

COMMONWEALTH OF PENNSYLVANIA vs. JAMES DEAN  
ARMANN, Defendant, C.P. Franklin County Branch, Criminal  
Action, Nos. 776-1995, 777-1995, 778-1995

*Commonwealth v. Armann*

*speedy probation revocation hearing - prejudice to defendant*

1. Defendant violated probation by having new charges in a different county; probation revocation hearing in Franklin County took place 9 months after conviction on the new charges and counsel argued defendant did not receive a speedy revocation hearing as required by Pa.R.Crim.P. 1409.
2. In considering the reasonableness of the delay, the court must consider: (1) the length of the delay; (2) the reason for the delay; and (3) any prejudice suffered by defendant as a result of the delay.
3. When new charges are the basis for the probation violation, the length of the delay is to be calculated from the date of defendant's conviction on those charges.
4. Courts have found a delay of five and a half months unreasonable; however, the court must also look at the reasons for the delay. In this case, there was no evidence to show that the Commonwealth delayed the hearing to hamper the defense.
5. The primary purpose of requiring a prompt revocation hearing is to prevent the loss of essential witnesses or documentary evidence and the continuance of unnecessary incarceration or other limitations on personal liberty.
6. Where the defendant pleads guilty to new charges which constitute the probation violation, there is no issue of lost witnesses or lost evidence.
7. Defendant was not prejudiced due to unnecessary incarceration because defendant was not incarcerated solely due to the Franklin County detainer but also because of a detainer issued by a District Justice.
8. Defendant was not prejudiced by the fact that he was not permitted to participate in the work release program due to the Franklin County detainer because a prisoner does not have the right to be enrolled such program.

*Paul E. vonGeis, Esquire, Senior Deputy Attorney General, of  
the Office of Attorney General of the Commonwealth of  
Pennsylvania, Attorney for the Commonwealth*  
*Norma J. Lukacs, Esquire, Attorney for the Defendant*

**OPINION**

WALKER, P.J., February 16, 1999:

**Factual and Procedural Background**

On September 25, 1996, Appellant James Dean Armann was sentenced to 120 months probation in Franklin County for conspiracy charges. Subsequently, on December 22, 1997,

appellant plead guilty to new charges in Cambria County, for which he was sentenced on February 20, 1998. As a result of the new charges in Cambria County, the Franklin County Probation Department issued a detainer on appellant on August 28, 1997.

Appellant was paroled from his Cambria County sentence on July 5, 1998. However, because of the Franklin County detainer as well as a detainer issued by District Justice Creany in Cambria County, he remained incarcerated. The Franklin County Probation Department originally scheduled appellant's probation revocation hearing for September 9, 1998. However, one of the probation officers requested a continuance to September 23, 1998, to allow appellant's newly appointed counsel to prepare for the hearing. At the revocation hearing, appellant's counsel argued that his probation should not be revoked because the Commonwealth failed to provide a speedy revocation hearing as required by Pa.R.Crim.P. 1409 due to the nine-month delay between appellant's conviction and the revocation hearing. The Honorable William H. Kaye found appellant in violation of his probation based on the Cambria County conviction and deferred the speedy revocation issue to the sentencing hearing. On November 10, 1998 appellant appeared before this court for the sentencing hearing. Again, appellant's counsel raised the issue of a speedy revocation hearing. By sentencing appellant to three consecutive sentences of 6 to 36 months plus fines and restitution, this court denied counsel's request that appellant's probation not be revoked. (See transcript of sentencing proceedings).

Appellant filed a motion for reconsideration of sentence, which was denied by this court on December 7, 1998. On January 6, 1999, appellant filed a timely notice of appeal to the Superior Court. On January 7, 1999, this court ordered appellant to file a concise statement of matters complained of on appeal, which was timely submitted.

**Discussion**

Appellant argues that his probation was improperly revoked because his probation revocation hearing was not timely held. Appellant argues that the nine-month delay between his conviction in Cambria County and the revocation hearing is untimely and that he suffered prejudice because he remained incarcerated, was

ineligible for work-release programs and suffered great anxiety and concern.

Pa.R.Crim.P. 1409 provides in relevant part:

(B) Whenever a defendant has been sentenced to probation or intermediate punishment, or placed on parole, the judge shall not revoke such probation, intermediate punishment, or parole as allowed by law unless there has been:

(1) a hearing held as speedily as possible at which the defendant is present and represented by counsel; and

(2) a finding of record that the defendant violated a condition of probation, intermediate punishment, or parole.

