

COMMONWEALTH :
 :
 vs. : No. CR-215-2018
 :
 ANTHONY BREELAND, :
 Defendant : Omnibus Motion

OPINION AND ORDER

Defendant was charged with delivery of a controlled substance and related counts. Defendant’s arraignment was held on February 26, 2018. Through a stipulated order filed on March 28, 2018, Defendant was granted an extension to file an omnibus pretrial motion. Said motion was filed on the defendant’s behalf on June 28, 2018. Argument on said motion was held before the court on August 28, 2018.

Defendant’s omnibus pretrial motion includes a motion to suppress and motion to dismiss. Defendant’s motion to suppress seeks to suppress the evidence that was obtained from defendant’s cell phones. Defendant claims that the search of the cell phones was “without a valid warrant” because the warrant was not approved by the Commonwealth and therefore violated Lycoming County Rule of Criminal Procedure L202. Defendant’s motion to dismiss is based on the same alleged violation of Lycoming County Rule of Criminal Procedure L202. Defendant alleges that because of the defect in the warrant, his constitutional rights were prejudiced and the charges should be dismissed pursuant to Pa. R. Cr. P. 109.

Contrary to Defendant’s position, the Commonwealth argues that the defendant has no right to relief based solely upon a violation of Rule 202. The Commonwealth asks that Defendant’s motion be dismissed “without argument and with prejudice.”

The court held argument on Defendant’s motion on August 28, 2018. At the time, Defendant was proceeding pro se. Defendant argued that because Rule 202 was violated,

the evidence obtained pursuant to the search warrant of Defendant's cell phones must be suppressed. Defendant further argued that because Rule 109 was violated, the charges against him must be dismissed.

Lycoming County Rule of Criminal Procedure L202 entitled Approval of Search Warrant Applications by Attorney for the Commonwealth notes that no search warrants shall be issued by any judicial officer unless the search warrant application has the approval of an attorney for the Commonwealth prior to filing. The Rule prefaces the preclusion of the issuance of a search warrant on the District Attorney having filed a certification pursuant to Pennsylvania Rule of Criminal Procedure 202.

Pursuant to Rule 202 (A) of the Pennsylvania Rules of Criminal Procedure, the District Attorney of any county may require that search warrant applications filed in the county have the approval of an attorney for the Commonwealth prior to filing. In Lycoming County, pursuant to Rule L202, the District Attorney has required that it approve search warrant applications prior to filing. Pursuant to Rule 202 (B) of the Pennsylvania Rules of Criminal Procedure, the Lycoming County Court of Common Plea promulgated a local rule specifying such.

Rule 202 (D) of the Pennsylvania Rules of Criminal Procedure specifically notes, however, that no defendant shall have the right to relief based solely upon a violation of Rule 202.

The clear language of Rule 202 as well as the applicable case law with respect to Rule 109 preclude Defendant from obtaining the relief that he seeks. It appears to the court that suppression or dismissal is only available as a remedy if the defendant can prove that he was prejudiced. *Commonwealth v. Revtai*, 516 Pa. 53, 532 A.2d 1, 6 (Pa. 1987);

Commonwealth v. Wolgemuth, 737 A.2d 757, 759 (Pa. Super. 1999); *Commonwealth v. Schimelfenig*, 522 A. 2d 605, 613 (Pa. Super. 1987).

Actual prejudice is required before dismissal of charges because of defects in procedure. *Commonwealth v. McGinley*, 386 Pa. Super. 547, 563 A.2d 518, 521 (1989). Under the facts and circumstances of this case, the court finds that Defendant has not suffered actual prejudice. Accordingly, Defendant's omnibus pretrial motion is denied.

ORDER

AND NOW, this 12th day of September 2018, following a hearing and argument, Defendant's omnibus pretrial motion is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Ryan Gardner, Esquire (standby counsel)
Anthony Breeland
c/o Lycoming County Prison
Nicole Ippolito, Esquire, ADA
Gary Weber, Lycoming Reporter
Work File