[J-89-2011]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 2 WAP 2011
	:	
Appellant	:	Appeal from the Order of the Superior Court entered August 4, 2010 at No. 1916 WDA 2009, affirming the Order of the
v.	:	Court of Common Pleas of Allegheny County entered November 4, 2009 at CP-02-CR-0015191-2009.
DAVID L. BRADFORD,	:	
	:	
Appellee	:	ARGUED: October 18, 2011

CONCURRING OPINION

MR. JUSTICE EAKIN **DECIDED: MAY 30, 2012**

I concur in the reversal of the Superior Court's decision and the reinstatement of the charges against Defendant. I write separately to express my opinion regarding the timeliness of a defendant's exercise of the speedy trial right embodied in Pa.R.Crim.P. 600.

The failure to bring Defendant to trial within the prescribed time period was brought on by judicial, not prosecutorial, error. While the majority focuses on the propriety of a prosecutorial tracking system that relies on judicial adherence to rules of procedure, I would refrain from general pronouncements regarding the propriety of such systems; given the diverse nature of the 60 judicial districts in the Commonwealth, one size does not fit all when it comes to methods of tracking criminal cases for prosecution.

I believe our assessment of whether Defendant's right was violated must also take into account when the right was asserted, as the United States Supreme Court held in Barker v. Wingo, 407 U.S. 514, 530 (1972). The majority notes the theory behind a rule establishing a definitive period of time for a speedy trial violation was to eliminate the vagueness inherent in balancing approaches, such as that announced in Barker. Majority Slip Op., at 12-13 (citing Commonwealth v. Hamilton, 297 A.2d 127, 130-33 (Pa. 1972)). In Hamilton, the rationale for adopting a specific time period within which to bring an accused to trial was that "experience has demonstrated that under [the balancing] type of approach, there has been little success in eliminating criminal backlogs in populous counties where delays and the evils they create are most severe." Hamilton, at 131-32. However, the adoption of a mechanical rule whereby the passage of a specific amount of time automatically triggers the possibility of dismissal, without taking into account the circumstances mentioned in Barker, merely set the stage for a different form of evil: procedural gamesmanship.

Here, no further proceedings were held in Defendant's case after his preliminary hearing, yet he waited until exactly one week after Rule 600's run date to assert his right to a speedy trial. Clearly, he knew he was in jail, yet did nothing to inquire about his case; this bespeaks gamesmanship. The right to a speedy trial, like the privilege against self-incrimination or the right to counsel, must be invoked by a defendant. The right to a speedy trial is intended to protect an accused's right to a decent and fair procedure, as well as society's interest in bringing accused criminals to justice, see Barker, at 519-21 — it is not intended to afford a defendant a windfall by permitting him to sit on the right and then call foul when it is too late for the prosecution to do anything.

If a defendant is going to complain about the prosecution's diligence, he must exercise diligence himself and not simply sit idly by, waiting for the clock to run out.[1]

[1] Indeed, Barker recognized the speedy trial right differs from other constitutional rights:

> [D]eprivation of the right may work to the accused's advantage. Delay is not an uncommon defense tactic. … Thus, unlike the right to counsel or the right to be free from compelled self-incrimination, deprivation of the right to speedy trial does not per se prejudice the accused's ability to defend himself.

Id., at 521. An assessment that does not take into account whether the defendant asserted the right, and if not, why not, encourages the sort of manipulation of the system that Barker sought to prevent.