The requirement of a speedy revocation hearing means that the hearing must be conducted with "reasonable promptness after probation officials know or reasonably should have known of the violation. *Commonwealth v. Jones*, 250 Pa. Super. 116, 119, 378 A.2d 481 (1977). Rule 1409 did not establish a presumptive time period in which the Commonwealth must revoke probation. *Jones*, 250 Pa. Super. at 120. In considering the reasonableness of the delay, the court must consider (1) the length of the delay; (2) the reasons for the delay; and (3) any prejudice suffered by the defendant as a result of the delay. *Jones*, at 120.

When new charges are the basis for the probation violation, the length of the delay is to be calculated from the date of the defendant's conviction on those charges. *Commonwealth v. Williams*, 254 Pa. Super. 202, 207, 385 A.2d 979 (1978). In the underlying case, it is undisputed that the delay between appellant's conviction on the new charges in Cambria County and his probation revocation hearing was approximately nine months. Courts have found a delay of five and a half months unreasonable. *See Commonwealth v. White*, 218 Pa. Super. 188, 279 A.2d 768 (1971). However, the court must also evaluate the reasons for the delay. When the delay is the result of a deliberate attempt by the Commonwealth to hamper the defense, this factor must be given much weight in favor of the defendant. *Jones*, 250 Pa. Super. at 120. A more neutral reason, such as negligence or overcrowded courts, should be weighed less heavily but should

nevertheless be considered since the ultimate responsibility of such circumstances must rest with the government rather than the defendant. *Id.* Finally, a valid reason such as a missing witness justifies a delay. *Id.* at 120-121. In the underlying case, there does not appear to be any evidence that the Commonwealth delayed the probation revocation hearing to hamper the defense. Only one continuance was requested by the Commonwealth, and that was clearly to benefit appellant in order to allow his counsel to prepare for the hearing. No other reasons were provided by either side to explain the delay. However, it is also clear that appellant himself never requested a prompt hearing.

Lastly, this court must consider whether appellant was prejudiced by the nine-month delay. The primary purpose of requiring a prompt revocation hearing is to prevent the loss of essential witnesses or documentary evidence and the continuance of unnecessary incarceration or other limitations on personal liberty. *Jones*, 250 Pa. Super. at 121. The Pennsylvania Supreme Court has found that where the defendant had plead guilty to the new charges which constituted the probation violation, there is no issue of lost witnesses or lost evidence, since the conviction itself is sufficient to find a violation. *Commonwealth v. Marchesano*, 519 Pa. 1, 8, fnote 4, 544 A.2d 1333 (1988). Furthermore, the Superior Court has found that where a defendant is in custody for another reason, such as a second criminal conviction, and not simply because of a prima facie showing of a parole violation, the interest in providing a prompt revocation hearing to avoid the incarceration of an innocent person is substantially reduced. *Commonwealth v. Boykin*, 270 Pa. Super. 592, 595, 411 A.2d 1244 (1979).

In the underlying case, appellant's probation violation was based on a new conviction, and thus he did not incur any prejudice due to the delay because of lost witnesses or other evidence. Furthermore, at no time was appellant incarcerated solely due to the Franklin County detainer because there was also a detainer issued by a Cambria County District Justice. Appellant argues that the detainer impacted his personal liberty interests, because it made him ineligible for work and educational release programs and contact visits. However, like probation, a prisoner does not have the right to be enrolled in a work release program

and it may be rescinded or modified at any time with or without notice to the prisoner. See 61 Pa.C.S.A. §2141; *Richardson v. Uneska*, 1988 WL 97660 (E.D. Pa.). Thus, the mere fact that appellant was not permitted to participate in those programs due to the detainer is not sufficient to constitute prejudice, and, in any case, he would have lost those privileges because of the district justice detainer.

A copy of the pre-sentence report is attached to this opinion and made a part of the record.

In conclusion, even if the time between appellant's conviction and the probation revocation hearing must be deemed to be unreasonable, it is this court's opinion that he is not entitled to any relief because he did not suffer any prejudice due to the delay. Therefore, this court would respectfully request the Superior Court to dismiss the appeal.

## **MODERN MYTHS**

**MYTH #1: The disease of alcoholism is caused by drinking alcohol.**

**MYTH #2: Alcoholism is caused by stress.**

**MYTH #3: Alcoholism is the symptom of an underlying psychological disorder.**

**MYTH #4: Alcoholics must drink to excess on a daily basis.**

**MYTH #5: Alcoholism is cured by not drinking.**

### **Alcoholism is:**

**a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. It is characterized by continuous or periodic impaired control over drinking, preoccupation with drug/alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably denial.**

**There is no cure for alcoholism; however, with proper treatment the disease can be placed in remission.**

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