

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. CR-594-2005
	:	CR-616-2005
SHARIEM HOUSTON,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

Before this Honorable Court, is the Defendant's Motion to Dismiss, filed on December 1, 2005. The Defendant alleges that he is entitled to a dismissal of the pending charges based on *Pennsylvania Rule of Criminal Procedure Number 600*. Specifically, the Defendant argues that, over 365 days have elapsed since the filing of criminal charges on May 6, 2004 and July 19, 2004, during which, the Commonwealth failed to exercise due diligence in locating the Defendant and bringing him to trial. For the following reasons, the Court GRANTS the Defendant's Motion to Dismiss and the charges filed under both CR-594-2005 and CR-616-2005 are DISMISSED.

I. Background

On May 6, 2004, a warrant was issued for the Defendant on charges of Possession of a Controlled Substance and Possession of Drug Paraphernalia (case number CR-616-2005). Then, on July 19, 2004, another warrant was issued for the Defendant on charges of Criminal Use of a Communication Facility, Delivery of a Controlled Substance, Possession with Intent to Deliver, Possession of a Controlled Substance, and Possession of Drug Paraphernalia (case number CR-594-2005). On March 25, 2005, the Defendant was apprehended and has been incarcerated, awaiting trial, since November 25, 2005.

II. Discussion

Pa.R.Crim.P. No. 600(a)(3), requires the Commonwealth to bring a defendant, who is at liberty bail, to trial within 365 days from the date on which the complaint is filed. *Pa.R.Crim.P. No. 600(a)(3)*. Pa.R.Crim.P. No. 600(c)(1), excludes “the period of time between the filing of the written complaint and the defendant's arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence.” *Pa.R.Crim.P. No. 600(c)(1)*. In determining whether law enforcement acted with due diligence in attempting to apprehend the defendant, the court must employ a balancing test whereby, using a common sense approach, the activities of the police are weighed against the interest of the accused receiving a fair trial. *Commonwealth v. Ingram*, 404 Pa.Super. 560, 567, 591A.2d 734, 737 (1991), *citing*, *Commonwealth v. Cruz*, 362 Pa.Super. 282, 524 A.2d 507 (1987), *citing*, *Commonwealth v. Branch*, 337 Pa.Super. 22, 486 A.2d 460 (1984). Although the police efforts need not be perfect, they need be reasonable. *Commonwealth v. Hunt*, 2004 PA Super 358, P18, 858 A.2d 1234, 1242 (2004), *citing*, *Commonwealth v. Hill*, 558 Pa. 238, 736 A.2d at 588 (1999).

In the instant case, 365 days have elapsed since the filing of the criminal charges against the Defendant on May 5, 2004 and July 19, 2004 and, the Commonwealth has failed to establish that law enforcement efforts to apprehend the Defendant were reasonably representative of due diligence thereby extending the time in which they have to bring the Defendant to trial.

On April 23, 2004, the Williamsport Bureau of Police arrested the Defendant and released him on bail. On his booking sheet, the Defendant's home address is listed as 6241 Elmwood Avenue, Philadelphia, Pennsylvania 19142. The sheet indicates that the Defendant resided at that address with his mother, which, at the hearing on the instant matter, the Defendant

explained was actually his aunt who is his legal guardian. In the more than ten months that elapsed between May 6, 2004 (the date the first set of charges against the Defendant were filed) and March 25, 2005 (the date the Defendant was apprehended on both sets of charges), Officers never attempted to locate/contact the Defendant at the Philadelphia address on his booking sheet. Instead, several Officers with the Lycoming County Drug Task Force attempted to locate the Defendant at, what was believed to be but has not been verified as, his mother's address and other residences that were believed to be, but have not been verified as locations the Defendant could possibly be located.¹ During the summer of 2004, then head of the Lycoming County Drug Task Force, Lieutenant Thomas Ungard, Jr., spoke with the property owner of the Defendant's mother's alleged address and employees at the post office and Department of Public Welfare, all of whom informed Lieutenant Ungard that the Defendant and/or his mother moved out of town without leaving a forwarding address. Despite information indicating that the Defendant did not live in Williamsport, no attempts to locate the Defendant at the Philadelphia address he provided were made.

Rule 600 protects Defendants' right to a speedy trial while also allowing the Commonwealth reasonable time to prosecute criminal charges. While the Commonwealth must only show a reasonable exercise of due diligence in locating and apprehending a defendant to avoid expiration of this time allowance, that burden was not met in the instant matter.

¹ At the hearing on this matter, the Defendant testified that he has several relatives in Williamsport whom he stays with when visiting from Philadelphia; it was not brought out at the hearing whether any of these later addresses were in fact that of the Defendant's family members.

ORDER

AND NOW, this _____ day of January, 2006, for the reasons stated above, the Defendant's Motion to Dismiss is GRANTED, and the charges filed under both CR-594-2005 and CR-616-2005 are DISMISSED.

By the Court,

Nancy L. Butts, Judge

cc: DA
PD
Judges
Law Clerk
Gary L. Weber, Esq.