

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

**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**HAKIM HOPKINS,  
Defendant**

:  
:  
:  
:  
:  
:  
:

**CP-41-CR-0000948-2012**

**OPINION AND ORDER**

On April 13, 2012, the South Williamsport Police Department filed a criminal complaint against Hakim Hopkins (Defendant). The charges arose from an incident on April 9, 2012, where the Defendant's girlfriend's father, Rodney Wilson, called the police to do a welfare check on his daughter who was staying with Defendant at a hotel at 234 Route 15 Hwy, formerly the Days Inn. At the time of the welfare check, Rodney Wilson (Father) arrived on the scene. Dasheka (Girlfriend) and Father consented to a search of their vehicle, a 2004 Gold Chrysler Pacifica which Defendant and his Girlfriend were using on the day in question. The police recovered Defendant's PA ID Card from the vehicle. A check of the identification card indicated Defendant was on State Parole.

Police recovered from the vehicle a .38 revolver, a Rossi .357 magnum revolver, and crack cocaine, a Schedule II controlled substance. The .38 revolver was later determined to be stolen property. Defendant was charged with two (2) counts of Persons Not to Possess Firearms,<sup>1</sup> a felony of the second degree; two (2) counts of Firearms not to be Carried Without License,<sup>2</sup> a felony of the third degree; Possession With Intent to Deliver,<sup>3</sup> an ungraded felony;

---

<sup>1</sup> 18 Pa.C.S.A. § 6105(a)(1).

<sup>2</sup> 18 Pa.C.S. § 6106.

<sup>3</sup> 35 P.S. § 780-113(a)(30).

Receiving Stolen Property,<sup>4</sup> a felony of the second degree; and other ungraded misdemeanor drug charges.

### **Procedural History**

On June 4, 2012, Shaka Mzee Johnson, Esq. represented the Defendant at his Preliminary Hearing. On September 13, 2012, Attorney Johnson was granted leave of Court to withdraw as counsel by the Honorable Marc F. Lovecchio. Peter Campana, Esq. was subsequently retained by the Defendant and continues to represent him.

On October 31, 2012, the Defendant filed an Omnibus Pre-trial Motion, which included a Petition for Writ of Habeas Corpus and a Motion to Suppress Evidence. Both motions were subsequently denied by this Court. On July 31, 2013, over a year after criminal charges were filed, the Commonwealth filed a motion to amend information on to conform to the requirements of Alleyne v. United States, 133 S. Ct. 2151 (2013); to wit: The Commonwealth requested to apply the mandatory minimum sentences eligible for the charges of 18 Pa.C.S. § 7508 [Drug trafficking sentencing and penalties] and 42 Pa.C.S. § 9712.1 [Sentences for certain drug offenses committed with firearms]. Trial Court Opinion, 12/4/13, at 2. Initially, this Court granted the Commonwealth's motion to amend, reserving decision on the constitutionality of the statutory sections until sentencing. Id. at 5. But after a Motion for reconsideration of its decision, filed by Defense Counsel, the motion to amend was subsequently denied by an Order of the Court on February 28, 2014. The Court cited the Lycoming County Court of Common Pleas *en banc* decision in Commonwealth v. Derr. No. 1620-2011 (Lovecchio, J., February 6, 2014) in its

---

<sup>4</sup> 18 Pa.C.S. § 3925(a).

Order granting the reconsideration. In Derr, the *en banc* panel of the Court of Common Pleas of Lycoming County held that 18 Pa.C.S. § 6317 and 18 Pa.C.S. § 7508 are unconstitutional.

Although, the Commonwealth filed its Petition for Allowance of Appeal to the Supreme Court of Pennsylvania, on March 28, 2014, it ultimately filed a praecipe to discontinue the appeal on December 28, 2015. The Court placed the matter on the February 2016 pretrial list. Defense Counsel requested a continuance citing two other trials scheduled for that term of court, a request the Commonwealth opposed.

On May 31, 2016, the Court heard argument on whether charges against Defendant should be dismissed due to a violation of Defendant's right to a Speedy Trial under the Sixth Amendment to the United States Constitution and Article 1, Section 9, of the Pennsylvania Constitution. At oral argument, Defense conceded that for Rule 600(A) purposes, 365 days of non excludable time had not accrued. Rather, the Defense posited a constitutional objection to the length of time that had been passed since the criminal complaint was filed. Defense Counsel listed no specific prejudice to his client as a result of the delay.

After argument, and prior to the Court's decision on the motion, the Commonwealth requested a continuance of Defendant's trial on June 30, 2016, citing unavailability of witnesses and law enforcement, a request which Defense did not oppose though it had previously asserted Defendant's right to a speedy trial.

### **Discussion**

Defense Counsel concedes that the Commonwealth is not "out of time" to bring its case if a traditional Pa.R.Crim.R.600 analysis is performed and cites Barker v. Wingo, 92 S. Ct. 2182, (1972) and Commonwealth v. Miskovitch, 64 A.3d 672 (Pa. Super. 2013) for the balancing test

the Court uses in determining whether a Defendant's right to a speedy trial has been violated. In neither case did the court find that the Defendant's right to a speedy trial had been violated.

