

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR - 1896 - 2005
	:	
vs.	:	CRIMINAL DIVISION
	:	
JASON PRESSLEY,	:	
Defendant	:	Petition for Habeas Corpus

OPINION AND ORDER

Before the Court is Defendant's Petition for Habeas Corpus, filed December 19, 2005. A hearing on the petition was held December 21, 2005.

Defendant was arrested on November 1, 2005, and remanded to the Lycoming County prison in lieu of \$100,000 bail, and has been charged with possession with intent to deliver a controlled substance and related offenses. A preliminary hearing was scheduled for November 29, 2005, but was rescheduled to December 13, 2005, and then again rescheduled to January 10, 2006. Both continuances were at the request of the Commonwealth and without agreement of defense counsel. In the instant petition, Defendant asserts a violation of Rule 540, which requires the preliminary hearing be held within ten days of the preliminary arraignment, unless extended for cause shown, Pa.R.Crim.P. Rule 540 (F)(1)(a), and requests the Court release him on signature bail.

It is well-established that where a preliminary hearing has not been held within the time required by Pa.R.Crim.P. 540 and there has been no good cause shown for continuing the hearing beyond that time, an accused is entitled to be released from custody until the preliminary hearing has been held. See Commonwealth v. Bernhardt, 519 A.2d 417 (1986); Commonwealth v. Zook, 615 A.2d 1 (Pa. 1992); Commonwealth v. Rothhaupt-Smith, 799 A.2d 112 (Pa. Super. 2002). In the instant case, the Commonwealth did not appear for the hearing on December 21, 2005, and no cause for the continuances was established of record. Therefore, the Court is unable to find "good cause" for the delay, See Commonwealth v. Rothhaupt-Smith, *supra*, (The record does not support a finding that the Commonwealth established good cause for the delay in the preliminary hearing since the reasons for the

particular dates chosen do not appear of record.), and Defendant is indeed entitled to be released pending the preliminary hearing.

ORDER

AND NOW, this day of December 2005, for the foregoing reasons, the petition for habeas corpus is hereby granted. Defendant shall be released immediately, on \$10,000 R.O.R. bail.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Prothonotary
DA
Jay Stillman, Esq.
Warden, LCP
DJ Carn
Gary Weber, Esq.
Hon. Dudley Anderson