

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH</b>	<b>:</b>	<b>No. CR-404-1985</b>
	<b>:</b>	<b>(85-10,404)</b>
<b>vs.</b>	<b>:</b>	
	<b>:</b>	<b>CRIMINAL</b>
<b>RICHE W. MORRISON,</b>	<b>:</b>	
<b>Defendant</b>	<b>:</b>	<b>Motion to Dismiss</b>

**OPINION AND ORDER**

This matter came before the Court on the Defendant’s Motion to Dismiss the charges filed against him. The relevant facts follow.

On February 22, 1985, the police arrested the Defendant for driving under the influence of alcohol (DUI) and various summary offenses. The police filed a criminal complaint against the Defendant for these charges on March 1, 1985. At the preliminary hearing, the District Justice set bail at \$2,000 ROR. The Defendant signed the bail bond, which stated the following under the heading BAIL CONDITIONS: “The CONDITIONS of this bond are that the defendant will: ... (3) The DEFENDANT . . . must give written notice to the issuing authority, Clerk of Courts, the District Attorney AND Court Bail Agency, of any change in his address within forty-eight hours of the date of his change of address.”

Defendant was represented by the public defender’s office. On June 5, 1985, an assistant public defender filed a motion to dismiss on Defendant’s behalf, in which he asserted the charges should be dismissed because the criminal complaint was not filed within five days of Defendant’s release after arrest without warrant for driving under the influence of alcohol in violation of former Rule 130(d). A hearing was held on this motion on August

7, 1985.<sup>1</sup> Defendant was present for this hearing. At the conclusion of the hearing, the Court dictated an Order in open court dismissing the DUI charge, staying the summary charges, and continuing bail. N.T., August 7, 1985, p.2. On August 9, 1985, the Commonwealth appealed the Order dismissing the charges.

In August 1987, Defendant left the Williamsport area and moved to the Philadelphia area. He did not notify his public defender, the court, the district attorney or the clerk of courts of his new address.

On or about May 5, 1988, the Pennsylvania Supreme Court reversed the dismissal and remanded this case. On May 26, 1988, this case was called for trial, but it was continued to the June session due to the Defendant not being available. On June 20, 1988, this case was again called for trial and the Defendant did not appear, so the Court directed that a bench warrant issue for the Defendant's apprehension.<sup>2</sup>

On May 10, 2007, the Defendant turned himself in the Lycoming County sheriff. The bench warrant was vacated and this case was scheduled for a pre-trial conference on August 7, 2007.

On August 7, 2007, the Defendant waived his right to a jury trial and elected to be tried without a jury.

On August 21, 2007, the defense filed a motion for formal discovery, which was scheduled to be heard on September 19, 2007.

This case was scheduled for a pre-trial conference on October 3, 2007. At that time, defense counsel indicated the Defendant was going to enter a plea and he had not

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1 The hearing consisted of counsel agreeing to the date of arrest and the filing of the criminal complaint and the Court entering an order. N.T., August 7, 1985, p. 2.

2 The Prothonotary issued the bench warrant to the sheriff on June 30, 1988.

yet completed his CRN evaluation, so the case was scheduled for a guilty plea on November 28, 2007.

On November 28, 2007, the defense filed a motion to dismiss “under Pa.R.Cr.P. rule 600 and upon the Doctrine of Laches.” At the time scheduled for his guilty plea, the defense requested a continuance. The continuance request was granted and the case was placed on the status list for January 31, 2008.

On January 30, 2008, the defense filed two more continuance requests to continue the status conference and the hearing on his motion to dismiss. These requests were granted. The motion to dismiss was rescheduled for February 19, 2008 and the status conference was rescheduled for March 11, 2008.

On February 19, 2008, the court held a hearing and argument on the Defendant’s motion to dismiss. The court held the record open for the Defendant to submit records regarding the various times he was incarcerated between the time the case was called for trial in 1988 and the date he turned himself in on the bench warrant. The court received a one-page document from defense counsel on February 28, 2008, a copy of which is attached.<sup>3</sup>

The Defendant first contends he is entitled to dismissal under Rule 600. The Defendant seems to be arguing that the time from the Order directing issuance of the bench warrant until the Defendant turned himself in on May 10, 2007 is not excludable under Rule 600, because: (1) he did not have notice of the case being called to trial in May and June of 1988; and/or (2) he was incarcerated in a state correctional institution so the Commonwealth

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<sup>3</sup> That document seems to indicate the Defendant was incarcerated in state correctional institutions from April 4, 1994 through April 11, 2001 and most of 2003-2005.

should have known where he was and brought him to trial. The Court cannot agree.

