapped Timothy Keeling and stole his truck and began driving back to Texas.

Petitioner and Reece stopped in New Mexico where, according to Reece, Petitioner murdered Keeling with the stolen handgun. Driving Keeling's truck, the two made their way to Hardin County, Kentucky where they kidnapped Francis C. Brady and stole his truck. The pair then drove to Bullitt County, Kentucky where Petitioner fatally shot Brady execution-style and burned Keeling's truck in attempt to destroy evidence relating to their crimes. Shortly thereafter, Kentucky State Trooper Herbert Bennett initiated a traffic stop of the Brady vehicle in Hardin County. Petitioner fired two shots at Trooper Bennett, one of which disabled his police cruiser. While escaping, Reece and Petitioner became separated from one another. Thereafter, Reece was arrested two weeks later in Las Vegas, Nevada and petitioner was apprehended in Hugo, Oklahoma two months later.

Petitioner was tried and convicted in Bullitt County for the murder of Brady. This Court affirmed Petitioner's conviction, but vacated his death sentence and remanded the matter back to the Bullitt Circuit Court for resentencing.¹ At the resentencing,

¹ St. Clair v. Com., 140 S.W.3d 510 (Ky. 2004).

Petitioner was once again given the death penalty. Petitioner was also charged in Hardin County with capital kidnapping of Brady, the attempted murder of Trooper Bennett, receiving stolen property and arson. This Court rejected St. Clair's petition for a writ to prevent the trial in Hardin Circuit Court on double jeopardy grounds², and he was subsequently convicted and received another death penalty sentence. However, this Court reversed that conviction due to the trial court allowing Petitioner's wife to testify against him in violation of the marital privilege.³ Petitioner now seeks a writ of prohibition from this Court, preventing him from being retried in Hardin Circuit Court for capital kidnapping, attempted murder, receiving stolen property and arson.

Writs of prohibition and mandamus are extraordinary in nature, and should be granted only in exceptional circumstances.⁴ Generally, such circumstances occur when: (1) the lower court is proceeding or is about to proceed outside its jurisdiction; or (2) the lower court is about to act erroneously, but within its jurisdiction, and there is no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result.⁵ In this matter, only the latter classification is applicable since the circuit court has jurisdiction over the type of criminal proceeding which Petitioner is facing.⁶ Where

² St. Clair v. Roark, 10 S.W.3d 482 (Ky. 1999).

³ St. Clair v. Com., 174 S.W.3d 474 (Ky. 2005).

⁴ Seymour Charter Buslines, Inc. v. Hopper, 111 S.W.3d 387, 388 (Ky. 2003).

⁵ Southeastern United Medigroup v. Hughes, 952 S.W.2d 195, 199 (Ky. 1997).

⁶ KRS 23A.010(1)

the lower court is about to proceed erroneously but within its jurisdiction, “lack of an adequate remedy by appeal is an absolute prerequisite to issuance of a writ.”⁷

In support of his Petition, Petitioner cites to St. Clair v. Roark,⁸ wherein this Court held that where a petitioner is seeking a writ of prohibition to prevent a trial on double jeopardy grounds, the court in which the petition is filed has the option of either declining to issue the writ on grounds that an adequate remedy by appeal exists or addressing the merits of the issue. However, the Petition before this Court does not plead any issues relating to double jeopardy which would give this Court that option. Furthermore, we are not inclined to extend the holding of St. Clair v. Roark to include the arguments raised by Petitioner herein.

The phrase “no adequate remedy by appeal” has been defined to require an injury suffered that “could not thereafter be rectified in subsequent proceedings in the case.”⁹ Here, other than generally pointing to the ordeal of being a defendant in a capital trial, Petitioner offers nothing to show that he will suffer any injury that cannot be corrected on appeal if he is convicted erroneously. Since Petitioner has adequate remedy by appeal, his Petition for a writ of prohibition is hereby DENIED.

All sitting. All concur.

⁷ Independent Order of Foresters v. Chauvin, 175 S.W.3d 610, 615 (Ky. 2005), citing, Bender v. Eaton, 343 S.W.2d 799, 801 (Ky. 1961).

⁸ 10 S.W.3d 482 (Ky. 1999).

⁹ Bender, 343 S.W.2d at 801.

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