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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000071-MR

JASON EMBRY

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE STEVEN R. JAEGER, JUDGE
ACTION NO. 02-CR-00533

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: JOHNSON, MINTON, AND TACKETT, JUDGES.

TACKETT, JUDGE: Jason Embry appeals from a judgment entered by the Kenton Circuit Court on a conditional plea of guilty to flagrant non-support, for which he was sentenced to five years' imprisonment, probated for five years. He claims on appeal that the trial court erred in refusing to dismiss the indictment because no trial was held within 180 days of his demand for a speedy trial under the Interstate Agreement on Detainers (IAD). We affirm.

An arrest warrant for Jason Embry for flagrant non-support was issued in Kentucky in 1999. In February 2001, Embry began serving a five-year prison term in Montana for an unrelated charge. On February 28, 2002, he filed a form requesting that he be tried within the 180-day time limit under the IAD. In June 2002, Embry was arrested and brought to Kentucky from his incarceration to face his non-support charges. Embry denied being the father of the child, and an agreed order for DNA testing was entered on August 8, 2002. On August 23, Embry was indicted, and on September 3, he was arraigned. On September 4, a discovery order was entered and a trial date set for October 16. Embry moved to dismiss the charge for failure to prosecute on October 4. The circuit court ruled that Embry had waived the time limit by affirmatively requesting to be treated in a manner contrary to normal procedures, by agreeing to DNA testing. Embry entered a conditional guilty plea, and this appeal followed.

The circuit court was correct that Embry had waived his rights. Embry asserts that the trial court's ruling that agreeing to DNA testing after he asserted the defense of non-paternity "is to deny any meaningful opportunity to present non-paternity as a defense." We disagree. The IAD plainly states that the time limit is waived if the defendant affirmatively requests to be treated in a manner contrary to normal

procedures. It does not define what constitutes such an affirmative request, but the trial court reasoned that when Embry agreed to undergo genetic testing for a determination of paternity, he did not raise any concerns about delays that might be caused by such testing. It is well settled that trial courts have broad discretion in setting their schedule and in granting continuances when good cause is shown, and the IAD itself recognizes that courts may, for good cause shown, grant any continuances necessary. Therefore, we hold that the trial court did not abuse its discretion in holding that Embry's agreement to undergo DNA testing constituted a waiver of those rights.

For the foregoing reasons, the judgment of the Kenton Circuit Court is affirmed.

ALL CONCUR.

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