

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-002159-MR

KENT FRANK HILL

APPELLANT

v.

APPEAL FROM OHIO CIRCUIT COURT  
HONORABLE RONNIE C. DORTCH, JUDGE  
ACTION NO. 96-CR-00057

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, LAMBERT AND THOMPSON, JUDGES.

ACREE, JUDGE: Kent Hill appeals *pro se* from an order of the Ohio Circuit Court denying his motion for post-conviction relief, pursuant to Kentucky Rules of Criminal Procedure (RCr) 11.42, without an evidentiary hearing. Because the motion was filed well outside the time limit set by the rule, we affirm the trial court.

Hill ran away from corrections officers who were transporting him to a court appearance from the penitentiary in Eddyville. He was apprehended the following

day and charged with second-degree escape. Hill filed a motion for a speedy trial, citing Kentucky Revised Statute (KRS) 500.110 which reads

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 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.*

KRS 500.110 (emphasis supplied). The applicable one-hundred-eighty day time frame would have expired in December 1996, so the trial court set Hill's case for jury trial on November 6, 1996. However, by agreeing to extradition to face charges in Iowa, Hill made himself unavailable for trial on that date. Consequently, when upon his return from Iowa he again appeared before the court, there was one day remaining before the expiration of his one hundred eighty days. The trial court found that Hill had waived his right to be tried within that time period and, we believe for good cause shown in open court, continued the case to the next available trial date, April 3, 1997.

Prior to his next scheduled trial date, Hill informed the trial court that he had reached a plea agreement with the Commonwealth, causing the court to dismiss the jury. Nevertheless, when he arrived in court, Hill refused to plead guilty unless the trial

court would agree to accept a conditional plea, under RCr 8.09, guaranteeing his right to appeal the failure to try him in accordance with KRS 500.110. The trial court denied his request and rescheduled his trial for April 15, 1997. Hill argued that he was entitled to dismissal of the indictment because the trial court had failed to dispose of the charge against him within one hundred eighty days. That motion was also denied. Ultimately, Hill pleaded guilty and received a three-year sentence to run consecutively to the sentences he was already serving.

The final order convicting Hill and imposing sentence was entered on July 16, 1997. No direct appeal was taken. Hill filed a petition for RCr 11.42 relief on July 29, 2005. He alleged that his trial counsel was ineffective for failing to aggressively pursue dismissal of the escape charge after his right to a speedy trial was violated. Hill also requested appointment of counsel and an evidentiary hearing. The trial court denied the motion in a summary order, and this appeal followed.

Hill, representing himself on appeal, argues that he received ineffective assistance of counsel and that the trial court abused its discretion when it refused to hold an evidentiary hearing on his RCr 11.42 motion. He contends that his trial counsel failed to vigorously pursue dismissal of the indictment after more than one hundred eighty days had passed. Hill further claims that his trial counsel and the trial court both regarded the right to a speedy trial as an “impotent phrase.” The Commonwealth points out that Hill's RCr 11.42 motion was filed well past the time limit. Hill, however, contends that his counsel erroneously induced him to believe that he was not entitled to have his case

disposed of within one hundred eighty days, and he argues this action caused the time limit to toll.

Motions under RCr 11.42 are required to be filed

(10) . . . within three years after the judgment becomes final, unless the motion alleges and the movant proves either:

(a) that the facts upon which the claim is predicated were unknown to the movant and could not have been ascertained by the exercise of due diligence; or

(b) that the fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively.

RCr 11.42(1).

Hill's motion was not filed until eight years after the judgment against him became final. His claims of ineffective assistance center on counsel's alleged failure to protect his right to a speedy trial. Citing KRS 500.110, Hill filed the motion for a speedy trial himself. Therefore, he was certainly aware at the time of his guilty plea that he had a right to be tried within one hundred eighty days, subject to the trial court's power to grant a continuance for good cause. Hill fails to allege any facts which were unknown to him at the time of his guilty plea, or the existence of any fundamental constitutional right which has sprung into being since the three-year statute of limitations elapsed.

Consequently, this Court can discern no just cause why Hill should be allowed to proceed with his RCr 11.42 motion. His motion, unquestionably, fails for lack

of timeliness. An untimely motion for post-conviction relief simply will not be heard by the trial court.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Kent Frank Hill, *pro se*  
West Liberty, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
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