IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	**:**	
	:	
v.	**:**	**CR-870-2001**
	:	**CRIMINAL DIVISION**
SHARON NEE,	**:**	
Defendant	**:**	

OPINION AND ORDER

The Commonwealth filed a Motion for Rule 600 on October 23, 2012. A hearing on the motion was held on December 10, 2012.

Background

On February 5, 2001, South Williamsport Police filed a criminal complaint against Sharon Nee (Defendant) for an alleged DUI on January 20, 2001. The Defendant was charged with two (2) counts of Driving Under the Influence of Alcohol.[1] Bail was set at $2,000 unsecure bail, which the Defendant posted. The Defendant signed a document entitled "Bond," which stated that "THE CONDITIONS OF THIS BAIL BOND ARE AS FOLLOWS: 1. The defendant must appear at all times required until full and final disposition of the case." On May 7, 2001, the Defendant, *pro se*, signed a "Lycoming County Criminal Case Scheduling Form," which scheduled an ARD hearing and Court Arraignment on June 18, 2001.[2] On June 19, 2001, the Honorable Dudley Anderson filed a bench warrant against the Defendant for failure to appear for Arraignment on June 18, 2001. In approximately 2003, the Defendant moved to York, PA.

On May 25, 2012, the Honorable Marc F. Lovecchio vacated the bench warrant issued on June 19, 2001 and set bail at $5,000 unsecured. On October 23, 2012, the Defendant filed a

[1] 75 Pa.C.S. § 3731(a)(1), 75 Pa.C.S. § 3731(a)(4).
[2] The Defendant completed a "Waiver of Counsel" form on May 7, 2001.

Motion to Dismiss – Rule 600, alleging that a trial should have commenced no later than 365 days from January 20, 2001. In addition, at the hearing on the Motion, the Defendant testified that she had sent correspondence to the District Attorney's Office in October 2011 requesting information on the case. The Defendant stated that she also attached a stamped, self-addressed envelope with the correspondence to the District Attorney's Office but she never received a response.

Discussion

The Defendant argues that the Commonwealth was not due diligent in finding the Defendant and that Rule 600 dictates that the charges should be dismissed.[3] The applicability of Rule 600 is contingent on whether the defendant is released on bail or incarcerated. "[T]rial 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). "[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 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.

The Commonwealth, however, is not required to show due diligence in certain circumstances. "When an [Appellant] who is on bail and who has notice of a scheduled court

[3] The Defendant did not raise in the Motion a constitutional right to a speedy trial, but only the violation of Pa.R.Crim.P. 600. Commonwealth v. Anders, 699 A.2d 1258 (Pa. Super. 1997) (citing Barker v. Wingo, 407 U.S. 514 (1972)). The Commonwealth and the Defendant also did not raise this at the hearing and therefore this Court will not address this issue.

proceeding in his case fails to appear in court at the appointed time, he has violated the conditions of bail, and the Commonwealth is entitled to count any period of delay as excusable time . . .; a showing of due diligence is not required." Commonwealth v. Vesel, 751 A.2d 676, 680 (Pa. Super. 2000) (citing Commonwealth v. Byrd, 472 A.2d 1141, 1143-44 (Pa. Super. 1984)). The reasoning for such a rule is stated in Cohen:

> Where, however, the accused is aware of his obligation to appear and fails to do so, he may legitimately be held accountable for any resultant delay. Restated, where a warrant of arrest is involved the requirement of due diligence in the service of process is required before blame can be assigned to the suspect. Where the defendant is on bail and has notice of his obligation to appear and fails to do so, a concept of due diligence is apprehending the fugitive is misplaced in a speedy trial analysis. To rule otherwise would permit a defendant who intentionally absented himself from a scheduled court hearing to have the charges against him dismissed if the Commonwealth's efforts to locate him did not measure up to a court's standard of due diligence. Such a result is obviously absurd.

Commonwealth v. Cohen, 392 A.2d 1327, 1331 (Pa. 1978).

Here, a condition of the Defendant's bail was that she "appear at all times required until full and final disposition of the case." The Defendant also signed and dated the "Lycoming County Criminal Case Scheduling Form" detailing the dates and times that the Defendant was to appear in court. After failing to appear at Arraignment, Judge Anderson issued a bench warrant. As the Defendant violated the conditions of bail, anytime that resulted from the delay is excusable time to the Commonwealth. See Vesel, 751 A.2d at 690 (finding that the Commonwealth did not violate Pa.R.Crim.P. 1100 after approximately eight (8) years after a bench warrant was issued).

In argument, the Defendant states that she contacted the District Attorney's Office by mail and requested information regarding her case. This contact, however, does not pacify the

fact that the Defendant failed to attend her Arraignment and a bench warrant was issued. In Snyder, the Superior Court of Pennsylvania addressed this situation:

> We may take judicial notice of the fact that the trial docket is controlled by the court of common pleas, and not by the district attorney. Thus, steps taken to advance the prosecution of Defendant's case emanate from the action of the court's clerks and not, in this first instance, action by the district attorney.
>
> In the same vein, the provisions of Rule 4013[4] relating to conditions of bail require the defendant to appear *before the issuing authority or the court* at all times required, and to submit to all orders and process *of the issuing authority of the court*. We find no exception in the Rule permitting a defendant to not appear, simply because informal contacts are ensuing between the defendant and the district attorney.

Commonwealth v. Snyder, 542 A.2d 95, 99 (Pa. Super. 1988) (emphasis in original). The letter sent to the District Attorney's Office does not change the outcome of this Motion. Therefore, this Court finds that the Defendant is not entitled to dismissal of her charges based upon Pa.R.Crim.P. 600.

ORDER

AND NOW, this _____ day of January, 2013, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Dismiss – Rule 600 is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

[4] Currently Pa.R.Crim.P. 526., which states that a defendant on bail will "appear at all times required until full and final disposition of the case."