In Barker it was held that

- (1) the right to a speedy trial is a more vague and generically different concept than other constitutional rights guaranteed to accused persons and cannot be quantified into a specified number of days or months, and it is impossible to pinpoint a precise time in the judicial process when the right must be asserted or considered waived, (2) while a defendant's assertion of, or failure to assert, his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of such a right, the primary burden remains on the courts and the prosecutors to assure that cases are speedily brought to trial, (3) a claim that a defendant has been denied his right to a speedy trial is subject to a balancing test, in which the conduct of both the prosecution and the defendant are weighed, and courts should consider such factors as length of the delay, reason for the delay, the defendant's assertion or nonassertion of his right, and prejudice to the defendant resulting from the delay, in determining whether a defendant's right to a speedy trial has been denied.

First, the Court believes a pre-trial delay of four and one half years is long enough to presume prejudice. In applying the balancing test set forth in Miskovitch, the Court must determine whether the degree of actual prejudice that occurred, rather than the assumptions provided by the conclusion of presumptive prejudice, when weighed against the reason for the delay establishes that Defendant's speedy trial rights have been violated.

Next, the Court must review the reasons for delay in this case. The primary two causes of delay in this trial were the Commonwealth's appeal to the Supreme Court of Pennsylvania and continuance of trial requests. There have been ten (10) continuance requests in this case, nine (9) of which have been requests to continue trial. The matter has been given thirteen (13) pretrial dates over the four year period. Seven (7) of the requests to continue the trial have been Defense requests, only one (1) of which the Commonwealth opposed. Two (2) continuance of trial

requests have been made by the Commonwealth, one (1) of which the Defense opposed. The most recent Commonwealth request, after the Defense filing of a motion to dismiss on speedy trial grounds, the Defense did not oppose. The Court finds the lack of opposition on the part of Defense Counsel illustrates that the Defense is not asserting its right to a speedy trial.

Ultimately, the Court believes that the Defendant's right to a speedy trial has not been violated. The Defense did argue that the Defendant's release from pretrial incarceration on nominal bail was an assertion of his speedy trial right; however, the Court does not equate the desire to be free from incarceration when legally entitled to be with asserting one's legal entitlement to be tried quickly and publicly by an impartial jury. Though the pretrial incarceration rule is contained within the same rule of criminal procedure that addresses prompt trial, requesting release from pretrial incarceration is not requesting that a matter be brought to trial, an assertion Defendant would have to make affirmatively in accordance with the Barker test.

However the Court does find the time between August 31, 2015, and the date that the Commonwealth's filed its praecipe to discontinue its appeal representing the Commonwealth's challenge to the lower court's decision is non excludable time for speedy trial purposes (119 days). The Supreme Court issued its opinion on August 31, 2015, affirming the *en banc* opinion of this Court finding the sentencing provision of Section 7508 not severable and unable to be cured by using a special verdict slip. The Commonwealth sought to apply mandatory minimum sentences to the Defendant under statutory sections 18 Pa.C.S. § 7508 and 42 Pa.C.S. § 9712.1. Normally the Commonwealth would not have to make a separate declaration of proceeding

under these statutes until after conviction<sup>5</sup>, however, in light of Alleyne it felt that it must. The Court initially allowed such amendments, over objection by the Defense, but subsequently reversed its decision. The statutes subject to Commonwealth's appeal were held unconstitutional by the Supreme Court of Pennsylvania on November 25, 2014 and August 7, 2015, respectively. 18 Pa.C.S. Section 7508 was held unconstitutional in Commonwealth v. Cardwell, 105 A.3d 74, Pa.Super 263 (filed November 25, 2014; Petition for Allowance of Appeal from the Order of the Superior Court denied August 12, 2015). Title 42 Section 9712.1 was recognized as unconstitutional in the Cardwell opinion. 42 Pa.C.S. Section 9712.1 was held unconstitutional in Commonwealth v. Newman, 99 A.3d 86, 2014 Pa. Super. 178 (filed August 20, 2014, Appeal denied by, Motion dismissed by, as moot Commonwealth v. Newman, 2015 Pa. LEXIS 1718 (Pa. Aug. 7, 2015). Rather than holding the Commonwealth to the dates it could have learned the statutory sections it sought to enforce were unconstitutional, the Court finds the Commonwealth must have known of the Derr affirmance as it was specifically a Lycoming County case and could have withdrawn its appeal in the above captioned matter at that time.

The Defendant cited no prejudice in his motion or in argument to the Court other than presumptive prejudice. Even under Barker and Miskovitch, (the constitutional standard rather than the Rule 600 standard) specific prejudice must be found. Other than the general discomfort of having an outstanding criminal matter, the Defendant states no prejudice. No witnesses formerly available are permanently unavailable and the Defense provided no intervening information that would indicate to the Court that the Defendant is prejudiced by the continuation of these proceedings.

---

<sup>5</sup> "Notice of the applicability of this section [18 Pa.C.S. § 7508] to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing." 18 Pa.C.S. § 7508(b) Proof of sentencing.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of October, 2016, for the reasons stated in the foregoing opinion, Defendant's Motion to Dismiss for Violations of Defendant's Right to Speedy Trial, is DENIED.

Any further requests for continuances of trial must be held on the record before this Court.

BY THE COURT,

\_\_\_\_\_  
Nancy L. Butts, President Judge

cc. DA  
Pete Campana, Esq.  
Gary Weber, Lycoming Law Reporter  
Susan Roinick, Law Clerk  
DCA