

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 96-11,244

VS :

GEOFFREY VAN LUNDY :

OPINION AND ORDER

Before the Court is Defendant's Motion to Dismiss pursuant to Pa.R.Crim.P. 600.¹ After a review of the file and the testimony presented, the Court finds the following procedural facts relevant to the motion. On 6/5/96, a criminal complaint was filed against the Defendant for driving under the influence, accidents involving damage to an unattended vehicle, and operation of a vehicle without financial responsibility, as a result of an incident that occurred on 5/26/96. On 7/5/96 Defendant appeared for, and waived his preliminary hearing. Defendant was released on \$1,500.00 bail. Also on that date, Defendant was provided a criminal case scheduling form. Defendant signed the form to acknowledge his receipt, and to acknowledge that he was informed of all of the scheduled dates for his case. Included on the form was the date of a pre-trial scheduled on November 26, 1996. On 11/14/96, Defendant was sent additional notice, by regular and certified mail, of the pre-trial. The notice was returned to the Court with written indication that the Defendant had moved and had not left a forwarding address. A bench warrant was issued for the Defendant on 11/27/96 for his failure to appear for the pre-trial.

The Defendant testified that he moved in August or September, 1996, to Jordan Avenue in Montoursville. Defendant testified that he believed that the Sheriff was aware

that he had moved to the Jordan Avenue address, and alleged that the Sheriff had been at that address looking for him. Defendant testified that approximately 12/12/96 – 12/13/96, he went to Texas. On approximately 12/14/96, he was detained on the warrant in Sulfer Springs, Texas. He testified that the Texas authorities notified Chief Bill Miller of the Williamsport Bureau of Police. Defendant testified that he spoke with Chief Miller on that date, and was allegedly told that as an early Christmas present he would not be extradited back to Pennsylvania. After being in Texas, the Defendant moved to Allentown, PA, for some time, before he moved back to Jordan Avenue in Montoursville.

Defendant alleges that his case should be dismissed because the Commonwealth failed to bring his case to trial within 365 days as is required under the speedy trial rule. Pa.R.Crim.P. 600 provides that trial in a case in which a written complaint is filed against the defendant, where the defendant is at liberty on bail, shall commence “no later than 365 days from the date on which the complaint is filed.” In determining the period for commencement of trial, excludable times include: any delays resulting from the unavailability of the defendant or the defendant’s attorney, *Pa.R.Crim.P. 600(C)(3)(b)*.

As a general rule, where an accused is out on bail, has notice of his obligation to appear, and fails to do so, he is unavailable from the time of that proceeding until he is subsequently apprehended. [Commonwealth v. Vesel](#), 2000 PA Super 131, 751 A.2d 676, (2000). Additionally, in such cases, the Commonwealth is entitled to an exclusion of this period without the requirement of showing its efforts to apprehend the defendant during the period of his absence. *Id.* The courts have reasoned that “to rule otherwise

¹ Former Pa.R.Crim.P.1100

would permit a defendant who intentionally absented himself from a scheduled court hearing to have the charges against him dismissed if the Commonwealth's efforts to locate him did not measure up to a court's standard of due diligence. Such a result is obviously absurd." Commonwealth v Taylor, 340 Pa.Super.87, 489 A.2d at 853 (1989). In the instant case, the Court is satisfied that the Defendant was informed of the date that he was to appear for his pre-trial, and willfully failed to appear. The Court therefore finds that the Defendant was unavailable from the date that he failed to appear for his pre-trial on 11/26/96.

The next issue before the Court is whether the Commonwealth is entitled to an exclusion of the entire period from 11/26/96 to 12/18/00 without a showing of due diligence, or whether the Commonwealth's obligation to exercise due diligence resumed upon being notified that the Defendant had been apprehended in Sulfer Springs on 12/14/96. Under Commonwealth v. Haynes 339 Pa.Super. 165, 488 A.2d 602 (1985)², this Court finds that once the Defendant was apprehended in Texas, and his whereabouts were known to the Commonwealth, the Commonwealth had the duty to act with due diligence in securing his custody. In Haynes, supra., the Defendant failed to show for trial. Sometime thereafter, the Commonwealth learned that the Defendant was incarcerated by the United States Army in Fort Dix, New Jersey for being absent without leave. The Commonwealth argued that although they knew of the Defendant's incarceration, their duty of due diligence was vitiated

² This case involved a motion to dismiss pursuant to Pa.R.Crim.P. 6013, in the Philadelphia Municipal Court. The Court remarked that the rule is remarkably similar to [Rule 1100 of the Pennsylvania Rules of Criminal Procedure](#). [Now Rule 600] The Court therefore reviewed the case in a manner similar to [Rule 1100](#) cases.

by the Defendant's prior violation of his bail agreement in leaving the jurisdiction and not reporting his whereabouts. The court disagreed, and held that where the Commonwealth knows where the Defendant is incarcerated, they are required to show due diligence in seeking the custody of the accused before the accused may be deemed "unavailable".

The final issue before the Court, therefore, is whether the Commonwealth has exercised due diligence and made a reasonable effort to secure the defendant's attendance at trial. The Court finds that it has not. Instantly, the Court finds that there was no evidence presented that the Commonwealth made *any* effort during the four year lapse to contact the Defendant following their notification of the Defendant's whereabouts on 12/14/96. Having found that the Commonwealth has not exercised with due diligence in bringing this case to trial, the Court grants the Defendant's motion.

ORDER

AND NOW, this _____day of April, 2001, it is ORDERED and DIRECTED that the Defendant's Motion to Dismiss pursuant to Pa.R.Crim.P.600 is GRANTED.

By The Court,

Nancy L. Butts, Judge

xc: William Simmers, Esquire, ADA
Marc Lovecchio, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire