

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

PAUL JOHN SALASSA

Appellant

No. 734 EDA 2013

Appeal from the Judgment of Sentence February 28, 2013
In the Court of Common Pleas of Montgomery County
Criminal Division at No(s): CP-46-CR-0006264-2011

BEFORE: FORD ELLIOTT, P.J.E., OTT, J., and STRASSBURGER, J.*

MEMORANDUM BY OTT, J.:

FILED JUNE 27, 2014

Following a non-jury trial, Paul John Salassa (Salassa), was convicted of driving under the influence (DUI) – highest rate.¹ Salassa now appeals from the judgment of sentence imposed February 28, 2013, on him in the Court of Common Pleas of Montgomery County.² He raises one issue in this timely appeal: he claims the trial court erred in failing to dismiss the charges

* Retired Senior Judge assigned to the Superior Court.

¹ 75 Pa.C.S. § 3802(c).

² Salassa was sentenced to a term of 90 days to five years' incarceration plus a \$1,500.00 fine and costs.

against him pursuant to Pa.R.Crim.P. 600.³ After a thorough review of the submissions by the parties, the certified record, and relevant law, we affirm.

Briefly, a written complaint was filed against Salassa on February 8, 2011, charging him with violating various traffic laws, including DUI. Thereafter, Salassa sought acceptance into Accelerated Rehabilitative Disposition (ARD). As the trial court explained:

At the start of this case [Salassa] signed two Rule 600 waivers, the first on August 31, 2011, as part of his Notice of Filing of ARD Application. The second was a Rule 600 Waiver made part of his ARD Application and was signed by [Salassa] on September 7, 2011. Sometime thereafter, as the facts indicate above, [Salassa's] ARD application was denied and he was put into the normal DUI-track for a trial to be held in front of the undersigned [Judge Steven T. O'Neill]. The Commonwealth was ready to proceed with trial on January 25, 2012, but it was continued due to [Salassa's] failure to appear. The next scheduled trial date, February 2, 2012, also did not occur due to a defense continuance.

During this time, defense counsel continued to seek ARD, evidenced by the reconsideration letter he wrote to ADA Ricca on February 15, 2012. Further confirming his intention to seek ARD, this court's order from [Salassa's] next trial date March 14, 2012, specified that [Salassa] had an ARD scheduled for April 24, 2012. At some point unknown to this court, [Salassa's] April 24th ARD was changed to go forward as a guilty plea in front of a miscellaneous judge during the ARD hearings. However, it is clear that at least until late April of 2012, defense counsel continued to pursue consideration for ARD.

Trial Court Opinion, 5/3/2013, at 6-7.

³ In relevant part, the rule requires a defendant be tried within 365 days of the filing of a written complaint.

After Salassa's second attempt for ARD was denied, the Commonwealth asked for the case to be relisted for trial. The case was not placed on a trial list until after the Commonwealth checked on the status of the case more than six months later.⁴ Salassa received a stipulated bench trial on January 28, 2013, 720 days⁵ after the complaint was filed. On January 28, 2013, prior to trial, the trial court held a hearing on Salassa's Rule 600 claim that his right to a speedy trial had been violated. On January 30, 2013, the trial judge denied the motion to dismiss pursuant to Rule 600, and found Salassa guilty of DUI-highest rate. Salassa was sentenced as stated above.

When reviewing a trial court's decision in a Rule 600 case, an appellate court will reverse only if the trial court abused its discretion. **See Commonwealth v. Selenski**, 606 Pa. 51, 994 A.2d 1083, 1087 (2010). "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 ... discretion is abused." **Id.** (internal citation omitted). Our scope of review is limited to the record evidence from the Rule 600 hearing and the findings of the lower court, viewed in the light most favorable to the prevailing party. **See Id.**

⁴ The trial court noted: "[i]t is unclear why the instant case was not rescheduled, other than Court Administration indicating that it did not follow a normal course because it was not on a standby trial list waiting to be scheduled." Trial Court Opinion, 5/3/2013, at 3-4.

