

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 1322 – 2014
:
vs. : CRIMINAL DIVISION
:
ARTHUR RAYMOND WILEY, JR., :
Defendant : Motion to Dismiss

OPINION AND ORDER

Before the Court is a Motion to Dismiss Pursuant to Rule 600(G),¹ filed by Defendant on August 19, 2014. A hearing on the motion was held September 29, 2014.

A criminal complaint charging Defendant with theft and receiving stolen property was filed by Pennsylvania State Police Trooper Adam Kirk on August 6, 2013, and an arrest warrant based on those charges was issued that same day. Defendant was arrested on the basis of that warrant in Allegheny County on August 10, 2013, and committed to the Allegheny County Prison. On August 15, 2013, Defendant was preliminarily arraigned by Magisterial District Judge Jerry Lepley by way of video conference.² For unknown reasons, MDJ Lepley did not schedule Defendant’s preliminary hearing until August 6, 2014, by notice dated June 26, 2014. Following that preliminary hearing, Defendant was held for court and a formal arraignment was scheduled for August 25, 2014. Defendant waived arraignment on August 19, 2014, and also that date filed the instant motion to dismiss, contending that the Commonwealth “failed to exercise due diligence in proceeding in this matter” and seeking dismissal because Defendant “has not been tried within 365 days.”

¹ The motion’s title apparently refers to a provision of Rule 600 which has been eliminated from the rule in the most recent version thereof: “[i]n 2012, former Rule 600 was rescinded and new Rule 600 adopted to reorganize and clarify the provisions of the rule in view of the long line of cases that have construed the rule.” Pa.R.Crim.P. 600 *Comment*.

² Defendant was thereafter unable to post bail and remained in the Allegheny County Prison until he was transferred (on other charges) to another facility and then to the State Correctional Institution at Houtzdale, where he currently resides.

Rule 600 provides, in relevant part:

Rule 600. Prompt Trial

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

Pa.R.Crim.P. 600. In the instant case, the rule required that trial commence by August 6, 2014, unless it is determined that the period of delay (from the preliminary arraignment to the preliminary hearing) was “caused by the Commonwealth when the Commonwealth has failed to exercise due diligence”. The Comment elaborates on “due diligence” as follows:

Computation of Time

For purposes of determining the time within which trial must be commenced pursuant to paragraph (A), paragraph (C)(1) makes it clear that any delay in the commencement of trial that is not attributable to the Commonwealth when the Commonwealth has exercised due diligence must be excluded from the computation of time. Thus, the inquiry for a judge in determining whether there is a violation of the time periods in paragraph (A) is whether the delay is caused solely by the Commonwealth when the Commonwealth has failed to exercise due diligence. If the delay occurred as the result of circumstances beyond the Commonwealth's control and despite its due diligence, the time is excluded.

Id. (citations omitted).

In response to Defendant’s assertion that the Commonwealth failed to exercise due diligence, the Commonwealth cites Commonwealth v. Bradford, 46 A.3d 693 (Pa. 2012). There, although a preliminary hearing was timely held, the preliminary hearing transcript was not forwarded to the court of common pleas within five days thereafter, in violation of

Pa.R.Crim.P. 547(B).³ The District Attorney's tracking system was triggered by receipt of that transcript by the clerk of courts and therefore, the District Attorney never began tracking the case. The Pennsylvania Supreme Court found it reasonable (and thus an exercise of due diligence) for the District Attorney to have relied on the District Judge's compliance with the rules of criminal procedure to trigger its internal tracking system. The Court characterized the District Judge's failure to forward the preliminary hearing transcript as a "circumstance clearly beyond the control of the Commonwealth", Id. at 702, and denied relief under Rule 600. This court agrees with the Commonwealth that the instant situation is factually quite similar to that in Bradford.

