

RENDERED: SEPTEMBER 5, 2003; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-001543-MR

CLARK VINCENT REED

APPELLANT

v.

APPEAL FROM TODD CIRCUIT COURT
HONORABLE TYLER L. GILL, JUDGE
ACTION NO. 00-CR-00001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: COMBS AND McANULTY, JUDGES; MILLER, SENIOR JUDGE.¹

McANULTY, JUDGE: Appellant Clark Vincent Reed appeals his conviction pursuant to a conditional guilty plea in the Todd Circuit Court. Appellant argues that the court should have

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

dismissed his indictment under the Interstate Agreement on Detainers (IAD), KRS 440.450 to KRS 440.500, due to the Commonwealth's failure to bring him to trial within 180 days after he made a request for final disposition.

The trial court refused to grant dismissal of the indictment on the basis that appellant sent his request for final disposition of his case to the Todd County Attorney rather than the Commonwealth's Attorney assigned to his case. Thus, the trial court concluded that the time did not begin to run when the County Attorney received the request. In addition, the court concluded that the earliest trial date possible in Todd County, without having to call a special jury for one case, was in July 2001. This was beyond the 180 day period asserted by appellant. The trial court indicated this was the earliest appellant could have been brought to trial under the IAD.

Appellant challenges the court's conclusion that the request for final disposition should have been sent to the Commonwealth's Attorney. The 180 day time period for trying the prisoner pursuant to the IAD does not commence until his request for final disposition of the charges against him has actually been delivered to the appropriate court and the prosecuting officer of jurisdiction that lodged the detainer against him. Fex v. Michigan, 507 U.S. 43, 113 S. Ct. 1085, 122 L. Ed. 2d

406, (1993). The applicable provision of the IAD, KRS 440.450, Article III, section (1), states in pertinent part:

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: 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 supplied).

Appellant contends that since the Todd County Attorney was a prosecuting officer in the district court proceedings which preceded appellant's indictment, he was a prosecuting officer in this matter. Moreover, appellant argues that the fact that the county attorney received the request rather than the Commonwealth's Attorney is of no consequence under the IAD, since the Act directs "[a]ll courts, departments, agencies, officers and employees of this state and its political subdivisions . . . to enforce the agreement on detainers and to cooperate with one another and with other party states in

enforcing the agreement and effectuating its purpose." KRS 440.470.

We find no case law on this precise issue in Kentucky. We are aware of only one other IAD case to consider a similar circumstance. In People v. Pellegrino, 131 Misc.2d 118, 499 N.Y.S.2d 841 (1986), the defendant, following his indictment and detainer, delivered a document to the county attorney, who then forwarded the document to the appropriate district attorney. The New York state trial court held that was erroneous because the defendant had not sent it to the prosecuting officer. The court concluded that the defendant had not complied with the IAD. Id. at 122.

Furthermore, two cases in this Commonwealth have addressed this same issue as it applies to the intrastate agreement on detainers, KRS 500.110. That statute was adopted subsequent to the IAD, and uses some of the same language. Thus, cases interpreting it where the language is the same may provide insight to the application of the IAD. Dunaway v. Commonwealth, Ky., 60 S.W.3d 563, 567 (2001).

The language of KRS 500.110 also states that the prisoner shall cause the request for final disposition to be delivered to "the prosecuting officer." Under KRS 500.110 the request for final disposition must be sent to the prosecuting

officer who lodged the detainer, and to the court² where the indictment, information or complaint forming the basis for the detainer was pending when the detainer was lodged. Rosen v. Watson, Ky., 103 S.W.3d 25 (2003); Huddleston v. Jennings, Ky. App., 723 S.W.2d 381 (1986).

From this authority and the wording of the IAD, we conclude that the prosecuting officer in this case was the Commonwealth Attorney. After appellant was indicted, according to the Todd Circuit Court calendar, the detainer was lodged on February 16, 2000. The case was in the circuit court and the Commonwealth was represented in that court by the Commonwealth's Attorney. Furthermore, we do not agree that delivery to the county attorney was equivalent or sufficient under the IAD. The language of the statute indicates that the notice and request is to be delivered to a specific officer -- the officer with the authority to make the decision whether to prosecute the charge. In this case, the county attorney who handled aspects of the case preliminary to the indictment was not the prosecuting officer. We agree notification to the office of the County Attorney in November 2000 did not cause the 180 day period to commence.

² Under the IAD, the "appropriate court" is defined as the Circuit Court of competent jurisdiction. KRS 440.460.

Having determined that the trial court correctly refused to dismiss the case due to improper notification under the IAD, we believe the other issues raised by appellant are moot.

COMBS, JUDGE, CONCURS.

MILLER, JUDGE, DISSENTS.

BRIEF FOR APPELLANT:

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