

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :

v. :

DANIEL LEE BALLIET, :
Defendant :

CR-816-2011 :
CRIMINAL DIVISION :

OPINION AND ORDER

The Defendant filed a Motion to Dismiss Pursuant to Rule 600 on April 4, 2012. A hearing on the motion was held May 24, 2012.

Background

On August 11, 2010, Pennsylvania State Police filed a criminal complaint against Daniel Lee Balliet (Defendant), which charged him with Theft by Unlawful Taking or Disposition, Receiving Stolen Property, Criminal Mischief, Risking Catastrophe, Recklessly Endangering Another Person, and five counts of Criminal Conspiracy. On October 8, 2010, the Defendant was arrested and was then subsequently released on bail on October 14, 2010. A preliminary hearing, which was scheduled on October 14, 2010, was continued to November 4, 2010 at the Defendant's request.¹ On February 14, 2011, the Defendant filed a Petition for Writ of Habeas Corpus.

On March 25, 2011, the date of the hearing on the Petition for Writ of Habeas Corpus, another attorney for the Commonwealth attended the hearing. At the hearing, the Assistant District Attorney requested a continuance to enable the addition of witness testimony to their case/argument against the Defendant's Petition. Prior to this date, the Commonwealth's attorney assigned to the case knowingly planned to rely solely on the transcripts from the preliminary

hearing. The Court denied the Commonwealth's request for a continuance. After the hearing, which relied on the transcripts of the preliminary hearing, this Court found that prima facie was not met on any of the charges and granted the Defendant's Motion for Habeas Corpus. In fact, at the hearing the Assistant District Attorney admitted that there was not a prima facie case without the addition of more evidence. The case was dismissed without prejudice.

On May 4, 2011, a second criminal complaint was filed against the Defendant with the same offenses as the original complaint. On July 26, 2011, Defendant filed a Motion to Suppress Evidence. The Court denied the motion in an Order and Opinion dated September 16, 2011. On March 29, 2012, the Defendant filed a Motion to Dismiss Pursuant to Rule 600, which is the subject of this Opinion.

Discussion

The Defendant contends that more than 365 days have elapsed since the filing of the first criminal complaint and that the Commonwealth has not exercised "due diligence" in bringing the Defendant to trial. Rule 600 states that "trial in a court case in which a written complaint is filed against the defendant, when the defendant is at liberty on bail, shall commence no later than 365 days from the date on which the complaint is filed." Pa.R.Crim.P. 600(A)(3). This Rule is meant to secure a defendant's Pennsylvania Constitutional and United States Constitutional right to a prompt trial. Pa. Const. Art. I, § 9; USCS Const. Amend. 6. "[A] Trial court must grant a Rule 600(G) motion to dismiss unless it finds that the Commonwealth has exercised due diligence and that the circumstances occasioning the postponement were beyond its control." Commonwealth v. Meadius, 870 A.2 802, 805 (Pa. 2005) (citing Pa.R.Crim.P. 600(G)). The

¹ The continuance by the Defendant adds up to twenty-one (21) days.

exercise of “due diligence” requires the Commonwealth to do everything reasonable within its power to guarantee that a trial begins on time. See id. at 807-08.

In Meadius, the Pennsylvania Supreme Court determined that Rule 600(G) precludes the withdrawal and re-filing of charges where the Commonwealth fails to exercise “due diligence” in bringing the charges against the defendant at the earliest possible time. Commonwealth v. Johnson, 11 A.2d 509, 512 (Pa. Super. 2010) (citing Medius, 870 A.2d at 807-08). In that case, the Court found that there was no “due diligence” and by using the date of the first complaint reinstated the trial court’s decision to dismiss the case based on Rule 600. See id. The lack of “due diligence” is an independent basis for dismissal and not dependent on a lack of evasive intent by the Commonwealth. See id.

Further, in Surovcik, the Superior Court concluded that the Commonwealth failed to exercise due diligence where all the evidence offered at the preliminary hearing for the second criminal complaint was available to the Commonwealth prior to its withdrawal of the original complaint. Commonwealth v. Surovcik, 933 A.2d 651, 657 (Pa. Super 2007). The Court found that the Commonwealth did not have intent to delay, however, the lack of “due diligence” alone warranted dismissal of charges under Rule 600. See id. at 655.