On the notice issue, the Court relies on the case of Commonwealth v. Baird, 919 A.2d 258, 260-61 (Pa.Super. 2007), in which the Superior Court stated:

A defendant on bail who failed to appear at a court proceeding, of which he has been properly notified, is deemed unavailable from the time of that proceeding until he is subsequently apprehended or until he voluntarily surrenders himself...Notice of an upcoming court date to someone other than the defendant may constitute proper notification of the date to the defendant...Where defense counsel has actual notice of a proceeding and fails to so inform his or her client, the onus and consequences of such failure fall upon the defendant. The defendant's failure to appear at the court proceeding, therefore, renders the defendant unavailable during the entire period between the date of the proceeding and the defendant's subsequent apprehension by police. (citations omitted)

The Court believes that one can infer from the Orders entered in May and June of 1988 that defense counsel had notice for the case being called to trial on May 26, 1988 and June 20, 1988. From the language and the distribution list for copies of the May 26, 1988 Order, the Court can reasonably infer that William Miele, a public defender, appeared on the Defendant's behalf at the call on May 26, 1988 and requested a continuance because the Defendant was unavailable.<sup>4</sup> The Court directed that the case be continued to the June Session of trials and a copy of the Order was sent to Mr. Miele.<sup>5</sup> Therefore, Defendant, through counsel, had notice for the June 1988 call of the list.

When a defendant who is on bail and has notice of a proceeding fails to appear, he has violated the conditions of bail, and the Commonwealth is entitled to count any

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4 Given the Defendant's testimony that he did not notify his attorney when he moved to Philadelphia in 1987, the Defendant was unavailable because his attorney did not have his new contact information.

5 Typically, the Court dictates the order in open court in the presence of counsel when a continuance request is made during call of the list. This would constitute sufficient notice to the Defendant. See Commonwealth v. Derrick, 322 Pa.Super. 517, 527, 469 A.2d 1111, 1116 (1998)(oral notice to defense counsel of continuation of trial is sufficient notice to defendant).

period of delay as excusable time; a showing of due diligence is not required.

Commonwealth v. Byrd, 325 Pa.Super. 325, 329, 472 A.2d 1141, 1143-44 (1984); see also Commonwealth v. Vesel, 751 A.2d 676, 680 (Pa. Super. 2000); Commonwealth v. Brown, 351 Pa.Super. 119, 124, 505 A.2d 295, 297 (1986). This rule applies when the defendant is incarcerated unless he has complied with the notice requirements of Rule 526(A)(3) or the Commonwealth has actual knowledge of his incarceration. See Commonwealth v. Gorham, 341 Pa.Super. 499, 503, 491 A.2d 1368, 1371 (1985). The Defendant admitted in his testimony that he did not comply with the notice requirements of Rule 526(A)(3) and the conditions of his bail bond. Although the Defendant presented evidence that he was incarcerated for significant time periods between 1994 and 2001 and between 2003 and 2005, no evidence was presented to show the Commonwealth knew the Defendant was incarcerated. Therefore, the Court finds the period from May 26, 1998 to May 10, 2007 is excludable under Rule 600(C)(3).<sup>6</sup> Since more than 365 days have not run from May 5, 1998 to May 26, 1998 and from May 10, 2007 to November 28, 2007,<sup>7</sup> the Defendant is not entitled to dismissal under Rule 600(D)(2).

The Defendant also is not entitled to dismissal under the doctrine of laches.

The Pennsylvania Courts have found the concept of laches has no place in the criminal law.

Commonwealth v. Shinn, 368 Pa.Super. 436, 442, 534 A.2d 515, 518 (1987).

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<sup>6</sup> The time period from November 28, 2007 through the present is also excludable under Rule 600(C)(3)(b).

<sup>7</sup> There may be additional periods of excludable time between May 10, 2007 and November 28, 2007, because the Defendant could not be tried on the day he turned himself in. The time period after May 10, 2007, however, was not the focus of the hearing on February 19, 2008.

**ORDER**

**AND NOW**, this \_\_\_\_ day of March 2008, the Court DENIES the Defendant's  
Motion to Dismiss.

By The Court,

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Kenneth D. Brown, P.J.

cc: Kenneth Osokow, Esq. (ADA)  
Matthew Ziegler, Esq.  
Gary Weber, Esq. (Lycoming Reporter)  
Work File