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Commonwealth v. Davis

COMMONWEALTH OF PENNSYLVANIA
v. GENE S. DAVIS, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action — Law, No. MD-65-2010

Mootness Doctrine; Expedition of Litigation; Preliminary Hearings; Central Court System

1. The existence of an actual controversy is essential to appellate jurisdiction and, if an event occurs which renders it impossible to grant any relief, the issue is moot.
2. The two exceptions to the "mootness doctrine" are 1) the question involved is capable of repetition but likely to evade review; or 2) the question involved is one of public importance.
3. A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client. Pa. R. Prof. Conduct 3.2.
4. The reason for establishing the Central Court System for the disposition of preliminary hearings in criminal matters was to correct inefficiencies that consistently occurred under the old system, including multiple continuances, scarce negotiations, and undue delay.
5. Where the defendant was not faced with the issue of prolonged incarceration following two continuances of his preliminary hearing because his bail status was ROR, and where sanctions against the Commonwealth for delaying the preliminary hearing were inappropriate, the Defendant's Writ of Habeas Corpus was moot and not subject to sanctions or creation of a local rule as requested by the Defendant.

Appearances:

Franklin County District Attorney's Office

Steve Rice, Esquire, *Counsel for Defendant*

OPINION

Meyers, Jr., August 18, 2010

Facts

(Note: Many of the facts set forth herein regarding the way in which criminal preliminary hearings are scheduled and heard are within the personal knowledge of the Court and any attorney who has practiced criminal law within the last five to ten years in Franklin County, Pennsylvania. Accordingly, no references to a record are set forth in the opinion.)

For several years, preliminary hearings in criminal matters in Franklin County have been held in a consolidated process every Tuesday of each week commonly referred to as "Central Court." In accordance with Pa.R.Crim.P. 542(A)(1), counsel from the Franklin County District Attorney's Office appear at the preliminary hearings representing the Commonwealth and take charge of the prosecution, including pre-hearing negotiations with defendants or defense counsel. Counsel from the District Attorney's Office who will handle a particular case is often unknown until the day of the hearing. Witnesses who are to appear at the preliminary hearing are subpoenaed by the affiant of the criminal complaint

and not the attorney for the Commonwealth.

In the case *sub judice*, the Defendant's preliminary hearing was initially scheduled to occur on February 23, 2010. Defense counsel requested, via fax, a continuance from the Central Court Coordinator, Nina Curfman, on February 2, 2010. The request for a continuance was granted and the preliminary hearing was rescheduled for March 2, 2010. A copy of the "Notice of Continuance" was mailed to the affiant at the Chambersburg Barracks of the Pennsylvania State Police on or around February 4, 2010; however, the affiant did not immediately receive such notice from the Pennsylvania State Police. Defense counsel had sent a letter in advance of the newly scheduled hearing date advising the Franklin County District Attorney's Office that the Defendant desired to have a preliminary hearing. The Commonwealth, asserting they were unaware of Defense Counsel's letter, and thus unaware that an actual preliminary hearing was scheduled to commence on March 2, 2010, requested a continuance the day of the scheduled preliminary hearing as the Pennsylvania State Trooper and affiant was unaware of the hearing until the night prior, thus being unable to subpoena the necessary witnesses. On March 2, 2010, Defense counsel, along with a court reporter hired by defense counsel, was at the courthouse prepared to begin the preliminary hearing. Magisterial District Judge Pentz considered all the information provided by the Commonwealth and granted the request for a continuance. The preliminary hearing was rescheduled for March 23, 2010, at which point in time the Defendant waived his right to a preliminary hearing.

The Defendant, although having waived preliminary hearing, filed this Motion for Writ of Habeas Corpus, requesting that this Court create a local rule dictating the procedure for granting continuances for preliminary hearings, or in the alternative, to issue an advisory opinion indicating certain information that must be presented to a Magisterial District Judge prior to the granting of a continuance. Upon review of the relevant law, this Court is prepared to enter its Opinion.

