

RENDERED: SEPTEMBER 23, 2005; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000187-MR

JASON MCBRIDE

APPELLANT

v. APPEAL FROM BUTLER CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 93-CR-00009

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING

** ** * * * * *

BEFORE: BARBER, BUCKINGHAM, AND JOHNSON, JUDGES.

BARBER, JUDGE: Appellant, Jason McBride (McBride), appeals, Pro Se, the Butler Circuit Court's denial of his motion to vacate, set aside, or correct the judgment against him. We affirm the denial.

McBride asserts on appeal that he is entitled to have his pleadings liberally construed, pursuant to Hill v. United States, 368 U.S. 424, 430 (1987). We agree with the duty imposed on the courts to thoroughly review motions made without

benefit of counsel, and review the action with that premise in mind.

McBride was charged with burglary in the first degree. He moved, pro se, for a speedy trial. After more than 180 days had passed without trial McBride moved to have his indictment dismissed. The Commonwealth filed a response. The trial court agreed with the Commonwealth and overruled McBride's motion to dismiss the charges. Prior to trial McBride pled guilty to the charges against him and was sentenced to serve ten years. He was represented by counsel at the time he entered his guilty plea. The court found that his plea was entered knowingly and voluntarily. McBride signed the plea agreement forms which state that he entered the plea knowingly and voluntarily.

Following sentencing McBride made a motion, pursuant to RCr 11.42, claiming ineffective assistance of counsel. This motion was overruled. McBride then made the underlying motion for dismissal of charges, arguing that he was not granted the speedy trial he was entitled to by law. He further asserted that the Commonwealth violated the Interstate Agreement on Detainers Act (IAD) by transporting him repeatedly across state lines. The trial court found that it no longer had jurisdiction over the matter and denied the motion for that reason. McBride then filed the underlying motion to set aside, vacate or correct the sentence in this case. McBride claims that neither his

counsel nor the court advised him that he could have the charges against him set aside due to violations of the IAD, or the delay in prosecution of the action. McBride avers that his counsel told him that the IAD was irrelevant to his case. McBride further stated that he did not become aware of the IAD grounds for his motion until nine years after he was sentenced. In the motion before the circuit court McBride alleged fraud and coercion lead him to enter his guilty plea. He claims that officers of the court coerced him, outside the courtroom, into pleading guilty to the charges.

The Commonwealth claims that McBride's motion was untimely and that the trial court appropriately denied it for that reason. The Commonwealth cites the Doctrine of Laches as barring McBride's motion. Taking McBride's assertions as true, that he did not discover that the IAD might form a proper basis for an argument of reversible error for nine years after his sentencing, McBride's motion was not untimely.

The Commonwealth argues that the plea agreement waived all defenses other than a claim that the indictment was defective. Hughes v. Commonwealth, 875 S.W.2d 99, 100 (Ky. 1994). A guilty plea does not waive the argument that the state had no right to bring the charges. United States v. Brown, 155 F.3d 431, 434 (4th Cir. 1998). McBride has a right to challenge on appeal the right of the Commonwealth to continue to bring the

charges against him despite many months passing between his indictment and sentencing.

McBride alleges ineffective assistance of counsel, claiming that his counsel lied to him and misled him. Errors by counsel sufficient to set aside a judgment must be so serious as to fall outside the wide range of professionally competent counsel and counsel's performance must have been so deficient as to affect the plea process. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Bronk v. Commonwealth, 58 S.W.3d 484, 486-87 (Ky. 2001). The Commonwealth asserts that McBride has failed to meet his burden of proof with regard to this argument. We agree. The record contains ample evidence that the protections of the law created to ensure that a guilty plea is voluntarily made were applied in this case.

We now turn to the argument that McBride did not receive a speedy trial in accordance with law, or the argument that provisions of the IAD were violated. It is well established in holding that for an actionable violation of the IAD to have occurred, the record must show that the defendant made a timely formal request for speedy trial pursuant to the IAD, and that this request was denied by public officials for an inappropriate reason. Rhodes v. Commonwealth, 622 S.W.2d 677, 678 (Ky.App. 1981). No such showing has been made by McBride.

There is no reference to the IAD in McBride's pre-sentencing memoranda and the record does not contain any evidence showing that public officials either ignored or denied his request for a speedy trial. A defendant is entitled to a speedy trial as a matter of law. Gabow v. Commonwealth, 34 S.W.3d 63, 70 (Ky. 2000). Where good cause exists for the delay of the trial, and such delay is not shown to have improper prejudice on the accused, such a delay does not constitute reversible error. Dunaway v. Commonwealth, 60 S.W.3d 563, 569 (Ky. 2001).

In the present case McBride failed to show that the trial court or the Commonwealth acted in bad faith to delay prosecution of this matter. McBride failed to show that the delay prejudiced his defense such that conviction would have been improper. This does not rise to the level of reversible error. McDonald v. Commonwealth, 569 S.W.2d 134, 137 (Ky. 1978). The judgment is affirmed.

ALL CONCUR.

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