Here, both the Commonwealth and the Defendant are in agreement that 365 days have elapsed since the filing of the first criminal complaint.² The only issue raised by both the Commonwealth and the Defendant was whether the Commonwealth exercised “due diligence” in the dismissal and re-filing of the charges against the Defendant. If the Commonwealth was “due diligent” then the date of the second criminal complaint would be used to calculate Rule 600 and

² For a detailed list of the dates in this Case please refer to the background section. The first criminal complaint was filed on August 11, 2010 and 365 days from this date would be August 11, 2011. Excludable time would include the twenty-one (21) day continuance the Defendant’s counsel requested for the preliminary hearing. Any additional

the Commonwealth would be in compliance. If the Commonwealth, however, was not “due diligent” than the date of the first criminal complaint would be used to calculate the 365 days and the Court would be forced to dismiss the Defendant’s case based on Rule 600.

During the original charges, the Commonwealth believed they could have relied on the transcripts of the preliminary hearing for the Defendant’s Petition for Writ of Habeas Corpus up until the day of the hearing. At the hearing the Commonwealth requested a continuance in order to present additional witness testimony, which was not previously prepared. The Commonwealth acknowledged at this time that they did not have sufficient evidence available to prove a prima facie case. The Defendant filed the Petition on February 14, 2011 and on March 7, 2011 a hearing on the Petition was scheduled for March 25, 2011. The Commonwealth had ample notice of the hearing and only discovered a very obvious error in their case/argument the day of the hearing, after another attorney had reviewed the case and when it was too late to cure.

The only reason the Commonwealth did not bring more evidence at the hearing was because the initial attorney believed they had presented sufficient evidence at the preliminary hearing solely based upon a review of the transcripts of the preliminary hearing. Witness testimony and other evidence existed at the time of the hearing on the Motion for Habeas Corpus that the Commonwealth could have used but did not. In fact, during the hearing in this case’s Motion to Dismiss Pursuant to Rule 600, the Commonwealth stated that they were in possession of the results of DNA evidence as early as January 23, 2011. The Court’s reason for granting Defendant’s Petition for Writ of Habeas Corpus was because the attorney for the Commonwealth who was assigned the case failed to adequately prepare for the hearing and did not do everything

excludable time would be arguable and also irrelevant to defeating any potential Rule 600 violations.

within their power to be prepared, which resulted in unnecessary and needless delay including the ultimate dismissal of the first set of charges. In no way were the circumstances beyond the control of the Commonwealth.³

Further, after the case was dismissed on March 25, 2011, the second criminal complaint charging the Defendant was filed on May 4, 2011. No reason was given for why the criminal complaint was filed more than one (1) month after the Defendant's case was dismissed without prejudice. The Commonwealth did not indicate that more evidence was needed or even obtained during this time. Like Surovcik, all evidence was available prior to the dismissal of the original charges. Once again, the Court must find that the Commonwealth did not act with due diligence in having the trial begin within 365 days of the Defendant's original complaint or August 11, 2010.

ORDER

³The Court notes that as it refers to the Commonwealth, at no time was a member of the Pennsylvania State Police present, leading the Court to conclude that the decisions made were solely a product of the District Attorney's Office without consultation with the Affiant or any other witnesses from the State Police.

AND NOW, this _____ day of June, 2012, based upon the foregoing Opinion, the Court finds that the Commonwealth has failed to exercise due diligence in bringing the Defendant to trial in violation of Pa.R.Crim.P. 600. Therefore, the Defendant's Motion to Dismiss Pursuant to Rule 600 is hereby **GRANTED** and it is **ORDERED** and **DIRECTED** that the charges filed against the Defendant are hereby **DISMISSED** with prejudice.

By the Court,

Nancy L. Butts, President Judge

xc: DA (AB)
Peter Campana, Esq.
Eileen Dgien, Dep. CA
Gary Weber
Zygmunt A. Pines, Esq.
Court Administrator of Pennsylvania
AOPC – Harrisburg
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 1500
PO Box 61260
Harrisburg, PA 17106-1260