

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellant	
v.	
LINH K. NGUYEN,	
Appellee	No. 1337 EDA 2012

Appeal from the Order April 3, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No.: CP-51-CR-0012515-2011

BEFORE: MUSMANNO, J., WECHT, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.

Filed: January 11, 2013

The Commonwealth appeals from the trial court order dismissing the charges against Appellee, Linh K. Nguyen, pursuant to Pennsylvania Rule of Criminal Procedure 1013. We reverse and remand.

On February 15, 2011, Appellee was arrested and charged with driving under the influence of alcohol or a controlled substance. On October 21, 2011, the municipal court convicted Appellee of the charge and sentenced him to six months' probation. Appellee appealed his conviction to the court of common pleas on October 26, 2011.

On December 12, 2011, Appellee was arraigned and, after a pre-trial conference, trial was scheduled for January 18, 2012. On January 18, 2012, the case was continued to March 20, 2012 because an interpreter had not

* Retired Senior Judge assigned to the Superior Court.

been ordered for Appellee. On March 20, 2012, the trial court denied Appellee's first motion to dismiss the charges against him pursuant to Rule 1013. Also on this date, the trial court became aware that the Commonwealth had not yet prepared a bill of information. The case was continued again to April 3, 2012 to give the Commonwealth time to prepare the bill, which it filed on March 29, 2012.

On April 3, 2012, the trial court granted Appellee's second motion to dismiss pursuant to Rule 1013. On May 1, 2012, the Commonwealth timely appealed and filed a Rule 1925(b) statement. The trial court filed a Rule 1925(a) opinion on May 24, 2012.

The Commonwealth raises one issue for our review: "Did the trial court err in granting [Appellee's] motion to dismiss under Rule 1013, where the run date was not violated?" (Commonwealth's Brief, at 7).

Our standard of review in this matter is well-settled:

Our standard of review for evaluating claims brought pursuant to Rule of Criminal Procedure 1013 is the same as that applied to claims made under Rule of Criminal Procedure 600. The purpose of the rules is similar, and the case law applies equally to both. When considering any speedy trial claim, the proper scope of review is limited to the evidence on the record from the evidentiary hearing and the findings of the trial court. . . . In assessing a Rule 1013 issue, we are confined to determining whether the trial court committed an abuse of discretion in reaching its decision.

Commonwealth v. Preston, 904 A.2d 1, 9 (Pa. Super. 2006) (*en banc*), *appeal denied*, 916 A.2d 632 (Pa. 2007) (citations, quotation marks, and footnote omitted).

We must first determine the “mechanical run date” of this matter, which is “the date by which trial must commence under the relevant procedural rule.” *Id.* at 11 (citation omitted).

Rule 1013 of the Pennsylvania Rules of Criminal Procedure provides, in relevant part, that “[a] trial *de novo* in the Court of Common Pleas shall commence within a period of 120 days after the notice of appeal from the Municipal Court is filed.” Pa.R.Crim.P. 1013(G). The Rule takes into account both excludable time and excusable delay. **See** Pa.R.Crim.P. 1013(D).

“Excludable time” is defined by Rule 1013 itself as any period of time during which a defendant expressly waives his rights under the Rule. Pa.R.Crim.P. 1013(D)(1). Delays caused by the unavailability of the defendant or counsel also are excludable, as are delays for continuances granted at the request of the defendant or counsel. Pa.R.Crim.P. 1013(D)(2)(a), (b). “Excusable delay” is not expressly defined in . . . Rule 1013, but the legal construct takes into account delays which occur as a result of circumstances beyond the Commonwealth’s control and despite its due diligence.

Preston, supra at 11 (case citations omitted).

Here, Appellee filed his appeal of the municipal court decision on October 26, 2011. Therefore, the mechanical run date was February 23, 2012. However, on January 18, 2012, the initial trial date, the case was continued to March 20, 2012, because no interpreter had been ordered for Appellee. The Commonwealth argues that the sixty-two days between January 18th and March 20th were excludable time that extended the run date to April 25, 2012. (**See** Commonwealth’s Brief, at 11). We agree.

