

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA

: No. CR-2172-2016

vs.

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:

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: **Opinion and Order Re Defendant's**

WILLIAM R. WEST, JR.,
Defendant

: **Omnibus Pretrial Motion Nunc Pro Tunc**

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OPINION AND ORDER

Defendant is charged by Information filed on or about December 23, 2016 with criminal conspiracy to possess with intent to deliver controlled substances and related charges. Defendant's preliminary hearing was held on December 6, 2016. At the time, he was represented by Attorney Trisha Hoover Jasper. Following the preliminary hearing, the charges were held for court. Defendant's December 27, 2016 arraignment was waived and the case was placed on the March 2017 pretrial list with Call of the List scheduled for April 18, 2017.

On January 26, 2017, Defendant filed a timely omnibus pretrial motion. A hearing was scheduled for March 3, 2017. Defendant failed to appear for the March 3, 2017 hearing on the omnibus pretrial motion and the court dismissed the motion concluding that Defendant waived his right to pursue such by not appearing.

Defendant subsequently filed an omnibus pretrial motion nunc pro tunc on March 7, 2017. The court scheduled a hearing on the nunc pro tunc issue only for May 3, 2017.

At the May 3, 2017 hearing, Defendant testified. Defendant testified that he was residing at 623 Second Avenue in Williamsport and that he continues to reside there. It is his mother's house and that's where he receives his mail.

He testified that he did not receive a copy of the court order setting the initial hearing date for March 3, 2017. He testified that he was not aware that a motion had been filed. Defendant's testimony was corroborated by his counsel who indicated that she does not send courtesy copies of motions prior to receiving the court order setting forth the date. She did send the omnibus pretrial motion and the attached court order scheduling the hearing date to Defendant's residence.

Defendant did not find out about missing the hearing until he called a few days later to ask for a copy of the video of the stop.

His counsel advised the court that she was in weekly contact with Defendant but that they did not discuss the omnibus motion or the scheduling of the initial hearing.

Through cross-examination, the Commonwealth introduced testimony regarding Defendant's non-appearance for matters in another case in which he is represented by a different attorney. The Commonwealth argued that Defendant "shows up only when he wants to."

In reviewing all of the relevant factors, the court will give Defendant the benefit of the doubt and grant the petition to proceed nunc pro tunc. A hearing on the omnibus pretrial motion shall be scheduled as set forth below.

Rule 579 of the Pennsylvania Rules of Criminal Procedure requires an omnibus pretrial motion to be "filed and served within 30 days after arraignment, unless opportunity therefor did not exist, or the defendant or defense attorney, or the attorney for the Commonwealth, was not aware of the ground for the motion, or unless the time for filing has been extended by the court for cause shown." Pa. R. Crim. P. 579 (A).

Defendant's initial omnibus pretrial motion was timely filed and set for a hearing. When Defendant failed to appear for the hearing, the court entered an order deeming the motion withdrawn.

The court accepts as credible Defendant's statements, along with those of his attorney, which support that he did not know the date and time for the hearing on the motion. In fact, the court finds credible Defendant's assertion that he did not even know the motion was filed.

Moreover, the motion was filed almost immediately following the missed hearing and Defendant appeared at the next hearing. It does not appear that Defendant has delayed or manipulated these matters such that he is hoping to avoid accountability.

Finally, the court cannot conclude that the petition for writ of habeas corpus is meritless on its face. The court reviewed the petition along with the State Police report provided by the Commonwealth and believes that the interests of justice would require a hearing.

In light of these facts and circumstances, the court will grant a hearing on the merits of Defendant's omnibus motion and vacate its order deeming the original motion withdrawn.

ORDER

AND NOW, this 12th day of May 2017 following a hearing and argument, the court GRANTS Defendant's nunc pro tunc request for a hearing on his omnibus pretrial motion and VACATES its order dated March 3, 2017 which deemed his original omnibus pretrial motion withdrawn. The hearing on the omnibus pretrial motion is scheduled for the

26th day of May, 2017 at 3:00 p.m. in Courtroom No. 4 of the Lycoming County

Courthouse. One and a half hours have been allocated for this hearing. In that there is no transcript from the preliminary hearing, the Commonwealth will need to present the appropriate witnesses.

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney
Trisha Hoover Jasper, Esquire
Gary Weber, Lycoming Reporter
The Honorable Marc F. Lovecchio