

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 01-11,977

VS :

DENNIS LEE BURLEY :

OPINION AND ORDER

Before the Court is Defendant's Motion to Dismiss pursuant to Pa.R.Crim.P. 600. After a review of the file and the testimony presented, the Court finds the following procedural facts relevant to the motion. On September 23, 1992, a criminal complaint was filed against the Defendant for driving under the influence and driving with a suspended license as a result of a vehicle stop on September 17, 1992. Chief Terry Lynn, of the Montgomery Police Department testified of no further action on this matter until May of 1993, when he had contact with the Defendant's sister. She indicated that the Defendant had moved to Florida. On May 4, 1993, Lynn filed an affidavit indicating that the Defendant had been entered into the system, and that a warrant had been filed. Lynn testified that he did not enter the Defendant into the national registry, as he thought that the Defendant would return to the area at some time to resolve the charges. Defendant was eventually picked up on the warrant on November 9, 2001. Defendant attended and waived a preliminary hearing on November 15, 2001. On June 10, 2002, Defendant filed the instant motion.

Defendant alleges that his case should be dismissed because the Commonwealth failed to bring his case to trial within 365 days of the filing of the complaint as is required under the speedy trial rule. *Pa.R.Crim.P. 600(A)(3)* In

determining whether the 365 days has elapsed, the Court must exclude delays resulting from the unavailability of the defendant or the defendant's attorney, *Pa.R.Crim.P. 600(C)(3)(b)*. See also [Commonwealth v. Fisher](#), 545 Pa. 233, 681 A.2d 130, (1996), reargument denied, appeal after new sentencing hearing, 559 Pa. 558, 741 A.2d 1234, certiorari denied 121 S.Ct. 81, 531 U.S. 829, 148 L.Ed.2d 43 (Delay attributable to defendant's seven-year absence from Commonwealth was excludable for purposes of determining whether Commonwealth timely commenced trial after filing criminal complaint.)

Instantly, Defendant does not dispute that the time between Chief Lynn's filing of the warrant on May 4, 1993, and his apprehension on the warrant on November 9, 2001 is excludable. Defendant does assert, however, that the time between the filing of the complaint on September 23, 1992 and the filing of the warrant on May 4, 1993 should be included, as there was no showing that the Commonwealth made any effort to find him. *Pa.R.Crim.P. 600(C)(1)* provides that "the period of time between the filing of the written complaint and the defendant's arrest" may be excluded, "*provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence.*" (emphasis added) In the instant case, there was no testimony of any attempts by Chief Lynn to locate and apprehend the Defendant prior to May 4, 1992 when he contacted the Defendant's sister. Absent testimony or evidence of attempts to locate the Defendant, the Court finds that this time, a total of 223 days, should be included.

Defendant additionally asserts that the time between when he was picked up on the warrant on November 9, 2001, and the time he filed his instant motion on June 10,

2002 should be included. Instantly, upon review of the file, the Court finds no times that should be excluded from this time under Pa.R.Crim.P. 600(C). The Court therefore agrees that this time, a total of 213 days, should be included. Adding this total to the previous total of 223 days brings the total includable elapsed time of 436 days. Having found that the total time exceeds the restrictions under Pa.R.Crim.P. 600, the Court must GRANT Defendant's Motion to Dismiss these charges.

ORDER

AND NOW, this _____ day of August, 2002, it is ORDERED and DIRECTED that the Defendant's Motion to Dismiss pursuant to Pa.R.Crim.P.600 is GRANTED. The charges filed against the Defendant are DISMISSED. Costs are to be placed on Lycoming County. Any bail posted in this matter shall be returned, less poundage.

By The Court,

Nancy L. Butts, Judge

xc: Robert Ferrell, Esquire, ADA
Michael Seward, Esquire, PD
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire

