

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	No. 3076 EDA 2011
	:	
JEFFREY THOMAS	:	

Appeal from the Order Entered October 20, 2011,  
in the Court of Common Pleas of Monroe County  
Criminal Division at No. CP-45-CR-0000531-2011

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS AND PLATT,\* JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED JULY 08, 2014**

This is a Commonwealth appeal from an order entered on October 20, 2011, in the Court of Common Pleas of Monroe County. The sole issue presented is whether the trial court erred in dismissing the charges against Jeffrey Thomas (“appellee”) of forgery and theft pursuant to Pa.R.Crim.P. 600, 42 Pa.C.S.A. (“Rule 600”). After review of the briefs and record, we affirm.

The trial court summarized the factual history of this matter as follows:

This matter comes before us on Jeffrey Thomas’s (hereinafter, “Defendant”) Motion to Dismiss filed on August 22, 2011, alleging that the Commonwealth failed to exercise due diligence in bringing Defendant to trial within 180 days. [Defendant’s Motion to Dismiss, 8/22/11, p. 2.] Defendant was arrested by the Atlantic County,

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\* Retired Senior Judge assigned to the Superior Court.

New Jersey sheriff's office for an unrelated case on January 20, 2011. On February 3, 2011, Defendant waived extradition from the State of New Jersey and was transported from the Atlantic County Prison to Monroe County Correctional Facility on February 17, 2011. Defendant waived Arraignment on May 23, 2011. On August 22, 2011, Defendant filed a Motion to Dismiss and an evidentiary hearing was held on September 28, 2011. During that hearing, both parties presented evidence in support of their respective positions. At the conclusion of the hearing, both parties were given thirty (30) days to submit, their respective arguments on brief. Defendant filed his Defense Brief in Support of Motion to Dismiss on October 6, 2011. The Commonwealth has not filed a brief.

The following facts were offered at the evidentiary hearing: The Pocono Mountain Regional Police Department (hereinafter, "PMRPD") resumed its investigation of this case on July 19, 2007.[Footnote 1] An arrest warrant for Defendant was filed on May 14, 2008. That same day, a completed "Monroe County Control Center Clean/NCIC Wanted Person Entry Request Extradition Validation Form" was sent to the Monroe County District Attorney's Office. [Evidentiary Hearing, 9/28/11, Cmwth's Ex. 1.] Said form was signed by Assistant District Attorney Mark Matthews on May 14, 2008. [Evidentiary Hearing, 9/28/11, Cmwth's Ex. 1.] On May 16, 2008, a Criminal Complaint was filed charging Defendant with the following: Forgery, 18 Pa.C.S.A. §4101(a)(3); Theft by Deception, 18 Pa.C.S.A. §3922(a)(1); and Receiving Stolen Property, 18 Pa.C.S.A. §3925(a). [Evidentiary Hearing, 9/28/11 Cmwth's Ex. 3.] Information was then obtained from the Blakeslee Post Office that Defendant's home residency was located in Freeland, in Luzerne County and, acting on that information, a copy of the arrest warrant and Criminal Complaint were sent to the Freeland Police Department on May 16, 2008.[Footnote 2] [Evidentiary Hearing, 9/28/11; Cmwth's Ex. 2.] Freeland Police Department never confirmed that an

attempt to serve the arrest warrant on Defendant was initiated.

[Footnote 1] Officer Alison Hatten of PMRPD was the original officer assigned to the case since she received a complaint on December 19, 2006 regarding counterfeit checks from Michael Kane, the General Manager of Pocono Mountain Dairies. Investigations resumed after the case was reassigned to another officer.

[Footnote 2] Commonwealth's Exhibit 2 is a facsimile transmittal cover sheet sent from Sergeant Bowman to the Freeland Police Department which states that 9 pages are attached to the cover sheet regarding Defendant's Criminal Complaint and warrant. We note however that the only page submitted to the court during the evidentiary hearing was the cover sheet and none of the attached documents were admitted into evidence. [Evidentiary Hearing, 9/28/11, Exhibit 2.]

