

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 01-11,819

vs.

: CRIMINAL DIVISION

CHAD HARTER,

Defendant

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OPINION IN SUPPORT OF ORDER OF AUGUST 8, 2005,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court's Sentencing Order of August 8, 2005, entered after a July 25, 2005, Order denying his Motion to Dismiss Charges. Defendant's Statement of Matters Complained of on Appeal sets forth issues respecting only the denial of his motion to dismiss.

Defendant's motion was based on the three-year delay between Defendant's plea of guilty to DUI and a related charge on April 18, 2002, and his scheduled sentencing on July 8, 2005.¹ This Court found no violation of Defendant's speedy trial rights such as would justify dismissal of the charges, and the reasons for the Court's finding are set forth in the Opinion issued with the Order of July 25, 2005. This supplemental opinion is issued to address certain points raised by Defendant on appeal.

Defendant claims error in the Court "presuming the delay in sentencing to be caused by clerical error despite acknowledging lack of clarity as to the reason for the delay." Defendant testified he appeared for sentencing on July 3, 2002, as directed by the Order accepting his plea, and that he waited in the hallway but that his name was not called for sentencing.² The assistant district attorney represented to the Court that his investigation in preparation for the hearing revealed Defendant's name had not been placed on the sentencing list for that date. N.T. July 8, 2005, at 26-27. Defense counsel represented to the Court that he had been present on July 3, 2002, for the sentencing but had been told by the Court or a member of the Court system that the file could not be found and that he would be later informed of a new sentencing date. *Id.* at 28. The Court indicated it would accept both representations from counsel as the truth, having been offered by officers of the Court. *Id.* at 31. Defense counsel raised no

¹ Since the motion to dismiss was heard on July 8, 2005, and counsel asked for time to submit further authority to support their arguments, sentencing was rescheduled for August 8, 2005.

² Actually, Defendant testified to waiting "out there" but his counsel later clarified during argument that he waited "out in the hallway". N.T. July 8, 2005, at 28.

objection at that time. Thus, the Court believes it was completely justified in classifying the reason for the delay as clerical error: the failure to place Defendant's name on the sentencing list and a court clerk's direction to defense counsel to leave because the file was not in the courtroom³ were both errors made by court staff. Further, with respect to the "acknowledgment" of a lack of clarity on the issue, the Court specifically stated in its opinion, after noting Defendant's name had not been placed on the sentencing list, that "[i]t is unclear what happened at that point, but Defendant was not sentenced that day". In its use of the term "unclear", the Court was referring to defense counsel's statement that he did not have a "total recollection" concerning who told them to leave. Id. at 32. The Court believed the evidence as presented through both testimony and proffers of counsel to be sufficiently clear, however, to support its finding of clerical error.

Next, Defendant contends the Court erred in "resting the burden on the Defendant to show a reason for the delay in sentencing." The Court assumes Defendant is referring to the Court's statement in the opinion that the "reason for the delay appears to be simply clerical error; nothing to the contrary was demonstrated." By this statement the Court was merely referring to the state of the evidence, and was not drawing any adverse inference against either party for the lack of other evidence on the point.

Defendant also alleges court error in "resting the burden on the Defendant to pursue his own sentencing." The Court agrees it did place that burden on Defendant, but such is in keeping with appellate authority on the matter. See, for example, Commonwealth v. Glass, 586 A.2d 369, 372 (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.")(emphasis added), and Commonwealth v. Pounds, 417 A.2d 597, 600 (Pa. 1980)(noting, in considering whether appellant timely asserted his speedy trial rights, that "he did not file any formal petition seeking immediate decision on his post-verdict motions or immediate sentencing")(emphasis added).

