

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

**COMMONWEALTH OF PENNSYLVANIA** : **CR-1529-2018**  
v. :  
: :  
**ETHAN ENTZ** : **MOTION TO DISMISS**  
**Defendant** :

**OPINION AND ORDER**

Ethan Entz (Defendant) filed a Motion to Dismiss on November 27, 2018. A hearing on the motion was held on January 3, 2019. Both Defendant and the Commonwealth provided only additional argument at that time. Defendant challenges the District Attorney's office's ability to bring forward charges that arose from an incident that occurred on October 4, 2015. For the following reasons, the motion is denied.

**Background**

The factual basis of the underlying charges is not at issue and therefore only the procedure posture shall be addressed. The original incident occurred on October 4, 2015 and a complaint was filed in that matter on November 2, 2015, charging Defendant with two counts of Driving under the Influence of a Controlled Substance,<sup>1</sup> Possession of Marijuana, Small Amount,<sup>2</sup> and Possession of Drug Paraphernalia.<sup>3</sup> Defendant and the Commonwealth then entered into an agreed Stipulation, on January 25, 2016, that Defendant's charges would be not pressed upon proof of acceptance into the Armed Forces. *See* Stipulation 1/25/16. Failure of any condition allowed the Commonwealth to reinstate charges and during the stipulation period Defendant agreed to waive that time for statute of limitations and Rule 600 purposes. Defendant then applied for acceptance into the Armed Forces, but was denied due to the

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<sup>1</sup> 75 Pa. C.S. § 3802(d)(1)(i), (ii).

<sup>2</sup> 35 P.S. § 780-113(a)(31)(i).

<sup>3</sup> 35 P.S. § 780-113(a)(32).

pending charges. Thereafter the Commonwealth agreed to nol pros the charges so the Stipulation could be honored. Defendant was once again denied entry into the Armed Forces. Later that year, Defendant was charged under CR 2176-2016 for charges unrelated to the original action. That offense occurred on September 24, 2006 and the complaint was dated October 18, 2016. The Commonwealth then reinstated the October 4, 2015 charges in a complaint signed by the issuing magistrate on July 23, 2018.

### **Discussion**

Defendant filed a Motion to Dismiss stating that the Commonwealth should not be permitted to reinstate the charges because failure to satisfy the stipulation was of no fault of his own. It is well established that jeopardy does not attach when nol prossing charges and charges may be reinstated as long as they were not nol prossed on the basis of consideration, i.e. a guilty plea or other entered agreement. *See Commonwealth v. Ahearn*, 670 A.2d 133 (Pa. 1996). Although an agreement exists “in a criminal context, it remains contractual in nature and is to be analyzed under contract law standards.” *Commonwealth v. Hainesworth*, 82 A.3d 444, 449 (Pa. Super. 2013).

The Stipulation the parties originally agreed to and entered into on January 25, 2016 states:

IT IS HEREBY agreed by and between the Attorney for the Commonwealth and the defendant, that upon proof of acceptance into the Armed Forces of the United States or active duty for a period of not less than two years, the above captioned charges will be nol prossed. It is further agreed that should the defendant be discharged from his service in the Armed Forces for any reason other than due to physical incapacity, which incapacity occurs through injury suffered in the performance of his duties, the Commonwealth shall be permitted to refile the charges in this matter. The defendant further agrees to waive any objections he may have to refiling of charges as a result of the statute of limitations expiring. The defendant further agrees to waive any right he may have to a trial within the applicable Rule 600 period or any speedy trial right he otherwise has. Failure to comply in any manner with the foregoing shall be cause for the Commonwealth reinstating the charges in this matter.

It is clear that Defendant did not satisfy his obligations under the Stipulation. Additionally, the Commonwealth took steps beyond that necessary so Defendant could fulfill his portion of the agreement by not pressing the charges earlier, as an attempt to help with his acceptance into the Armed Forces. Defendant now claims that “failure to enlist was through no fault of his own,” but this does not relieve him of his obligation under the Stipulation. Without acceptance to the Armed Forces and two years of active duty the Stipulation is not satisfied, and therefore, as mentioned in the Stipulation, the Commonwealth had the right to reinstitute charges for the offense.

Since the terms of the Stipulation were not reached the only other issue the Court can foresee is whether the statute of limitations has run. The statute of limitations begins to run “from the time the cause of action accrued, the criminal offense was committed or the right of appeal arose.” 42 Pa. C.S. § 5502(a). The commencement of an action must occur prior to the two years statute of limitations. 42 Pa. C.S. § 5552(a) (“a prosecution for an offense must be commenced within two years after it is committed”). “A matter is commenced for the purposes of this chapter when a document embodying the matter is filed in an office authorized by section 5103 (relating to transfer of erroneously filed matters) or by any other provision of law to receive such document.” 42 Pa. C.S. § 5503(a).

Without delving into the dates with technical specificity and viewing the issue on its face, the Commonwealth still is within the two year statute of limitations. The offense occurred on October 4, 2015 and the present complaint was issued on July 23, 2018. This is a period of 1,024 days or two years, nine months, and twenty days. The period of the filing of the original complaint, in which the charges were initially not pressed to when the Commonwealth would have first had notice of Defendant not honoring his terms of the Stipulation, which is when the

next unrelated offense occurred, is 326 days. This period tolls for the calculation of the statute of limitations. Without delving into whether the statute of limitations could have been waived past notice or when the Commonwealth was on notice, facially that leaves a period of 698 days, which is less than the two year period, so the charges have still been brought within the applicable statute of limitations.

**Conclusion**

Therefore, this Court finds the Commonwealth is permitted to reinstate the charges against Defendant. The Court finds the Stipulation for the nol prosequendo of the charges was not satisfied and that the statute of limitations to reinstate the charges has not run, therefore Defendant's Motion to Dismiss is denied.

**ORDER**

**AND NOW**, this 11<sup>th</sup> day of January, 2019, based upon the foregoing Opinion, Defendant's Motion to Dismiss is hereby **DENIED**.

BY THE COURT,

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Nancy L. Butts, P.J.

cc: DA (JR)  
Andrea Pulizzi, Esq.