

RENDERED: July 7, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000767-MR

RANDY HAIGHT

APPELLANT

v. APPEAL FROM GARRARD CIRCUIT COURT
HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 04-CR-00012

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: MINTON AND VANMETER, JUDGES; ROSENBLUM, SENIOR JUDGE.¹

VANMETER, JUDGE: Randy Haight appeals from a judgment entered by the Garrard Circuit Court after he entered a conditional guilty plea to the charges of criminal possession of a forged instrument in the second degree and persistent felony offender (PFO) in the second degree. For the reasons stated hereafter, we affirm.

On August 8, 2003 an arrest warrant was issued for Haight on the charge of criminal possession of a forged

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

instrument in the second degree. The warrant described Haight's actions, stating that

intentionally with knowledge that it is forged and with intent to defraud, deceive or injure another, he utter[ed] or possesse[ed] any forged instrument. Defendant passed a check on the account of William E. Smith to Mini Market in the amount of \$175.00.

On September 28, two more arrest warrants were issued for Haight on the charges of burglary in the third degree and forgery in the second degree. The burglary arrest warrant described Haight's actions, stating that he

made an unlawful entry into Flatwoods Baptist Church with the intent to take property having no right to do so. The subject took a tin bank containing approximately \$35.00. Subject had a juvenile with him during the burglary.

The forgery arrest warrant described Haight's actions, stating that

intentionally with intent to defraud, deceive or injure another he falsely [made], complete[d] or alter[ed] a written instrument. Defendant forged a stolen check and gave to a juvenile to take into Ron's Mini Market to cash.

As Haight was already incarcerated, a detainer was lodged against him on October 28 for the two charges of burglary and forgery described in the September 28 warrants. On October 31, pursuant to KRS 500.110, Haight requested final disposition of the forgery and burglary charges and asserted his right to be

tried on the charges within 180 days. This request was filed by the circuit court clerk on November 19.

On February 20, 2004 an indictment was issued for Haight on seven counts, including: count one, third degree burglary; count three, second degree unlawful transaction with a minor; count four, second degree criminal possession of a forged instrument; and count seven, first degree persistent felony offender. Haight was arraigned on March 19 and a status hearing, originally set for April 16, was conducted on May 21. Meanwhile, when the 180-day period under KRS 500.110 expired on or about May 17, Haight requested that all charges be dismissed because they had not been tried within the requisite period. The trial court dismissed counts one and three of the indictment, both of which related to the burglary charge, as being included within the charges for which the detainer was issued. However, the court refused to dismiss the remaining five counts, finding that Haight had not requested trial on those charges pursuant to KRS 500.110. The trial court reasoned that under *Huddleston v. Jennings*² and *Rosen v. Watson*,³ KRS 500.110 required dismissal of only the charges covered by the detainer.

² 723 S.W.2d 381 (Ky.App. 1986).

³ 103 S.W.3d 25 (Ky. 2003).

Next, Haight sought a writ from this court to prohibit his trial on the remaining five counts. The motion was denied on the ground that the trial court had properly interpreted *Huddleston* and *Rosen* "to require dismissal of only those charges covered by the detainer." Haight then entered into a conditional plea of guilty to counts four and seven,⁴ and the remaining charges were dismissed. He reserved for appeal the question of whether the trial court should have dismissed all of the charges against him. Haight was sentenced to five years' imprisonment. This appeal followed.

Haight contends on appeal that the trial court erred by failing to find that pursuant to KRS 500.110, his request for the final disposition of the specific charges listed in the indictment also extended to all related charges which could have been brought against him at the same time. He correctly notes that the Sixth Amendment to the United States Constitution and Section 11 of the Kentucky Constitution guarantee the right to a speedy trial. KRS 500.110 specifically addresses this right as it applies to prisoners who have detainers lodged against them, stating:

Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of this state, and whenever during the continuance of the term of

⁴ As amended to second-degree PFO.

imprisonment there is pending in any jurisdiction of this 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 and 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.

In *Huddleston*, we described the purpose of this statute as being "not to ensure the speedy disposition of every charge, or even of those charges which potentially could form the basis for a detainer being lodged. Its purpose is to provide for the speedy disposition only of such charges as have actually resulted in a detainer being lodged."⁵ The Kentucky Supreme Court recently cited this language with approval in *Rosen*.⁶

Even if we assume without deciding that *res judicata* does not bar our consideration of the detainer issue now before us, it is clear that Haight is not entitled to relief on appeal. When he was not brought to trial within 180 days of his request

⁵ 723 S.W.2d at 383.

⁶ 103 S.W.3d at 29.

for a final disposition of the charges listed in the detainer, the trial court correctly dismissed counts one and three pursuant to KRS 500.110. However, since the remaining five charges had not resulted in the lodging of a detainer against Haight, those charges were not subject to the protections of KRS 500.110, regardless of whether under other circumstances they could have been included in the same detainer.⁷ The trial court did not err by failing to dismiss the remaining charges.

The judgment of the Garrard Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kim Brooks Tandy
Covington, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

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⁷ See *Rosen*, 103 S.W.3d 25; *Huddleston*, 723 S.W.2d 381.