

**[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

**DISSENTING OPINION**

**MR. JUSTICE SAYLOR**

**DECIDED: MAY 30, 2012**

I would affirm the order of the Superior Court based on the reasoning provided in its opinion. See Commonwealth v. Bradford, 2 A.3d 628 (Pa. Super. 2010).

As the majority explains, per Rule of Criminal Procedure 600(G), a motion to dismiss based on the passage of the mechanical run date is to be denied “[i]f the court, upon hearing, shall determine that the Commonwealth exercised due diligence and that the circumstances occasioning the postponement were beyond the control of the Commonwealth[.]” Pa.R.Crim.P. 600(G) (emphasis added). Significantly, the common pleas and intermediate courts held that neither of these requirements was met in Appellee’s circumstance. See Bradford, 2 A.3d at 634; Commonwealth v. Bradford, CC: 200915191, slip op. at 15-16 (C.P. Allegheny, Dec. 29, 2009). The Commonwealth’s framing of the issue in the instant appeal, however, is confined to the first of these requirements, due diligence. As such, I question the majority’s decision to

reverse, since the alternative and extant holding (i.e., that the cause of the delay was not beyond the control of the Commonwealth) serves as an independent basis supporting the orders of the common pleas and intermediate courts.

To the extent the majority addresses the beyond-the-control element, it does so in a summary fashion, affording no attention to the salient analysis of the Superior Court, as follows:

We stress that compliance with Rule 600 was not at all beyond the Commonwealth's control in this case. The Commonwealth could have kept a list, used a diary, maintained a docket, or employed some other record-keeping system to track this case, but the Commonwealth elected not to do so. That is, the A.D.A. walked out of the preliminary hearing without any record of this case for Rule 600 purposes, and the District Attorney's Office assumed the district justice and Department of Court Records would remind the District Attorney's Office about this case at some later time. Such conduct is inappropriate. The Commonwealth cannot choose to rely on offices it does not control and then, when Rule 600 time limits expire, assert a lack of control over those offices as an excuse for noncompliance with the rule.

Bradford, 2 A.3d at 634. Against this rationale, I find little force in the majority's conclusory pronouncement that the circumstances were "clearly 'beyond the control of the Commonwealth.'" Majority Opinion, slip op. at 14 (quoting Pa.R.Crim.P. 600(G)).

To the degree this appeal touches on judicial delay, I note that, per federal constitutional law, such delay is to be considered a factor in an appropriate speedy trial analysis. See Barker v. Wingo, 407 U.S. 514, 531, 92 S. Ct. 2182, 2192 (1972) (stating that a "more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant"). Thus, if Rule 600 is to be understood as subsuming and supplementing

the federal constitutional inquiry, see Majority Opinion, slip op. at 13, the rule obviously must take judicial delay into account as a factor impacting defendants' rights.

In summary, I believe the common pleas and intermediate courts correctly found neither the due-diligence nor the beyond-the-control requirement is met where the Commonwealth fails to independently monitor its own prosecution, particularly since such failure removes an important safeguard against impairment of constitutional interests via unnecessary delay. Accord Bradford, 2 A.3d at 634-36. In this regard, I share the Superior Court's view that the Commonwealth should not be permitted to "outsource" aspects of its obligation to bring cases to trial in a timely fashion, id. at 634, free of attendant responsibility and consequences.