

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-873-2013
:
vs. : CRIMINAL DIVISION
:
: Opinion and Order re
JEFFREY MACK WILLIAMS, : Defendant's motion to dismiss
Defendant :

OPINION AND ORDER

This matter came before the court for a hearing and argument on Defendant's motion to dismiss pursuant to Rule 600. The relevant facts follow.

On March 4, 2012, Trooper Matthew Lada conducted a traffic stop of a vehicle Defendant was driving. Although Defendant's operator's license listed an address of 2010 N. 25th Street, Philadelphia, Defendant told Trooper Lada that he was living at 639 Park Avenue in Williamsport. Trooper Lada filed a criminal complaint against Defendant on April 3, 2012, charging him with driving under the influence of alcohol (DUI) and summary traffic offenses. A summons was issued on April 10, 2012, but it was returned unclaimed, and an arrest warrant was issued on April 19, 2012.

On April 25, 2012, Trooper Lada went to Park Avenue to attempt to serve the arrest warrant, but he discovered that the specific address 639 Park Avenue did not exist. Trooper Lada forwarded the warrant to the Pennsylvania State Police (PSP) barracks closest to 2010 N. 25th Street in Philadelphia, the address listed on Defendant's operator's license.

On July 11, 2012, a corporal at the PSP barracks made a record entry of the warrant in their file. An attempt to serve the warrant was made on November 13, 2012, but was not successful. On January 13, 2013, a warrant letter was mailed to 2010 N. 25th Street.

No further efforts were made to locate Defendant until he was arrested on May 16, 2013.¹

On July 22, 2013, Defendant filed his motion to dismiss, in which he asserted that the Commonwealth failed to exercise due diligence to locate Defendant and to prosecute this matter within 365 days from the date the criminal complaint was filed. Defendant asserted, and at the hearing on his motion provided documents, that he was charged with DUI on August 27, 2012 in case 1939-2010 under the name Rashwan Jeffrey Williams, and incarcerated in the Lycoming County Prison from October 22, 2012 until November 8, 2012. In addition, he was sentenced on December 4, 2012 and has remained under the supervision of the Lycoming County Adult Probation office since that date. The name Rashwan Jeffrey Williams also appears as one of Defendant's aliases on his JNET criminal history. Defense counsel contends that if the police had searched any databases, they would have discovered that Defendant was incarcerated and under supervision under the alias Rashwan Jeffrey Williams.

Rule 600 states in relevant part:

(A) Commencement of Trial; Time for Trial

...

(2) Trial shall commence within the following time periods.

(a) Trial in a court case in which a written criminal complaint is filed against the defendant shall commence within 365 days from the date on which the complaint is filed.

...

(C) Computation of Time

(1) For purposes of paragraph (A), periods of delay at any stage of the proceedings caused by the Commonwealth when the Commonwealth has failed to exercise due diligence shall be included in the computation of the time within which trial

¹ Trooper Lada testified that Williamsport police apprehended Defendant on July 20, 2013, but the docket transcript from the Magisterial District Judge indicates that Defendant's preliminary arraignment was held on May 16, 2013, and he was confined in the Lycoming County Prison because he was unable to post bail until May 28, 2013.

must commence. Any other periods of delay shall be excluded from the computation.

Pa.R.Cr.P. 600.

The Commonwealth has the burden of proving due diligence by a preponderance of the evidence. Commonwealth v. Browne, 526 Pa. 83, 584 A.2d 902, 908 (1990). “Due diligence is fact-specific, to be determined on a case-by-case basis; it does not require perfect vigilance and punctilious care, but merely a showing the Commonwealth has put forth a reasonable effort.” Commonwealth v. Selenski, 606 Pa. 51, 994 A.2d 1083, 1089 (2010).

When the defendant or the defense has been instrumental in causing the delay, the period of delay will be excluded from computation of time. [citations omitted]. The periods of time that were previously enumerated in the text of former Rule 600 (C) are examples of periods of delay caused by the defendant. This time must be excluded from the computations in paragraphs (C)(1) and (C)(2): (1) the period of time between the filing of the written complaint and the defendant’s arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence.

Rule 600, Comment.

Additionally, the court cannot ignore the purposes of Rule 600. “Rule 600 has the dual purpose of both protecting a defendant’s constitutional rights and protecting society’s right to effective prosecution of criminal cases.” Commonwealth v. Bradford, 616 Pa. 122, 46 A.3d 693, 701 (2012).