⁵ Neither the Commonwealth nor the trial court has provided a numeric breakdown of the days between the complaint and the trial. Therefore, we will use Salassa's count.

Commonwealth v. Bradford, 46 A.3d 693, 700 (Pa. 2012).

Additionally,

We have explained that Rule 600 has the dual purpose of both protecting a defendant's constitutional speedy trial rights and protecting society's right to effective prosecution of criminal cases. **Selenski**, 994 A.2d at 1088; **Commonwealth v. Dixon**, 589 Pa. 28, 907 A.2d 468, 473 (2006). To protect the defendant's speedy trial rights, Rule 600 ultimately provides for the dismissal of charges if the Commonwealth fails to bring the defendant to trial within 365 days of the filing of the complaint (the "mechanical run date"), subject to certain exclusions for delays attributable to the defendant. Pa.R.Crim.P. 600(A)(3), (G). Conversely, to protect society's right to effective prosecution prior to dismissal of charges, "Rule 600 requires the court to consider whether the Commonwealth exercised due diligence, and whether the circumstances occasioning the delay of trial were beyond the Commonwealth's control." **Selenski**, 994 A.2d at 1088. If the Commonwealth exercised due diligence and the delay was beyond the Commonwealth's control, "the motion to dismiss shall be denied." Pa.R.Crim.P. 600(G). The Commonwealth, however, has the burden of demonstrating by a preponderance of the evidence that it exercised due diligence. **See Browne**, 584 A.2d at 908. As has been oft stated, "[d]ue diligence is fact-specific, to be determined case-by-case; it does not require perfect vigilance and punctilious care, but merely a showing the Commonwealth has put forth a reasonable effort." **Selenski**, 994 A.2d at 1089. "If, at any time, it is determined that the Commonwealth did not exercise due diligence, the court shall dismiss the charges and discharge the defendant." Pa.R.Crim.P. 600(G).

Bradford, 46 A.3d at 701-02.

Also, in relevant part, Pa.R.Crim.P. 600 states:

(A) Commencement of Trial; Time for Trial

(1) For the purpose of this rule, trial shall be deemed to commence on the date the trial judge calls the case to trial, or the defendant tenders a plea of guilty or *nolo contendere*.

(2) Trial shall commence within the following time periods.

(a) Trial in a court case in which a written complaint is filed against the defendant shall commence within 365 days from the date on which the complaint is filed.

Pa.R.Crim.P. 600 (A)(1)-(2)(a).

Finally, the Rule provides requirements regarding how to compute time.

(C) Computation of Time

(1) For purposes of paragraph (A), periods of delay at any stage of the proceedings caused by the Commonwealth when the Commonwealth has failed to exercise due diligence shall be included in the computation of the time within which trial must commence. Any other periods of delay shall be excluded from the computation.

Pa.R.Crim.P. 600 (C).

As noted above, Salassa claims his trial did not commence until 720 days after the complaint against him was filed. This is a facial violation of Rule 600. All parties and the trial court agree that the mechanical run date, that is the unadjusted 365 days from the date of the complaint, required Salassa be tried by February 8, 2012. However, Salassa also agrees that a certain amount of time must be credited to the Commonwealth as excludable. This lowers the time counted against Rule 600 to 587 days. **See** Salassa's Brief at 11. Salassa further admits that he sought reconsideration of the denial of his ARD request on February 15, 2012 and that the Commonwealth did not formally respond until April 24, 2012. Salassa concedes that this time might be excludable. Since he was still

actively seeking a non-trial disposition of the charges against him. Therefore, he could not be tried until his request for reconsideration was disposed of and this time cannot be charged against the Commonwealth. Allowing for this possibility, Salassa argues that there remained 518 days chargeable to the Commonwealth. **See id.** at 11.