At a preliminary arraignment proceeding, the rules of criminal procedure require the issuing authority to:

- (1) Fix a day and hour for a preliminary hearing which shall not be later than 14 days after the preliminary arraignment if the defendant is in custody and no later than 21 days if not in custody unless:
 - a. Extended for cause shown; or
 - b. The issuing authority fixes an earlier date upon request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth;

Pa.R.Crim.P. 540(G)(1). Neither of the exceptions is applicable in this matter and thus in failing to schedule the preliminary hearing until August 6, 2014, District Judge Lepley did not comply with the rules of criminal procedure.

At the hearing on September 29, the Commonwealth offered testimony that the District Attorney's system in Lycoming County is set up to begin tracking a case upon receipt of the notice of the preliminary hearing and, further, that the District Attorney's office had no notice of Defendant's arrest until receipt of the June 26, 2014, notice. In accordance with Bradford, the court finds it reasonable for the District Attorney to have relied on the MDJ's compliance with the rules of criminal procedure in managing its case deadlines, and also that the delay occasioned by District Judge Lepley was beyond the control of the Commonwealth. Thus, the court determines that the Commonwealth exercised due diligence in this matter and

³ In fact, the transcript was not forwarded until one year later, when the matter was brought to the Commonwealth's attention by the filing by Bradford of a Rule 600 motion to dismiss.

that the time between August 29, 2013, (14 days after the preliminary arraignment) and June 26, 2014, (the date of notice to the Commonwealth) must be excluded.⁴

In reaching this conclusion, the court has considered the cases cited by Defendant, Commonwealth v. Lynn, 815 A.2d 1053 (Pa. Super. 2003), and Commonwealth v. Colon, 87 A.3d 352 (Pa. Super 2014), but finds both distinguishable. In Lynn, the delay was occasioned by a seven-month continuance of the preliminary hearing. The Commonwealth was thus aware of the case, and the court found “no evidence that the Commonwealth exercised any reasonable efforts to bring the case to trial during the district justice’s seven-month continuance of the preliminary hearing.” Commonwealth v. Lynn, *supra* at p. 1059. As noted above, because the preliminary hearing in the instant matter was never scheduled until *after* the delay, the Commonwealth was *not* aware of the case prior to that time. In Colon, although a criminal complaint was filed on October 19, 2009, the preliminary arraignment was not held until July 20, 2011. The defendant was incarcerated in a state correctional institution and the State Trooper who filed the Complaint was aware of that incarceration. The court found “nothing in the record to indicate that the Commonwealth made any efforts after the filing of the complaint to ensure that Appellant was brought to trial within 365 days, despite being aware of Appellant’s location at a state correctional institution” and concluded that the “Commonwealth failed to exercise the requisite due diligence. Because there is no evidence that the delay was caused by circumstances beyond the Commonwealth’s control, Appellant’s Rule 600 motion should have been granted.” Commonwealth v. Colon, *supra* at p. 359. While the Superior Court does appear to impute the Trooper’s knowledge to the Commonwealth, this court finds the case distinguishable. In Colon, the delay was occasioned by the failure to proceed immediately after filing the Complaint and was *not* caused by the MDJ. In the instant case, all preliminary procedures were conducted by the Trooper through the preliminary arraignment. The delay did not begin until *after* the MDJ took over the processing of the matter. The court believes this distinction important, as the Colon Court noted that there was “no evidence that the delay was caused by circumstances beyond the Commonwealth’s control”.

⁴ As it is not necessary to the decision, the court makes no finding with respect to the time period between receipt of the notice by the District Attorney’s office and the preliminary hearing.

In light of Bradford's holding that it is reasonable for the District Attorney to rely on the District Judge's compliance with the rules of criminal procedure as part of its "due diligence", and nothing in the record before this court indicating that the Commonwealth otherwise failed to exercise due diligence, the court finds no violation of Rule 600 at this time.

ORDER

AND NOW, this day of October 2014, for the foregoing reasons, the Motion to Dismiss is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson