

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 481 - 2006
	:	
vs.	:	CRIMINAL DIVISION
	:	
TERRENCE HEATH,	:	
Defendant	:	Rule 600 Motion to Dismiss

OPINION AND ORDER

Before the Court is Defendant's Motion to Dismiss for a Violation of Rule 600, filed April 20, 2006. A hearing on the motion was held April 28, 2006.

Defendant has been charged with delivery of cocaine and related offenses, in connection with an alleged controlled buy of cocaine from Defendant on August 17, 2004. A complaint was filed December 10, 2004, but Defendant was not arrested until February 23, 2006. Defendant now contends that since more than 365 days have elapsed since the filing of the complaint the matter must be dismissed pursuant to Rule 600 of the Pennsylvania Rules of Criminal Procedure. The Commonwealth counters that for the most part, Defendant could not be located in spite of the exercise of due diligence.

According to the testimony of Officer Jeremy Brown of the Williamsport Police, although the charges against Defendant arose from a controlled buy on August 17, 2004, Defendant was not immediately arrested because he agreed to cooperate with police in making further controlled buys from other individuals in order to have that cooperation noted at some future time. Defendant was instructed to contact Officer Brown to make the specific arrangements and it appears he did contact Officer Brown at least twice, but was told to call back at another time. Officer Brown then lost contact with Defendant and, in spite of visiting the address given by Defendant as his residence, patrolling the area, contacting a friend and other confidential informants, and even visiting at Defendant's mother's house, was unable to thereafter locate him. Defendant's name was entered into NCIC and CLEAN, and on May 3, 2005, a fugitive warrant was issued. Defendant was picked up on that warrant in mid-summer 2005, but again based on his promise to cooperate was not arrested on these charges. When he

failed to follow through on that promise, however, his name was again entered into NCIC and he was eventually arrested on February 23, 2006.¹

Rule 600 excludes from consideration the period of time a defendant's whereabouts are unknown and cannot be determined by due diligence. Pa.R.Crim.P. Rule 600(C)(1). Considering all of the circumstances presented here, the Court believes the Commonwealth did indeed exercise due diligence in pursuing this matter. It appears a significant factor which contributed to the instant situation was Defendant's unkept promise to cooperate. Further, Defendant was fully aware of the threat of charges, if not the charges themselves, but chose to make himself scarce, rather than make himself available for a prompt trial. The Court will now reward such behavior by dismissing the matter.

ORDER

AND NOW, this 3rd day of May 2006, for the foregoing reasons, Defendant's Motion to Dismiss is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson

¹ The Court notes Defendant was stopped by the State Police for a traffic violation during this period of time, but used an alias and different date-of-birth.