

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001622-MR

JOE TODD

APPELLANT

V.

APPEAL FROM JOHNSON CIRCUIT COURT
HONORABLE JOHN DAVID CAUDILL, JUDGE
INDICTMENT NO. 02-CR-00034

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM, MINTON, AND TAYLOR, JUDGES.

MINTON, JUDGE: A finding that a defendant has been denied the right to a speedy trial as guaranteed by the Sixth Amendment to the U.S. Constitution and Section 11 of the Bill of Rights of the Kentucky Constitution is a basis for the dismissal of an indictment.¹ Between the pretrial conference and the scheduled trial date, the corrections department failed on two occasions to comply with the circuit court's orders to transport Joey W. Todd from the county jail where he was housed to attend a status

¹ See Commonwealth v. Vincent, Ky.App., 134 S.W.3d 17 (2004).

conference in the court where his indictment was pending. Todd argues on appeal that this somehow abridged his right to a speedy trial and his right to effective legal representation. We find no merit in Todd's arguments. So we affirm the trial court's denial of the motion to dismiss the indictment.

On August 27, 2002, Todd, a convicted felon on work release, walked away from a work detail at the Johnson County Garage. At the time, he was a state prisoner in the state's Class D Work Program, housed in the Big Sandy Regional Detention Center at Paintsville. He and a fellow inmate, John Daniel Mullins, were caught within four hours and returned to the jail. Todd confessed to the escape. Todd was indicted by the Johnson County Grand Jury on September 20, 2002, on charges of second-degree escape and with being a second-degree persistent felony offender (PFO). He was arraigned in Johnson Circuit Court on November 7, 2002. Sometime later, the corrections department moved Todd to the Grayson County Detention Center at Leitchfield, a location several hours' drive from the Johnson Circuit Court.

Todd appeared with counsel at a pretrial conference on February 21, 2003, and advised the circuit court that plea negotiations were fruitless. So in an order entered February 28, 2003, the court set the case for a trial on July 15, 2003.

On March 5, 2003, the Commonwealth filed a motion to consolidate for trial Todd's indictment with Mullins's. That motion was noticed for a hearing in Johnson Circuit Court on March 21, 2003. Neither Todd nor Mullins was present in court that day because no order was entered to bring them from the institutions where they were then housed. But their counsel was present. The transcript of the proceedings that day reveals a short discussion between the court and counsel in which the court was informed that the Commonwealth wanted to consolidate and cautioned that such might pose a conflict for the defense because of antagonistic defenses between Todd and Mullins. The court agreed to consolidate the cases; and the cases were set over for a status conference to be conducted on April 16, 2003.

Todd was not present when the case was called on April 16, 2003. In an order, entered April 3, 2003, the Court had directed the Grayson County Sheriff to bring Todd from that county to Johnson County. On its own motion, the court set aside as "inadvertently signed" its order consolidating the cases. Because in an apparent dispute over which agency was responsible for transporting state prisoners housed in the county jail, the Grayson County Sheriff did not bring Todd to court. There was no hearing on April 16, 2003. The status conference was rescheduled to May 16, 2003.

When Todd was not brought to court for the May 16, 2003, status conference, the court issued a show cause order directed to an official in charge of the Class D Work Program at the Department of Corrections. The order directed the corrections official to show cause why the court should not sanction the official for contempt for failing to comply with the two prior transport orders. Todd was in court on May 23, 2003, when the show cause hearing was scheduled. The show cause hearing did not take place, but the court did take up the Commonwealth's motion to consolidate and denied the motion.

On June 10, 2003, Todd's counsel filed a motion to dismiss his indictment claiming Todd's Sixth Amendment rights to counsel and his speedy trial rights had been violated by the Grayson County Sheriff's failure to transport him to these two status conferences. The lawyer who filed that motion for Todd was Lance Daniels, who had entered his appearance as counsel for Todd on May 16, 2003.

The record suggests no other purpose for the two aborted status conferences than consideration of the Commonwealth's motion to consolidate the Mullins and Todd indictments and of the potential conflicts consolidation might pose for Mullins's and Todd's public defender, James J. Barrett. Daniels's entry of appearance and, ultimately, the order denying consolidation, made moot the original purpose of the status

conference. At no time did Todd or his counsel file any sort of pretrial motion that was not heard. Todd never moved to advance the trial date from July 15, the date set at the February pretrial conference. Todd never filed a motion requesting to be brought back to Johnson County sooner than July 15 to prepare for trial.

On July 15, Todd appeared with counsel and accepted the Commonwealth's plea offer. He entered a conditional plea of guilty to second-degree escape, reserving the issues raised in his motion to dismiss the indictment. Before he entered his guilty plea, the court denied the motion to dismiss. Todd was then sentenced on the same day that he entered the plea, in accordance with the plea agreement, to one-year imprisonment on the escape charge, consecutive to the sentence he was already serving. The PFO charge was dismissed as a part of the plea agreement. This appeal follows.

When the defendant raises a constitutional speedy trial claim, there are four factors that are to be considered when determining whether this right has been violated:

(1) length of the delay; (2) reason for the delay; (3) the defendant's assertion of his right to a speedy trial; and

(4) prejudice to the defendant.² We can find no basis for a claim of delay in this case. The court proposed the July 15 trial date at the February pretrial to which Todd made no objection. And on July 15, Todd appeared and pled guilty. The failure to transport Todd for a hearing on the motion to consolidate did not prejudice Todd in any way. Thus, we must conclude that Todd's motion to dismiss the indictment was totally lacking in merit and the circuit court correctly denied relief.

Similarly, we find no merit in Todd's argument that his Sixth Amendment right to counsel was somehow abridged by the failures to transport Todd to the scheduled status conferences. Again, Todd fails to tell us how his lawyer was ineffective, and, if so, how the outcome of his case would have been different if the motion to consolidate had been heard sooner than June 23, 2003.

For the reasons discussed in this opinion, the judgment of the circuit court is affirmed.

ALL CONCUR.

² Barker v. Wingo, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); Tamme v. Commonwealth, Ky., 973 S.W.2d 13, 22 (1998).

BRIEF FOR APPELLANT:

Lance A. Daniels
Paintsville, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Janine Coy Bowden
Assistant Attorney General
Frankfort, Kentucky