

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. CR – 1792 - 2006
	:
vs.	: CRIMINAL DIVISION
	:
TAURAS T. SMITH,	:
Defendant	: Motion to Dismiss

OPINION AND ORDER

Before the Court is Defendant's Motion to Dismiss, filed as part of his Omnibus Pre-Trial Motion on December 11, 2006. A hearing on the motion was held February 12, 2007.

Defendant was charged on September 20, 2004, with various drug offenses but was not arrested on those charges until October 11, 2006. In the instant Motion to Dismiss, Defendant contends the Commonwealth has failed to exercise due diligence in bringing him to trial, in violation of Rule 600, and seeks to have the charges dismissed.

According to the investigating trooper, at the time of filing the initial complaint, an arrest warrant was also obtained, and since Defendant could not be located at that time, the warrant was entered into CLEAN and NCIC. Sometime prior to his transfer from the Montoursville barracks to the Punxsutawney barracks in April 2005, the trooper learned that Defendant was incarcerated in the Philadelphia County prison. When he contacted the prison he was told that the warrant from Lycoming County would be put in line with other detainees. He had no further information regarding efforts to return Defendant to Lycoming County to face the charges in the instant matter.

While Rule 600 requires trial to commence no later than 365 days from the date on which the complaint is filed, Pa.R.Crim.P. Rule 600(A)(3), the period of time between the filing of the complaint and the defendant's arrest shall be excluded "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. Rule 600(C)(1). Assuming for the sake of argument that Defendant's whereabouts could not have been determined by due diligence until April 2005, at that time, the Commonwealth knew of Defendant's whereabouts and thus it

became incumbent upon them to exercise due diligence in attempting to procure his return for trial. Commonwealth v. McNear, 852 A.2d 401 (Pa. Super. 2004). That they did so is to be shown by the Commonwealth by a preponderance of the evidence. Id. In the instant case, however, the Commonwealth presented no evidence respecting the efforts made to return Defendant for trial; the assistant district attorney handling the matter stated simply that he had no idea what happened between April 2005 and October 2006. Considering such a lack of proof, the Court has no choice but to include the time between April 2005 and October 2006, resulting in a violation of Rule 600.

ORDER

AND NOW, this 12th day of February 2007, for the foregoing reasons, Defendant's Motion to Dismiss is hereby GRANTED. The charges filed to the above-captioned number are hereby DISMISSED.

BY THE COURT,

Dudley N. Anderson, Judge

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