In determining whether an accused’s right to a speedy trial has been violated, consideration must be given to society’s right to effective prosecution of criminal cases, both to restrain those guilty of crime and to deter those contemplating it. However, the administrative mandate of Rule 600 was not designed to insulate the criminally accused from good faith prosecution delayed through no fault of the Commonwealth.

So long as there has been no misconduct on the part of the Commonwealth in an effort to evade the fundamental speedy trial rights of

an accused, Rule 600 must be construed a manner consistent with society's right to punish and deter crime. In considering these matters..., courts must factor into the ultimate equation not only the prerogatives of the individual accused, but the collective right of the community to vigorous law enforcement as well.

Commonwealth v. Armstrong, 74 A.3d 228, 235 (Pa. Super. 2013).

Defendant argues that the charges against him must be dismissed because the Commonwealth failed to exercise due diligence to locate and arrest him. According to Defendant, if the police had simply checked computer databases they would have realized that he was incarcerated in the Lycoming County Prison and then under the parole supervision of the Lycoming County Adult Probation Office under the name Rashwan Jeffrey Williams. The court cannot agree.

“The matters of availability and due diligence ‘must be judged by what was done by the authorities rather than by what was not done.’” Commonwealth v. De Marco, 481 A.2d 632, 636 (Pa. Super. 1984), quoting Commonwealth v. Williams, 425 A.2d 451, 455 (Pa. Super. 1981). “In addition, the efforts need only be reasonable; lack of due diligence should not be found simply because other options were available or, in hindsight, would have been more productive.” Commonwealth v. Ingram, 591 A.2d 734, 737 (1991)(citations omitted).

Although the police could have done more to locate Defendant, the court cannot say that their efforts in this case were unreasonable. Defendant gave a false address and perhaps a false name² to Trooper Lada. A summons was sent to the address that Defendant provided, but it was returned unclaimed. A warrant was issued for Defendant's

²The court does not know whether Defendant's real name is Jeffrey Mack Williams, Rashawn Jeffrey Williams, Jeffery Williams or some other name. It is clear, however, that at least on one occasion, Defendant provided a

arrest. Shortly thereafter, Trooper Lada went to Park Avenue and realized that Defendant had provided a fictitious address. He obtained a Philadelphia address from PennDOT records and forwarded the arrest warrant to the State Police barracks closest to that address. On November 13, 2012, an attempt was made to locate Defendant at that address, but it was unsuccessful. A letter also was sent to that address but the police did not receive any response. Unbeknownst to the police, however, when they were attempting to locate Defendant, he was incarcerated in Montgomery County and Lycoming County on other charges under other names or different spellings of his name.

Defendant faults the police efforts to locate him, but he fails to consider his own actions that inhibited their efforts. Defendant was actively concealing his whereabouts and identity. He provided a false address in this case and, in either this case or CR-1939-2012, he provided a false name. Defendant also has a very common last name. Contrary to defense counsel's arguments, it would not have been easy for the police to discover that Defendant was incarcerated and under supervision in Lycoming County under the name Rashwan Jeffrey Williams,³ as the offenses in case 1939-2012 occurred after the incident in this case. Although Defendant had a prior criminal history, the most recent case was from 2007 and Defendant did not receive a sentence of incarceration on that case. See Defendant's Exhibit 3.

Under all the facts and circumstances, the court finds that the delay in this case

false name to the police.

³ Defendant's exhibit 9 indicates that Defendant was incarcerated in Montgomery County in November 2012 at or around the time the police attempted to locate Defendant at his Philadelphia address. It took a considerable amount of effort for the court to find Defendant's Montgomery County case, because his first name was spelled **Jeffery**, instead of Jeffrey and he was arrested on a probation or parole violation bench warrant on October 22, 2012 in a case from 2005, see CP-46-CR-00006538-2005.

was attributable to the unavailability of Defendant. It would be an injustice to award Defendant a windfall of dismissal of the charges when he engaged in conduct to obscure his whereabouts and identity from the authorities. Therefore, the court will deny Defendant's motion to dismiss.

ORDER

AND NOW, this ___ day of December 2013, the court DENIES Defendant's motion to dismiss.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
Kathryn Bellfy, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)