

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. CR – 954 - 2006
	:
vs.	: CRIMINAL DIVISION
	:
ANDRE KING,	:
Defendant	: Motion to Dismiss

OPINION AND ORDER

Before the Court is Defendant's Motion to Dismiss, filed December 21, 2006. Hearings on the motion were held January 16, 2007, and March 6, 2007.

Defendant has been charged with theft by deception and receiving stolen property in connection with his cashing a check which did not belong to him on November 1, 2001. The Complaint was filed by Williamsport Police on December 16, 2002, but Defendant was not arrested until May 13, 2006. Defendant seeks dismissal of the charges on the basis that more than 365 days have passed since the filing of the Complaint and he has not been brought to trial, in violation of Pa.R.Crim.P. Rule 600. The Commonwealth contends, however, that in calculating the Rule 600 run date, the Court should exclude the time from the filing of the Complaint until Defendant's arrest because Defendant's whereabouts were unknown and could not be determined by due diligence. Rule 600(C)(1).

Officer Ronald Bachman testified that after filing the charges in December 2002, he obtained a warrant for Defendant's arrest and attempted to serve that warrant by going to Defendant's last known address and to the coconspirator's address, and by asking about Defendant on the street. When he was informed that Defendant had moved back to Philadelphia, he entered the warrant into NCIC and checked the Driver's License records, to no avail. Officer Bachman testified that he checked periodically in both databases but was not able to locate Defendant until April 2006, when police involvement brought to their attention the fact that Defendant was once again in Williamsport. The warrant was immediately served on Defendant as soon as his whereabouts became known to police.

Officer Gary Whiteman also testified to having entered the Andre King warrant into NCIC and checking that database either weekly or biweekly, as well as having sent the warrant to outlying jurisdictions and the federal marshals. Officer Whiteman said he checked periodically with Philadelphia County as well, but was unable to locate Defendant.

According to the Lycoming County Adult Probation Office, hindsight indicates that Defendant became incarcerated on March 18, 2002, in the Union County prison, and in January 2003 was sentenced in that County to a period of incarceration in a State Correctional Institute of 18 to 60 months, followed by a 60 month period of probation. Defendant was released on parole from SCI Smithfield on December 13, 2004, to a halfway house in Harrisburg. Union County and SCI Smithfield knew Defendant as “Jonathan Reid”, however, not Andre King. While the Union County sentencing Order indicates in the caption that Jonathan Reid was a/k/a Andre King, defense counsel’s thorough investigation of this matter¹ failed to turn up any reference to Andre King which appeared in a database accessible to the authorities in Lycoming County.

It thus appears to the Court that the Commonwealth did exercise due diligence in attempting to locate Defendant, and that the failure to find him was due more to Defendant’s use of an alias than for want of trying. The period of time from the filing of the Complaint to Defendant’s arrest will therefore be excluded, resulting in a finding that Rule 600 has not been violated, and Defendant is not entitled to relief.

ORDER

AND NOW, this 12th day of March 2007, for the foregoing reasons, Defendant’s Motion to Dismiss is hereby DENIED.

BY THE COURT,

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

Dudley N. Anderson, Judge

¹ At the conclusion of the hearing on January 16, 2007, defense counsel requested additional time to investigate the circumstances of Defendant’s incarceration in Union County, specifically whether Defendant’s a/k/a was entered into NCIC or any other database whereby Lycoming County should have been able to learn his whereabouts. At the hearing on March 6, 2007, counsel candidly admitted that he found no reference to “Andre King” in the records he reviewed.