

**IN THE COURT OF COMMON PLEAS  
LYCOMING COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

<b>COMMONWEALTH</b>	:	
	:	
<b>v.</b>	:	<b>No.: 02-11,976</b>
	:	
<b>CHRISTINE KNOSP,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

Before the Court is the Defendant's Motion to Dismiss, which was filed on January 23, 2004 and heard by the Court on March 15, 2004. In her motion, the Defendant asserts that she entered a guilty plea to the charge of Aggravated Harassment by a Prisoner on May 29, 2003 and that because she is still not sentenced, the charges must be dismissed under Rule 1405(A) of the Pennsylvania Rules of Criminal Procedure.

First, the Court notes that Rule 1405(A) was renumbered as Rule 704(A) on March 1, 2000, effective April 1, 2001. However, the test for a successful Motion to Dismiss for lack of timely sentencing has remained unchanged. The Defendant must show that she was not sentenced within the ninety day time period allowed by Rule 704(A), that there is no good cause for the delay, and that she was prejudiced by the delay. See Commonwealth v. Anders, 555 Pa. 467, 725 A.2d 170 (1999). Significantly, Pennsylvania courts have consistently held that absent a showing of prejudice, dismissal of the charges is not an appropriate remedy for a violation of the Rules of Criminal Procedure, including Rule 704. This is true

even where a finding is made that a delay in sentencing of more than ninety days exists and that there is no good cause shown for the delay. In Commonwealth v. Burke, 566 Pa. 402, 781 A.2d 1136 (2001), the Pennsylvania Supreme Court held that "the sanction of dismissal of criminal charges should be utilized only in the most blatant cases. Given the public policy goal of protecting the public from criminal conduct, a trial court should consider dismissal of charges where the actions of the Commonwealth are egregious and where demonstrable prejudice will be suffered by the defendant if the charges are not dismissed." Burke at 1144 (citations omitted). The Superior Court has held in other cases that "even in those situations where 'in the interests of justice' a dismissal is an appropriate consideration to remedy police or prosecutorial misconduct, it is not employed absent a showing of demonstrable prejudice. 'Dismissal in criminal cases is employed only as a last resort, and is limited to cases of extreme and substantial prejudice.'" Commonwealth v. Bowman, 2003 PA Super. 487 (Pa. Super., 2003) citing Commonwealth v. Bryan, \_\_\_ Pa.Super. \_\_\_, 818 A.2d 537, 541 (Pa.Super. 2003) (citations omitted).

In this case, the Defendant has adequately demonstrated that more than ninety days have passed since the entry of her guilty plea on May 29, 2003. She has also successfully asserted that there is no good cause shown for the delay, especially in view of the Commonwealth's failure to present any evidence that good cause exists for the Defendant's lack of sentencing in this case. However, the Defendant has failed to show that she has been

prejudiced in any way from the delay in sentencing. According to information presented at the hearing on this matter, the Defendant is an inmate at the Pennsylvania State Correctional Institution at Muncy. She was an inmate at the time that she committed the offense to which she pled guilty on May 29, 2003. The sentence she is presently serving has a minimum expiration date of July 28, 2005 and a maximum expiration date of January 28, 2012. There is no guarantee that she will be released upon reaching her minimum. Consequently, it is clear that she has suffered no unwarranted incarceration waiting for her sentencing to occur in that she was not entitled to release on her current sentence. At the time of sentencing on the new charge, Defendant can receive either a concurrent or a consecutive sentence. Based upon the guidelines promulgated by the Pennsylvania legislature, it is likely that any concurrent sentence imposed would reach its minimum expiration prior to the minimum date of her current sentence. If a consecutive sentence were imposed, then the outcome for the Defendant would be no different if she were sentenced now than if she had been sentenced within ninety days of her guilty plea. She would still need to wait for release on her current sentence before she could begin serving the sentence imposed for this new offense.

At the time of the hearing in this matter, the Defendant's attorney advanced a theory on her behalf that the mere uncertainty of not knowing what sentence will be imposed, when that uncertainty remains after ninety days, is adequate prejudice to warrant the dismissal of the charges. There

was no testimony offered at the time of the hearing to show that Defendant has been at all troubled by the uncertainty of her pending sentence, much less that any uncertainty she felt rose to the level of prejudice. The Court therefore rejects the contention of the Defendant's attorney that adequate prejudice has been shown in this case merely because of the delay itself.

**ORDER**

AND NOW, this \_\_\_\_ day of March, 2004, for the reasons set forth above, Defendant's Motion to Dismiss filed January 23, 2004 is DISMISSED.

By the Court,

\_\_\_\_\_  
Nancy L. Butts, Judge J.

xc: DA  
James Cleland, Esquire  
Court Scheduling  
Court Administrator  
Hon. Nancy L. Butts  
Diane L. Turner, Esquire  
Gary Weber, Esquire

In *Commonwealth v. Glover*, 500 Pa. 524, 458 A.2d 935 (1983), this Court held that:

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in determining whether a defendant's constitutional speedy trial right has been violated, it must first be determined whether the delay itself is sufficient to trigger further inquiry. [Citing *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972); *Jones v. Commonwealth*, 495 Pa. 490, 434 A.2d 1197 (1981)]. If the delay is sufficient to trigger further inquiry, the reviewing court must balance [\*471] the length of the delay with the reason for the delay, the defendant's timely assertion of his right to a speedy trial, and any resulting prejudice to the interests protected by the right to a speedy trial. [Citing *Barker*, supra; *Commonwealth v. Pounds*, 490 Pa. 621, 417 A.2d 597 (1980)].

*Glover*, 500 Pa. at 528, 458 A.2d at 937. Where the constitutional right to due process is concerned, the Superior Court has held that the *Glover* test applies, except that the appellant must prove a higher degree of prejudice. See *Greer*, 382 Pa. Super. at 139, 554 A.2d at 986 (citations [\*\*\*5] omitted) ("Not only must the appellant prove his cause was prejudiced by the delay, but he must also prove that the state's action in causing or allowing the delay was "fundamentally unfair," not merely undesirable, in order to establish a due process violation.").

[\*Commonwealth v. Anders\*, 555 Pa. 467, 470-471 \(Pa. , 1999\)](#)

Should Appellant successfully demonstrate that he has been prejudiced, he is entitled to a discharge. Otherwise, he is not entitled to relief.

[Commonwealth v. Anders, 555 Pa. 467, 474 \(Pa., 1999\)](#)