

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 v. : **No.: 01-11,734**
 :
 JAMES TAYLOR, :
 Defendant :

OPINION AND ORDER

Before this Honorable Court is Defendant’s Post Sentence Motion for a New Trial. On December 7, 2004, a jury trial was held before this Court, at which the Defendant was not present¹. At the time of trial, Defendant’s Attorney, James Protasio stated on the record, that at the time of jury selection, at which Defendant was present, Defendant was advised of the trial date and time. The jury returned a verdict of guilty of delivery of a controlled substance. On August 7, 2007, the Court imposed upon the Defendant a sentence of 30 to 60 months, followed by 10 years probation for delivery of a controlled substance, cocaine. On August 24, 2007², Defendant filed the instant Post Sentence Motion. Defendant argues under Pa. R. Crim. P. 602, that the Court erred by holding the trial in absentia, as he alleges that prior to trial he advised his attorney, that he was in Philadelphia, because his fiancée was hospitalized and he was caring for his infant child.

On December 4, 2007, a conference in chambers was held, followed by a hearing on Defendant’s Post Sentence Motions. In chambers, Mr. Protasio stated again that the Defendant was made aware of his trial date. Further, the parties stipulated that Mr. Protasio stated he never

¹ A bench warrant was issued for Defendant’s arrest. The bench warrant was vacated on February 23, 2007, as the Defendant was located and then incarcerated in Philadelphia.

² This Court, at the request of the Public Defendant’s Office, granted an extension of time for the filling of post sentence motions until August 27, 2007.

received a call from the Defendant, and that had he received such a call, he would have advised the Court. At the hearing, Defendant testified that he became aware of his trial date two days before trial at which time he called Mr. Protasio to reschedule. Defendant testified that while he called four times and left voicemails, he never actually spoke with Mr. Protasio. Defendant alleges that he was unable to attend his trial because his fiancée was in the hospital with kidney problems and that he was caring for his newborn child, who was on a heart monitor. At the request of Defense Counsel, Defendant was given until December 7, 2007 at five o'clock p.m. to obtain medical records from the Defendant's fiancée to substantiate his testimony. In a letter dated December 7, 2007, Defense Counsel states that she has been unsuccessful in obtaining said medical records.

The court did not err in holding Defendant's December 7, 2004, trial in absentia. Pa. R. Crim. P. 602 states in relevant part that:

- (A) The defendant shall be present at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule. The defendant's absence without cause shall not preclude proceeding with the trial including the return of the verdict and the imposition of sentence.

As the Defendant cannot substantiate his testimony, the Court finds the Defendant's absence without cause. Therefore, the Court denies Defendant's Post Sentence motion for a new trial.

ORDER

AND NOW, this ____ day of December 2007, based on the foregoing Opinion, it is hereby ORDERED AND DIRECTED that Defendant's Post Sentence Motion is DENIED.

By The Court,

Nancy L. Butts, Judge

cc: Nicole J. Spring, Esq
DA (KO)
James Taylor
SCI-Camp Hill
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
Gary Weber, Esq. (LLA)