Next, Defendant contends the Court erred in applying the reasoning of Commonwealth

³ The Court is certain, as was explained to counsel at the time of the hearing, that the direction to leave because the file was not in the courtroom did not come from the Court itself. Id. at 29.

v. Glass, Commonwealth v. Pounds, and Commonwealth v. Blair,⁴ “in that the instant Defendant appeared for sentencing within ninety (90) days of entry of his guilty plea but was sent away by the Court.” Commonwealth v. Glass and Commonwealth v. Pounds were relied upon by the Court in determining Defendant did not assert his speedy trial rights in a timely manner, and weighing that factor against Defendant.⁵ Apparently, Defendant believes that by appearing for sentencing on the original date, he had no further duty to assert his right to be sentenced in a timely manner. In Commonwealth v. Pounds, however, the Court emphasized that Pounds did not file any formal petition seeking immediate decision on his post-verdict motions or immediate sentencing even though Pounds had apparently previously sent several letters to the court. And, in Commonwealth v. Glass, the Court noted the reason for the delay as undecided post-verdict motions but nevertheless pointed out that counsel for appellant could have been more aggressive in making inquiries into the whereabouts of the delayed transcript, so that post-verdict motions could be briefed, and in making a request for prompt sentencing. It thus appears defendants have a continuing duty to assert their speedy trial rights and Defendant’s attempt herein to distinguish his case based on the fact that he did appear for sentencing originally, has no merit.

Finally,⁶ Defendant contends the Court erred in not applying the reasoning of Commonwealth v. West, 868 A.2d 1267 (Pa. Super. 2005), “wherein the Court cited the Trial Court’s failure to act in finding a constitutional violation.” The Court does not believe West to be controlling in this instance, however, as the circumstances there differed significantly from those presented here. Indeed, the West Court referred to those unique circumstances in weighing the “reason for the delay factor” in West’s favor:

Under the circumstances presented in this case, in which the courts had on several occasions during the 9-year interval recognized the mistake, yet repeatedly, failed to act by recommitting Appellant at those times, we conclude that Appellant's due process rights were violated when he was finally recommitted.

4 Commonwealth v. Blair, 699 A.2d 738 (Pa. Super. 1997).

5 The Court specifically did not rely on the reasoning of Commonwealth v. Blair with respect to this issue, but, rather, distinguished that case on the basis that there, the defendant was unaware that his speedy trial rights were being delayed.

6 Although Defendant does raise other general issues in his Statement of Matters, the Court believes those issues to have been adequately addressed in the opinion of July 25, 2005.

Commonwealth v. West, supra, at 1268 (emphasis added). In drawing its conclusion, the West Court distinguished the matter before it from that presented in Commonwealth v. Blair, 699 A.2d 738 (Pa. Super. 1997), where the delay was described as inadvertent error on the part of the court system⁷ and such factor was “weighed less heavily”:

In Blair, the court took action *the first time* it recognized the issue of Blair's period of mistaken liberty. Contrastingly, Appellant had several contacts with the criminal justice system both in Allegheny and Westmoreland counties during his period of mistaken liberty. Yet, despite the opportunities the courts had to address the outstanding question of whether Appellant served his 1990 sentence, they repeatedly failed to do so, *even after* recognizing that a question existed about the matter.

Commonwealth v. West, supra, at 1275 (emphasis in original). In the instant case, the Court notified Defendant to appear for sentencing as soon as the error came to its attention.⁸ Thus, as in Blair, this factor should be weighed less heavily, and does not tip the balance strongly in Defendant’s favor.

While the Court is mindful of the inconvenience caused to Defendant by the three-year delay in his sentencing, it cannot find that such delay constituted a violation of Defendant’s speedy trial rights such as would justify dismissal of the charges. Therefore, the Court respectfully suggests the Order of August 8, 2005, be affirmed.

Respectfully Submitted,

Dudley N. Anderson, Judge

Dated: September 28, 2005

cc: District Attorney
W. Jeffrey Yates, Esquire
Gary Weber, Esquire

⁷ Blair’s bond papers were missing from the record.

⁸ It can reasonably be inferred from Defendant’s testimony that he had not appeared before the Court on any other matter in the meantime, and there is nothing to indicate the missed sentencing had been brought to the Court’s attention prior to the issuance of the notice to appear.

Hon. Dudley N. Anderson