On November 27, 2009, Sergeant Bowman, of the PMRPD, by e-mail correspondence, requested Detective Richard Luthcke perform an [A]ccurint check to try to locate Defendant. [Evidentiary Hearing, Cmwltth's Ex. 8.] As a result, information was developed that Defendant had credit cards in his name displaying an address in Florida but it was also determined that in as much as Defendant was also wanted in Florida, he had probably absconded from Florida. Thereafter, Defendant's name was included in the list of names given to the Monroe County fugitive task force, which had been created in March of 2010 for the purpose of locating wanted persons. Although a specific time could not be provided, Sergeant LaRue attempted to locate Defendant at his residency in Luzerne County. On June 28, 2010, the fugitive task force recorded an attempt to locate

Defendant at his home to serve the arrest warrant but it was noted that the police could not locate the "12 Maple Lane" address which they had been previously provided. [Evidentiary Hearing, 9/28/11, Cmwlth's Ex. 7.]

On March 26, 2011, the Sergeant was led to believe that Defendant had been arrested by the U.S. Marshal's, which later turned out to be a different Jeffrey Thomas. That same day, it was determined that Defendant's information had either been removed from NCIC or it had expired. Acting on that information, Sergeant Bowman re-entered Defendant's information into the NCIC database himself. [Evidentiary Hearing, 9/28/11, Cmwlth's Exs. 5 and 6.] On January 20, 2011, PMRPD was contacted by the NCIC control center, notifying them that the East Orange Police Department had Defendant in custody. [Evidentiary Hearing, 9/28/11, Cmwlth's Ex. 6.] On January 24, 2011, the Sergeant contacted the East Orange Police Department and notified them that Defendant was wanted in Monroe County and forwarded the Criminal Complaint to the New Jersey station. The New Jersey police advised that Defendant was wanted in East Orange Police Department and that notification would be provided when Defendant was finished serving his time in New Jersey. On February 11, 2011, the Sergeant received a follow up call from the East Orange police that Defendant could be transported to Monroe County. Defendant was then transported from Atlantic County, New Jersey, to Monroe County, Pennsylvania, on February 24, 2011.

Trial court opinion, 10/20/11 at 1-3.

Bail was set and a preliminary hearing was scheduled for March 3, 2011; appellee waived his rights to the hearing. On August 22, 2011, appellee filed a motion to dismiss under Rule 600 alleging violation of his speedy trial rights. A hearing was held on September 28, 2011. Appellee

argued that the Commonwealth failed to bring him to trial within 365 days of the filing of the complaint. Basically, appellee averred that the Commonwealth's efforts to locate him and bring him to trial in a speedy manner did not rise to the level of due diligence. On October 22, 2011, the court issued an opinion and order granting the motion. On November 11, 2011, the Commonwealth filed a timely notice of appeal.

Again, the sole issue presented is whether the trial court erred in granting appellee's Rule 600 motion.

In evaluating Rule [600] issues, our standard of review of a trial court's decision is whether the trial court abused its discretion. Judicial discretion requires action in conformity with law, upon facts and circumstances judicially before the court, after hearing and due consideration. An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill will, as shown by the evidence or the record, discretion is abused.

The proper scope of review is limited to the evidence on the record of the Rule [600] evidentiary hearing, and the findings of the [trial] court. An appellate court must view the facts in the light most favorable to the prevailing party.

Additionally, when considering the trial court's ruling, this Court is not permitted to ignore the dual purpose behind Rule [600]. Rule [600] serves two equally important functions: (1) the protection of the accused's speedy trial rights, and (2) the protection of society. In determining whether an accused's right to a speedy trial has been violated, consideration must be given to society's right to effective prosecution of criminal cases, both to

restrain those guilty of crime and to deter those contemplating it. However, the administrative mandate of Rule [600] was not designed to insulate the criminally accused from good faith prosecution delayed through no fault of the Commonwealth.

**Commonwealth v. Ramos**, 936 A.2d 1097, 1100 (Pa.Super. 2007) (*en banc*), **appeal denied**, 948 A.2d 803 (Pa. 2008) (citation omitted).

Rule 600 requires that a criminal defendant be brought to trial no later than 365 days from the date the complaint is filed. Rule 600(A)(3).<sup>1</sup> Periods of time excluded from this calculation include “the period of time between the filing of the written complaint and the defendant’s arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence.” Pa.R.Crim.P. 600(C)(1). Additionally, time will be excluded when the period of delay results from “the unavailability of the defendant or the defendant’s attorney.” Pa.R.Crim.P. 600(C)(3).

