

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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|------------------------------|---|-------------------|
| COMMONWEALTH OF PENNSYLVANIA | : | NO. 01-11,819     |
|                              | : |                   |
| vs.                          | : | CRIMINAL DIVISION |
|                              | : |                   |
| CHAD BRIAN HARTER,           | : |                   |
| Defendant                    | : |                   |

**OPINION AND ORDER**

Before the Court is Defendant's Motion to Dismiss Charges, filed June 17, 2005. A hearing on the motion was held July 8, 2005, at the conclusion of which both counsel were given until July 20, 2005, to submit to the Court any authority for their respective positions. Nothing has been submitted by either counsel and the matter is now ripe for decision.

On April 18, 2002, Defendant pled guilty to one count of driving under the influence and one count of resisting arrest. A CRN evaluation was ordered and sentencing was scheduled for July 3, 2002. While Defendant did appear for sentencing on July 3, 2002, it appears that due to a clerical error, his name had not been placed on the sentencing list for that day. It is unclear what happened at that point, but Defendant was not sentenced that day and the matter was never rescheduled until a letter was sent by the Deputy Court Administrator on May 18, 2005, advising Defendant to appear for sentencing on July 8, 2005. In the instant Motion to Dismiss, Defendant contends that sentencing at this time would violate Rule 704 of the Rules of Criminal Procedure.

Rule 704 provides that sentence shall ordinarily be imposed within 90 days of the entry of a plea of guilty,<sup>1</sup> and violation of the rule has been held to implicate a defendant's speedy trial rights, see Commonwealth v. Young, 560 A.2d 204 (Pa. Super. 1989), the appropriate remedy for which may be discharge. Commonwealth v. Anders, 725 A.2d 170 (Pa. 1999). In determining whether such a violation has occurred, the court is directed to consider four factors: the length of the delay, the reason for the delay, the defendant's assertion of his right, and the prejudice to the defendant. Commonwealth v. McLean, 869 A.2d 537 (Pa. Super.

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<sup>1</sup> Pa.R.Crim.P. Rule 704(A)(1).

2005). After considering these factors in light of the appellate authority addressing this issue, the Court believes Defendant has failed to demonstrate a violation of his speedy trial rights such as would justify discharge.

The length of the delay is the triggering factor, and the three years involved here is clearly sufficient to trigger further inquiry.

The reason for the delay appears to be simply clerical error; nothing to the contrary was demonstrated. Thus, as in Commonwealth v. McLean, *supra*, this factor is given little weight.

With respect to Defendant's assertion of his speedy trial rights, the Court considers that Defendant never inquired about the rescheduling of his sentencing hearing, and asserted his rights only after being noticed to appear for sentencing. Unlike those cases where a defendant is unaware that his speedy trial rights are being delayed after conviction due to a lack of knowledge of the conviction itself, See Commonwealth v. Blair, 699 A.2d 738 (Pa. Super. 1997), and Commonwealth v. West, 868 A.2d 1267 (Pa. Super. 2005), here Defendant knew of the error and realized he was not being sentenced even though he should have been but failed to bring it to the attention of the Court. Indeed, Defendant testified he was hoping the mistake would never be discovered. Thus, this factor weighs against Defendant's request for dismissal of the charges. See Commonwealth v. Glass, 586 A.2d 369 (Pa. Super. 1991)(appellant's failure to have filed a petition seeking imposition of sentence, during the months that he was supposedly aggrieved by not having received a sentence, counts substantially against his speedy trial claim), and Commonwealth v. Pounds, 417 A.2d 597 (Pa. 1980)(failure to petition for immediate sentencing weighs against speedy trial claim). See also Commonwealth v. McLean, *supra* (Court balanced defendant's inquiry of the court clerk regarding his conviction against his and his attorney's lack of inquiry for the prior four months).

Finally, with respect to the issue of prejudice, while Defendant testified that he now owns a vehicle and is employed, the Court finds no real prejudice. Defendant will be eligible for work release and therefore will be able to continue his employment. And, while Defendant's vehicle may sit idle while he is incarcerated, such does not constitute the prejudice envisioned by the Courts in applying the rule. See Commonwealth v. Blair, *supra* (prejudice found in oppressive pre-trial incarceration, excessive anxiety and lost or missing witnesses).

Considering all of the circumstances, the Court finds no violation of Defendant's speedy trial rights such as would justify dismissal of the charges.

**ORDER**

AND NOW, this 25<sup>th</sup> day of July 2005, for the foregoing reasons, Defendant's Motion to Dismiss Charges is hereby DENIED. Defendant is Ordered and Directed to appear for sentencing on **August 8, 2005**, at **8:30 a.m.** in Courtroom **No. 3** before the undersigned.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA  
W. Jeffrey Yates, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson