

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

COMMONWEALTH : NO. 719-06
V. :
SAMUEL WINTERS : Criminal Division
: Motion to Dismiss
:

Date: July 28, 2006

ADJUDICATION AND ORDER

In this case, the Court will make the following findings of fact: On April 4, 2004, Officer Hagemeyer of the Montoursville Police Department conducted an interview of the Defendant at the Clinton County Prison regarding the incident forming the basis of the charges set forth in the criminal complaint in this matter. As a result of that interview and other evidence, Officer Hagemeyer filed a criminal complaint on May 17, 2004, and obtained a warrant for the Defendant's arrest. At that time, Officer Hagemeyer knew that the Defendant was incarcerated at the Clinton County Prison, which the Court would take notice is in the adjacent county and is certainly within an hour's distance of Montoursville and perhaps within thirty (30) to forty (40) minutes' distance of the Lycoming County Courthouse.

There was no attempt made to serve the warrant even though Officer Hagemeyer had advised his chief of the issuance of the warrant and the whereabouts of the Defendant. Officer Hagemeyer entered the warrant into the NCIC system and the CLEAN system to indicate that there was an outstanding warrant against the Defendant. Officer Hagemeyer did not have specific

knowledge as to the Defendant's whereabouts after May 17, 2004, but he did assume that eventually the Defendant was to be transferred from the Clinton County Prison to a federal prison.

The next event of significance is that on March 14, 2006, a U.S. probation officer contacted Officer Hagemeyer and advised him of the Defendant's whereabouts and likely place of residence. At that specific time, the Defendant was at the Lewisburg Federal Prison, which is in the adjacent Union County and within an approximate thirty (30) minute drive from Montoursville and the Lycoming County Courthouse. The Defendant was contacted by Officer Hagemeyer in March 2006 and agreed to surrender himself. Thereafter, the Court would note from the documents filed in this case that a preliminary hearing was waived, apparently, on April 3, 2006, with the Defendant having previously been preliminarily arraigned after surrendering himself on March 23, 2006. The information was subsequently filed on June 20, 2006, with the Defendant being arraigned on or about that date.

The Defendant filed the present Motion to Dismiss on June 27, 2006, asserting a violation of Pennsylvania Rules of Criminal Procedure Rule 600.

The Motion to Dismiss under Rule 600 must be GRANTED. The Court would refer counsel and the parties to our decision of June 6, 2006, in the case of *Commonwealth v. Sturdivant*, No. 856-04 (Lycoming County). Similarly, in that case, when the warrant of arrest was issued for Sturdivant, she was incarcerated in the Clinton County Prison. Following the issuance of the warrant, Sturdivant was transported from the Clinton County Prison to a District Justice office in Lycoming County for a preliminary arraignment and scheduling of a preliminary hearing. Sturdivant was then brought back to Lycoming County for a preliminary hearing in May of 2004. She appeared at

the preliminary hearing and waived it. A plea agreement was tentatively reached, and the case scheduling form set various court dates in the fall of 2004. After waiving the preliminary hearing, Sturdivant was taken back to Clinton County Prison and thereafter transferred from the Clinton County Prison to the State Correctional Institution at Muncy sometime after May of 2004, with the exact date not being clear. Sturdivant was not brought before the Court for any further action until September 14, 2005.

In *Sturdivant*, we examined Rule 600 and its purposes in detail. We then engaged in the required two-step analysis of determining first whether there was excludable time and second whether there was excusable delay. We found that there was no excludable time because Sturdivant was not unavailable for the time period during which she was incarcerated at the Clinton County Prison and the State Correctional Institution at Muncy because the Commonwealth failed to exercise due diligence to secure her presence before the Court. We also found that there was no excusable delay because the Commonwealth failed to exercise due diligence in bringing Sturdivant to trial before the Rule 600 run date. Accordingly, we found that the Commonwealth failed to bring Sturdivant to trial within 365 days of the criminal complaint having been filed in violation of Rule 600 and dismissed with prejudice the charges against her.

As compared to *Sturdivant*, the Commonwealth's efforts to bring the Defendant before the Court for prosecution are even less. We find that there is no excludable time. The case law is clear that mere incarceration within the Commonwealth does not make a defendant unavailable within the meaning of Rule 600, but a defendant is considered unavailable only for the period of time during which his presence could not be secured despite due diligence by the Commonwealth. *Commonwealth v. Pichini*, 454 A.2d 609, 610 (Pa. Super.

1982). Here, the Commonwealth made no effort to serve the warrant or bring the Defendant before the Court for prosecution despite the knowledge that the Defendant would be located at the Clinton County Prison or a federal correctional facility. We also find that there is no excusable delay. The evidence presented fails to establish that the Commonwealth exercised due diligence in bringing the Defendant to trial before May 17, 2005. The Commonwealth presented no evidence of any attempts to secure the Defendant's presence for trial, apparently, because none were made, despite the knowledge of the Defendant's location. As such, Rule 600 has been violated. Accordingly, the following order will be entered:

It is hereby ORDERED AND DIRECTED that the charges against the Defendant in this case are DISMISSED with prejudice. The costs shall be paid by Lycoming County. Bail is TERMINATED and shall be returned less appropriate fees and charges. The Defendant is discharged.

BY THE COURT:

William S. Kieser, Judge

cc: CA; A.P.O.; CC; DA; PD(RC)
Warden(2)
WSK/lb