

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

**COMMONWEALTH OF PA** : **No. CR-1-2018**  
**vs.** :  
:   
**JEROME WILLIAMS,** :  
**Defendant** : **Motion to Reconsider**

**OPINION AND ORDER**

Before the court is the defendant’s motion to reconsider. Specifically, on May 18, 2018, defendant filed a motion to dismiss, ostensibly a petition for habeas corpus, alleging that the Commonwealth failed to present sufficient evidence at the preliminary hearing to establish for prima facie purposes that the defendant possessed controlled substances with the intent to deliver them.

The court summarily denied said motion, noting that it was untimely and that the interests of justice did not warrant a hearing on the motion.

The defendant filed a motion to reconsider alleging that the motion to dismiss was filed “within thirty (30) days of receiving discovery” and that “the criminal judges agreed” that “motions to extend deadlines are no longer necessary due to discovery being late.”

Argument on the defendant’s motion to reconsider was held on June 20, 2018.

The undisputed facts are that the criminal complaint was filed on December 20, 2017, the preliminary hearing was held on December 28, 2017, the defendant through his counsel waived arraignment on January 22, 2018, and defense counsel entered his appearance on behalf of the defendant on January 22, 2018.

Over a period of months, discovery was provided to the defendant. On January 25, 2018, the defendant was provided with the police reports and the relevant rap sheets. On February 21, 2018, prison messages and phone calls were provided. On March 6, 2018,

additional prison phone calls and messages were provided. On March 7, 2018, evidence submission slips were provided. On April 7, 2018, additional prison phone calls and messages were provided. Finally, on April 18, 2018, a lab report was provided.

The basis for the defendant's motion to dismiss is the alleged insufficiency of the evidence that was produced at the preliminary hearing on December 28, 2018. At the very latest, this information would have been supplemented by the police reports provided on January 25, 2018.

"Unless otherwise required in the interests of justice, all pretrial requests for relief must be included in one omnibus motion." Pa. R. Crim. P. 578. The omnibus pretrial motion must be filed and served within thirty (30) days after arraignment, unless the opportunity therefor did not exist, or the defendant or defense attorney was not aware of the grounds for the motion, or unless the time for filing has been extended by the court for cause shown. Pa. R. Crim. P. 579 (A).

In this particular case, it is clear that: (1) the omnibus pretrial motion was not filed within thirty (30) days after arraignment; (2) the opportunity did exist to file it within that thirty (30) days because it is based solely on the testimony of the preliminary hearing; (3) the defendant and defense attorney were aware of the grounds for the motion; and (4) the time for filing was not extended by the court for cause shown.

In liberally construing the Rules, however, the court will consider the interests of justice standard as set forth in Rule 578.

Whether the interests of justice require an untimely motion to be heard is a matter for the discretion of the trial judge. *Commonwealth v. Long*, 753 A.2d 272, 279 (Pa. Super. 2000). In making this decision, the judge should consider several factors including: (1)

the length and cause of the delay; (2) the merits of the suppression claim; and (3) the court's ability, considering the complexity of the issues and the availability of the witnesses, to hold the hearing promptly. *Commonwealth v. Brown*, 378 A.2d 1262, 1266 (Pa. Super. 1977). A trial court should exercise discretion to hear an untimely motion where the merit of counsel's motion is so apparent that justice requires it to be heard. *Long*, 753 A.2d at 280; *Commonwealth v. Williams*, 323 A.2d 862, 866 (Pa. Super. 1974).

Under the circumstances in this particular case, the court concludes that the interests of justice do not support the defendant's omnibus motion being heard at this time. Defense counsel clearly had knowledge of the facts in support of the motion at the time he received a copy of the criminal complaint, by the time the preliminary hearing had concluded or at the latest, by the time he received a copy of the police reports. Nothing provided to the defendant by way of discovery following the production of the police reports on January 25, 2018 was utilized in support of the defendant's tardy filing of the motion to dismiss.

The defendant's reliance on being permitted to file the motion after all of the discovery has been produced begs logic. Defense counsel first argued that in the county where he previously practiced, it was not until discovery was fully provided that omnibus pretrial motions needed to be filed. Defense counsel no longer practices in that county and the Rules of Criminal Procedure apply statewide. The defendant's reliance on the email from First Assistant District Attorney Wade is also misplaced. It does not address this particular issue.

Moreover, defense counsel failed to explain why he did not file any motion to extend.

The defendant has been continually represented by the same public defender. While there has been a change in in personnel necessitating different attorneys to take over the handling of different cases, it was not in this case.

Next, there was no allegation made that the parties had been attempting to negotiate some sort of resolution such that defense counsel might risk losing the benefit of a plea agreement by the filing of a motion to dismiss. There was no representation at all by defense counsel that the parties were engaged in plea negotiations.

Finally, and perhaps determinatively, the underlying motion to dismiss has no apparent merit to it such that the interests of justice require it to be heard. When asked about the apparent merit of the motion, defense counsel responded that it was the Commonwealth's burden to prove a prima facie case. This did not, however, address the defendant's burden at this stage to show that the motion has apparent merit. Defense counsel subsequently argued that the Commonwealth's case is based on the credibility of the expert specifically stating that the Commonwealth case rests on "trusting" the expert under the "totality of circumstances." As defense counsel, knows, however, in connection with a pretrial insufficiency, credibility is not an issue. The Commonwealth's testimony must be taken as true.

Furthermore, the evidence is considered utilizing a prima facie standard, that being whether a crime was probably committed and whether the defendant probably committed it. In this particular case, and as set forth in the attachment to the defendant's motion to dismiss, the Commonwealth introduced a statement from Officer Joshua Bell as an expert in possession with intent to deliver (PWID). Based on his training and experience and the totality of the circumstances, he concluded that the defendant possessed the Oxycodone with the intent to deliver it to others. In formulating his opinion, he considered that the defendant possessed

37 pills concealed on his person, two cellular phones, US currency and a tied off distribution bag. Clearly, this evidence is sufficient to establish a prima facie case.

**ORDER**

**AND NOW**, this \_\_\_\_ day of June 2018, following the hearing and argument on the defendant's motion to reconsider, said motion to reconsider is **DENIED**.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)  
Benjamin Green, Esquire (APD)  
Gary Weber, Esquire (Lycoming Reporter)  
Work File