On May 1, 2010, the Court Administrator of Pennsylvania promulgated regulations governing court interpreters. **See** 204 Pa. Code. §§ 101-404. Subsection 201, which regulates the notice requirements for procurement of an interpreter, provides, in relevant part, that:

(a) Persons required to give notice; persons to whom notice is to be given; timing of notice.—

(1) **If a principal party in interest is a person with limited English proficiency . . . and is in need of an interpreter, either the principal party in interest or his or her attorney shall give notice of the need for an interpreter as soon as is practicable after learning of the need.** The notice shall be made to the presiding judicial officer or the Appellate Court Prothonotary/District Court Administrator or his or her designee and contain the information required in subsection (b)(2)¹ of this regulation.

204 Pa.Code § 201(a)(1) (emphasis added).

42 Pa.C.S.A. § 4412(a), which governs the appointment of interpreters, provides, in relevant part, that: “Upon request or *sua sponte*, if the presiding judicial officer determines that a principal party in interest or witness has a limited ability to speak or understand English, then a certified interpreter shall be appointed[.]” 42 Pa.C.S.A. § 4412(a). Further, “[a]s a general rule, the determination of whether an interpreter is warranted in a

¹ Subsection 201(b)(2) provides that the notice “must contain at a minimum . . . party and case identifying information; and . . . for a person with limited English proficiency, the language spoken (specifying any particular dialect or regional version) and the country of origin[.]” 204 Pa. Code. § 201(b)(2).

particular case is within the sound discretion of the [trial] court.” *In re Garcia*, 984 A.2d 506, 511 (Pa. Super. 2009) (citations omitted). Any delay in the court’s duty of appointment is excusable, however, because the court is under no obligation to rearrange its docket to bring Appellee to trial within a prescribed time. *See Commonwealth v. Peer*, 684 A.2d 1077, 1082 (Pa. Super. 1996) (“[C]ourt congestion may provide a reasonable explanation for the inability to try a defendant within the prescribed time period.”) (citations omitted); *see also Commonwealth v. Smith*, 569 A.2d 337, 339 (Pa. 1990) (affirming rule that “courts are under no obligation to rearrange their dockets” to accommodate defendants’ speedy trial rights.).

The application of regulation subsection 201(a)(1) appears to be an issue of first impression. However, based on its clear language, we conclude that, when read in conjunction with the above statute, the regulation mandates that a defendant or his counsel notify the trial court of his need for an interpreter and the statute governs the court’s resulting appointment of one.² *See* 42 Pa.C.S.A. § 4412(a); 204 Pa. Code 201(a)(1).

² The trial court notes that it “was troubled by the Commonwealth’s failure to bring an interpreter even after the necessity for one was clear[.]” (Trial Court Opinion, 5/24/12, at 5). However, because the regulatory authority for providing notice lay with Appellant and the statutory authority for appointing an interpreter was with the trial court, due diligence did not require the Commonwealth to bring an interpreter to trial. *See* 42 Pa.C.S.A. § 4412(a); 204 Pa. Code. § 201(a)(1); *see also Commonwealth v. Bradford*, 46 A.3d 693, 701-02 (Pa. 2012)(“[D]ue diligence . . . does not (Footnote Continued Next Page)

However, Appellant failed to comply with subsection 201(a)(1) of the regulations when he failed to notify the trial court of his need for an interpreter. Therefore, we conclude that any delay occasioned by Appellant's failure would be excludable. **See *Preston, supra*** at 11; 204 Pa. Code 201(a)(1).

Moreover, after the court became aware of the need for the appointment of an interpreter on January 18, 2012, it exercised its discretion in continuing the case to the next available trial date of March 20, 2012 on this basis. (**See** Trial Court Order, 1/18/12, at 1); **see also *Smith, supra*** at 339; ***Preston, supra*** at 11; ***Peer, supra*** at 1082. Hence, we further conclude that the sixty-two days between January 18th and March 20th also were excusable on the basis of court congestion and that, therefore, the new run date was April 25, 2012.

Accordingly, we are constrained to conclude that the trial court abused its discretion in granting Appellee's motion on the basis of Rule 1013.³ **See *Preston, supra*** at 9.

Order reversed. Case remanded. Jurisdiction relinquished.

(Footnote Continued) _____

require perfect vigilance and punctilious care, but merely a showing the Commonwealth has put forth a reasonable effort.") (citation omitted).

³ The court primarily based its decision to grant Appellee's motion on the fact that the Commonwealth failed to file the bill of information until March 29, 2012. (**See** Trial Ct. Op., 5/24/12, at 5). However, because we have concluded that the run date was extended to April 25, 2012 due to court congestion, this does not form a valid basis for dismissing the matter.