

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1338 – 2006
	:	
vs.	:	CRIMINAL DIVISION
	:	
JASON MITSDARFER,	:	
Defendant	:	Motion for Dismissal Under Rule 600

OPINION AND ORDER

Before the Court is Defendant’s Motion for Dismissal Under Rule 600, filed May 10, 2007. A hearing on the motion was held May 10, 2007.

Defendant has been charged with two counts of Hindering Apprehension and one count of Obstructing Administration of Law, as well as a summary criminal mischief, in connection with his role in helping his uncle avoid capture after escaping from a constable. A complaint was filed May 9, 2006. A jury was selected on May 10, 2007, and trial is scheduled to begin May 30, 2007. In the instant motion to dismiss, Defendant contends a violation of Rule 600 requires dismissal of the charges.

As Rule 600 requires in this matter that trial “shall commence no later than 365 days from the date on which the complaint is filed” Pa.R.Crim.P. 600(A)(3), the mechanical run date in this case is May 9, 2007,¹ and thus the rule has been violated. Pursuant to Rule 600(G), therefore, the Court must determine whether the Commonwealth exercised due diligence and whether the circumstances occasioning the postponement were beyond the control of the Commonwealth. Pa.R.Crim.P. 600(G).

The Commonwealth argues that it exercised due diligence because the delay resulted from a combination of court congestion and the unavailability of defense counsel. In support of this contention, the Commonwealth presented the testimony of the Deputy Court Administrator, Eileen Dgien, who keeps the records of the criminal scheduling system in Lycoming County. According to Ms. Dgien, this matter was listed as ready for trial at the pre-trial conference on February 15, 2007. At that time, the assistant district attorney prosecuting

the case indicated he was available on all jury selection days and all days of the trial term, but defense counsel indicated he was available only one out of three jury selection days, and only seven out of fourteen trial days. The matter was listed as a back-up case on the February 28, 2007, Call of the List, but was not reached due to the primary case being tried instead, and thus was continued on the list to the next term. At the Call of the List on May 8, 2007, the assistant district attorney was noted as being unavailable for jury selection that day due to being involved in other court proceedings, and at the Call of the List on May 9, 2007, the matter was not reached due to other cases being given priority based on attorney availability. As noted above, the jury was selected on May 10, 2007.

It does appear to the Court that the Commonwealth has exercised due diligence in bringing this matter to trial and that the delay has resulted from circumstances beyond its control, namely judicial delay resulting from congestion in the court calendar. Where court congestion factors into delay, the court must establish that it has devoted a reasonable amount of its resources to the criminal docket and that it scheduled the criminal trial at the earliest possible date consistent with the court's business. Commonwealth v. Spence, 627 A.2d 1176 (Pa. 1993), citing Commonwealth v. Crowley, 466 A.2d 1009 (Pa. 1983). Further, while the trial court should rearrange its docket, if possible, when judicial delay has caused a lengthy postponement beyond the Rule 600 date, or one that implicates the constitutional right to a speedy trial, it is not required to do so to avoid a delay of less than 30 days. Id. Here, where the delay is only one day, the delay was occasioned by the trial of other cases which had been assigned earlier, and Defendant can point to no prejudice resulting from such minimal delay, the Court believes it reasonable to conclude that the trial has been scheduled at the earliest possible date consistent with the court's business.² It certainly cannot be said that the delay was within the control of the Commonwealth, especially considering the significant unavailability of defense counsel during the previous trial term.

¹ At the hearing on Defendant's motion, counsel agreed there are no periods of excludable time under Rule 600(C) which would delay the run date.

² See Commonwealth v. Spence, 627 A.2d 1176 (Pa. 1993)(judicial delay of three weeks held not unreasonable where the matter was assigned to the court in the regular course of the court's business and, due to the fact that other cases had been assigned earlier than Spence's case, the court tried those first, as well as the fact that there was a need to coordinate the schedules of his three co-defendants in a joint trial).

ORDER

AND NOW, this 14th day of May 2007, for the foregoing reasons, Defendant's Motion for Dismissal Under Rule 600 is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
John Smay, Esquire
Gary Weber, Esquire
Hon. Dudley Anderson