The central dispute in this appeal is over the 249⁶ days between the date the Commonwealth asked for the case to be relisted for trial and when the case actually appeared on the trial list. Salassa claims that the Commonwealth requesting the case be relisted for trial and then not checking on the status of the case for 249 days does not represent due diligence. The trial court, however, determined that the 249-day delay was not attributable to the Commonwealth because the Commonwealth “acted diligently in immediately trying to get the case relisted”⁷ as soon as it was learned Salassa would not be receiving ARD. The trial court determined the delay in having the case relisted did not result from a lack of due diligence on the part of the Commonwealth, but rather from “a breakdown in the court’s processing system due to the case not following an ordinary course.”⁸ The trial court also found the Commonwealth exercised “further due

⁶ We counted 254 days, from April 24, 2012 to January 3, 2013. However, for purposes of this appeal we will use Salassa’s count, as the five-day difference does not affect the analysis.

⁷ Trial Court Opinion, 5/3/2013, at 7.

⁸ **Id.**

diligence”⁹ in following up with the assigned judge’s secretary to reiterate that the case needed to be relisted for trial.

Our review of relevant case law leads us to conclude the trial court did not abuse its discretion in denying Salassa’s Rule 600 motion.

Mindful that the analysis of due diligence and a defendant’s right to a speedy trial are conducted on a case-by-case basis, we believe that **Bradford** provides the proper guidance for the resolution of this matter. In **Bradford**, a District Judge failed to make certain that the transcript of the preliminary hearing was forwarded to and received by the Court of Common Pleas. Because the Court of Common Pleas did not receive the transcript, it did not generate a “CR” number that would have been automatically transmitted to the District Attorney’s Office, at which time the case would have been tracked for purposes of Rule 600. Our Supreme Court determined that the Commonwealth rightfully relied upon the District Judge to fulfill the duty to initiate the process, and so, could not be blamed for the one-year delay in listing the case for trial.

Here, the Commonwealth relied on the court administrator to list the matter for trial as it had requested. We find the instant request to relist the case for trial analogous to the reliance on the court system to transmit documentation from the District Court to the Court of Common Pleas in

⁹ **Id.**

Bradford. In each instance, the prosecutor relied upon the system to function as it was designed to function. In each case, the responsibility for taking the specific action was outside the Commonwealth's ability to control. While the prosecutor in **Bradford** could have double-checked to see that which should have been done was done, our Supreme Court did not place that responsibility on the prosecutor. Therefore, the time the **Bradford** case spent in limbo was not chargeable to the Commonwealth. Similarly, in the instant matter, the prosecutor's office could have double-checked that the case was relisted for trial. However, pursuant to **Bradford**, it was not the Commonwealth's responsibility to guarantee the smooth functioning of the Court of Common Pleas. Rather, the Commonwealth fulfilled its responsibility by requesting the case be relisted for trial after it was notified that Salassa would not be receiving ARD. Accordingly, the 249-day delay in relisting the case for trial cannot be charged against the Commonwealth.¹⁰

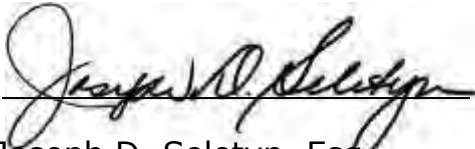
Having determined that the 249-day delay does not count against the Commonwealth for purposes of Rule 600, we subtract 249 days from the 518 days Salassa claimed. This results in the determination that, for

¹⁰ We recognize that the dissent in **Bradford** noted that the United States Supreme Court determined 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." **Commonwealth v. Bradford**, 46 A.3d 693, 707 (Pa. 2012)(Saylor, J., dissenting) *citing* **Barker v. Wingo**, 407 U.S. 514, 92 S.Ct. 2182 (1972), *see also* **Commonwealth v. Africa**, 569 A.2d 920 (Pa. 1990).

purposes of Rule 600, Salassa was tried within 269 days. This is well within the 365-day limit imposed by Rule 600. Therefore, the trial court correctly determined Salassa was not entitled to Rule 600 relief and the dismissal of the charges against him.

Judgment of sentence 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: 6/27/2014