

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 02-10,504

VS :

RONALD BRAHAM :

OPINION IN SUPPORT OF ORDER
IN COMPLIANCE WITH RULE 1925 (A)
OF THE RULES OF APPELLATE PROCEDURE

On July 10, 2002 the Court granted the Defense Motion to Dismiss pursuant to Rule 600 based on the Commonwealth's failure to appear for the hearing. Since the Commonwealth failed to appear, no testimony was taken on the merits. The Commonwealth filed a Motion to Reconsider on July 19, 2002, which the Court summarily denied. Alleging their prosecution was substantially handicapped; the Commonwealth filed a timely appeal with the Superior Court. This opinion is written in support of the Court's July 10, 2002 Order.

Defendant, Ronald Braham, was charged with Delivery of a Controlled Substance and Possession of a Controlled Substance, crack cocaine, in violation of the Drug, Device and Cosmetic Act. The Commonwealth alleges that on February 7, 2000 the Defendant delivered a quantity of crack cocaine to a confidential informant working with the Pennsylvania State Police. On March 8, 2000, Trooper Lancer Thomas appeared before District Justice James Carn to obtain a warrant for the Defendant's arrest. However, the Defendant was not arrested until March 14, 2002, with his address of record as SCI Greensburg. The Defendant waived his preliminary hearing on March 19, 2002 and was scheduled for trial during the August 2002 trial term. Defense

Counsel filed a Motion to Dismiss in accordance with Rule 600 on May 10, 2002. The hearing on the merits was scheduled for June 12, 2002 at 10:30 am. When both counsel appeared, the Commonwealth's attorney asked for a continuance. Although they had notice of the hearing, they failed to subpoena witnesses for the hearing. During this first contact, the Commonwealth never stated they were not aware of the issue raised or had not received a copy of the Defendant's motion. Over the objection of the defense, this Court granted the request, and rescheduled the hearing for June 14th at 10:00 a.m. The same Commonwealth's attorney filed a written request to continue the rescheduled hearing on the June 14th due to the unavailability of the officer. On the continuance form, the Court Scheduling Technician listed the next date as July 10, 2002 at 11:00 am. In addition, the hearing was listed on the daily schedule distributed prior to the end of business on July 9th. At 11:16 am on July 10th, when the Commonwealth failed to appear for the scheduled 11:00 am hearing, the Court granted the Defense request and dismissed the charges. (N.T. 7/10/02 at p.2)

Later that same day, the Executive District Attorney appeared in the office and told the secretary for this Court the Commonwealth had no notice of the motion, since there was nothing in their office file. On July 19, 2002, the same attorney filed a Motion to Reconsider with the Court again alleging, *inter alia*, that the District Attorney's Office was never served with a copy of the Defense motion. The Court summarily denied the motion, based upon the previous discussion of the case with original Commonwealth's attorney on June 10, 2002.

In their concise statement of matters complained of on appeal, the Commonwealth argues that the Court erred in dismissing the charges against the

Defendant. The Court disagrees. In Commonwealth v. Carson, 510 Pa. 568; 510 A.2d 1233 (1986), the Pennsylvania Supreme Court held that to dismiss a case under these circumstances, "the failure of a party to appear at a scheduled time must involve more than a **mere failure of time**; the failure must involve a failure of justice or prejudice to a defendant." Id. at 1235. In this case, this Court finds that the Defendant, who had been incarcerated in State Prison prior to being transported by the Sheriff's Office, could not be expected to be forced to accept another continuance request by the Commonwealth. The Court believes the fact that the Commonwealth would have further delayed the case directly affected the Defendant's status for parole on the state prison sentence that he was serving. Finally, the Court is not satisfied by a mere sanction being imposed on the Commonwealth for its failure to appear. The Commonwealth has made a substantial misstatement of fact to justify its appeal. This Court will not reward a total mischaracterization of the circumstances surrounding the Commonwealth's failure to appear a lesser sanction.

Date: November 25, 2002

By The Court,

Nancy L. Butts, Judge

cc: CA
Colleen Eddinger, Esquire
William Simmers, Esquire
Honorable Nancy L. Butts
Judges
Gary Weber, Esquire