Due diligence merely requires, however, that the Commonwealth make reasonable efforts to locate the defendant -- not every conceivable effort. **Commonwealth v. Bolden**, 485 A.2d 785, 789-790 (Pa.Super. 1984). “Due diligence is a fact-specific concept that must be determined on a case-by-case basis.” **Commonwealth v. Staten**, 950 A.2d 1006, 1010 (Pa.Super. 2008) (citations omitted). When viewing the facts of each case, our appellate courts construe Rule 600 in a manner consistent with society’s

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<sup>1</sup> Rule 600 has recently been amended.

J. S28006/14

right to punish and deter crime, so long as there has been no misconduct on the part of the Commonwealth in an effort to evade the speedy trial rights of an accused. **Bolden**, 485 A.2d at 788-790. In fact, due diligence “does not require perfect vigilance and punctilious care, but merely a showing the Commonwealth’s efforts were reasonable.” **Commonwealth v. Peterson**, 19 A.3d 1131, 1137 (Pa.Super. 2011).

A case that is instructive in applying the above-mentioned principles is **Commonwealth v. Fisher**, 681 A.2d 130 (Pa. 1996) (**reversed on other grounds**). In **Fisher**, “[l]ocal authorities submitted [the appellant’s] name and description to a national wanted persons list, set up a stake-out upon reports that [the appellant] was returning to the area, followed up on leads, and continued to interview witnesses, friends and families regarding the murder and [the appellant’s] possible whereabouts.” **Id.** at 136. The court reasoned that these efforts constituted “due diligence” and upheld the denial of the appellant’s Rule 600 dismissal motion, despite the fact that authorities brought the appellant to trial eight years after the filing of the criminal complaint. **Id.**

Instantly, it is undisputed that the criminal complaint was filed on May 16, 2008, and that the mechanical run date was May 16, 2009. However, May 16, 2009, fell on a Saturday; the Commonwealth had until the following Monday, May 18, 2009, to commence trial. 1 Pa.C.S.A. § 1908. Appellee was not arrested until January 17, 2011. The

J. S28006/14

Commonwealth argues that the time period between the filing of the criminal complaint and the date of appellee's arrest is excludable for Rule 600 purposes. The Commonwealth argues that it acted with the requisite due diligence and the delay was beyond its control. We disagree.

Clearly, there was a lack of due diligence on the Commonwealth's behalf. The actions taken by the Commonwealth during the 365 days of the mechanical run date were few and far between.

Officer Bowman testified the arrest warrant was faxed to the police station on May 14, 2008. That same day, a completed "Monroe County Control Center Clean/NCIC Wanted Person Entry Request Extradition Validation Form" was sent to the Monroe County District Attorney's Office. No further investigation was taken until late November 2009 when an Accurant search was conducted to try to locate appellee. However, a warrant check was not conducted until March of 2010 when the police believed appellee had been arrested. At this time, the police realized the arrest warrant had never been entered into NCIC. The following day, the warrant was entered into the NCIC. Thereafter, on January 20, 2011, the East Orange Police Department in New Jersey contacted the Pocono Mountain Regional Police regarding their apprehension of appellee and confirmed that the warrant for his arrest was still valid.

As the trial court notably observed, improved efforts to locate appellee did not occur "until sixteen (16) months after the written complaint had

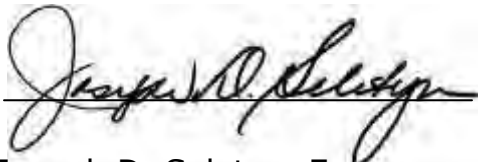


J. S28006/14

been filed and four (4) months after the mechanical run date of [appellee's] case had already expired." (Trial court opinion, 10/20/11 at 7.) Viewing the actions of the police under the criteria set forth above, we conclude that the trial court acted properly in finding the police did not exercise due diligence to ascertain his whereabouts during the time period in question. Thus, the Commonwealth has failed to establish that the trial court abused its discretion in this regard.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/8/2014