

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 00-10,495
	:
	:
vs.	: CRIMINAL DIVISION
	: Motion to Dismiss
ANDRE GRAY,	:
Defendant	:

OPINION AND ORDER

After a non-jury trial on January 8, 2001, Defendant was found guilty of possession with intent to deliver cocaine, possession with intent to deliver marijuana, possession of marijuana, possession of cocaine, and possession of drug paraphernalia. Sentencing was scheduled for March 14, 2001, rescheduled upon the request of the District Attorney’s Office for April 4, 2001, and then rescheduled to May 3, 2001. In the instant Motion to Dismiss, Defendant contends post-ponement of the sentence until May 3, 2001 is in violation of Rule of Criminal Procedure 704 and as a consequence, all charges must be dismissed.

Rule 704 requires sentencing to ordinarily occur within ninety (90) days of conviction, but also allows for a delay “for good cause shown”. Where good cause is not shown, a Defendant is entitled to dismissal of the charges only where he can demonstrate that the delay in sentencing prejudiced him. Commonwealth v Anders, 725 A.2d 170 (Pa. 1999). In determining whether prejudice has been shown, the Court must consider the length of the delay falling outside of the ninety (90) day period, the reason for the delay, the timeliness of the Defendant’s assertion of his rights, and any resulting prejudice to the interests protected by his speedy trial and due process rights. Id. Prejudice must not be presumed by the mere fact of an untimely sentence. The Court must examine the totality of the circumstances as no one factor is necessary, dispositive, or of sufficient importance. Id.

In the instant matter, the original scheduling date of March 14, 2001 was continued to April 4, 2001 upon request of the Commonwealth, who did not have the necessary witnesses present on March 14, 2001 to pursue a school zone enhancement. Sentencing did not occur on April 4, 2001, however, as through a court scheduling error, the sentencing hearing was not placed on the Court calendar and although counsel for the Commonwealth and defense counsel knew of the date and time, the sheriff was not cognizant of such and the Defendant was not brought from the County Prison for purposes of sentencing. The matter was thus rescheduled to May 3, 2001, twenty-five (25) days past the ninety (90) day deadline.

The Court will assume, for the sake of argument, that no good cause can be shown for the delay from April 4th until May 3rd, 2001. The Court cannot find prejudice to the Defendant, however. Defense counsel argues that prejudice results from Defendant's susceptibility to the school zone enhancement at the sentencing on May 3, 2001, whereas he would not have been susceptible to the school zone enhancement had the Court held the sentencing on March 14, 2001, without the Commonwealth's necessary witnesses. The Court believes defense counsel's argument erroneously focuses on a delay within the ninety (90) day period, that is, from March 14, 2001 until April 4, 2001. Since the Rule requires good cause for any delay beyond the ninety (90) day period, it appears that any prejudice to be shown must be that as a result of such a delay. In the instant matter, the school zone enhancement could have been applied at the sentencing on April 4, 2001 the same as it will be applied on May 3, 2001.¹

Since the delay was only twenty-five (25) days and was occasioned through a mistake in the Court system, not caused by the Commonwealth in any way, the Court can see no other prejudice to the Defendant.

¹In addressing defense counsel's argument, the Court overlooks the misplaced nature of the underlying statement, that is, that Defendant is prejudiced by application of the law.

ORDER

AND NOW, this 15th day of May, 2001, for the foregoing reasons, Defendant's Motion to Dismiss is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley N. Anderson