Discussion

Mootness Doctrine

In accordance with 42 Pa.C.S. §323, a Court of Common Pleas *may* promulgate local rules of practice and procedure. (Emphasis added.) Local rules promulgated by a Court of Common Pleas are given equal weight to Pennsylvania Supreme Court rules, provided that the local rules "do not abridge, enlarge, or modify substantive rights of the litigant." Grossman v. Mitchell, 435 A.2d 1280, 1282 (Pa. Super. 1982). The Commonwealth asserts, defense counsel concedes, and this Court agrees, that the promulgation of a local rule requested in defense counsel's motion is inappropriate; therefore, the Defendant is not entitled to that relief.

The Defendant's claim for Writ of Habeas Corpus is moot. The Superior Court has held that "the existence of an actual controversy is essential to appellate jurisdiction and, if an event occurs which renders it impossible to grant any relief, the issue is moot." Commonwealth v. Bernhardt, 519 A.2d 417 (Pa. Super. 1986); Commonwealth v. Rothhaupt-Smith, 799 A.2d 112 (Pa. Super. 2002). In defense counsel's brief in support of its Motion for Writ of Habeas Corpus, counsel asserts that one, if not both of the exceptions laid out by the Court in Bernhardt apply to the case *sub judice*. The two exceptions to the "mootness doctrine" established by the Court in Bernhardt are: (1) the question involved is capable of repetition but likely to evade review or; (2) the question involved is one of public importance. Id. at 420 (citing In Re Estate of Dorone, 502 A.2d 1271 (Pa. Super. 1985)). Defense counsel is correct in asserting that the Bernhardt court established two exceptions to the general rule that lacking actual controversy the issue of appellate jurisdiction is moot; however, Bernhardt, Rothhaupt-Smith and their exceptions are distinguishable from the case *sub judice*.

In Bernhardt, multiple petitioners brought actions for Writ of Habeas Corpus alleging that they spent a significant amount of time incarcerated while waiting for their respective preliminary hearings that were continued without a showing of cause. The Superior Court held that "where a preliminary hearing has not been held within the time required by Pa.R.Crim.P. 140(d)(1) and there has been no good cause shown for continuing the hearing beyond that time, an *accused is entitled to be released from custody* until the preliminary hearing has been held." Bernhardt, 519 A.2d at 422 (emphasis added); accord Rothhaupt-Smith, 799 A.2d 112 (stating that seventy-nine (79) days in jail while awaiting a preliminary hearing required just cause). In the case *sub judice*, the Defendant was not faced with the issue of prolonged incarceration while awaiting his preliminary hearing; rather, the Defendant was placed on ROR bail. Furthermore, defense counsel originally requested, and was granted, a continuance prior to the Commonwealth's request, logically implying that the Defendant was not concerned with an immediate preliminary hearing because of his ROR bail status.

Magisterial District Judges in our judicial system are granted the discretion to make decisions regarding the scheduling of preliminary hearings and whether or not to grant a continuance request, in order to expedite the judicial process. Pa.R.Crim.P 542(E)(1) provides the issuing authority with the power to grant a continuance for cause shown. The determination of whether or not cause has been shown is the responsibility of the issuing authority; here, Magisterial District Judge Pentz. The standard of review for a Magisterial District Judge's decision on granting or denying a

continuance is abuse of discretion. Pa.R.Crim.P. 542(E)(1). In the case *sub judice*, Magisterial District Judge Pentz had the discretion to either dismiss the case without prejudice, (likely resulting in the Commonwealth re-filing charges against the Defendant), or grant the continuance for cause shown. The record is absent of any evidence, and as a result this Court finds that Judge Pentz did not abuse his discretion in granting the Commonwealth's request for a continuance. Judge Pentz decided, upon hearing argument from both counsel, to grant the Commonwealth's request for a continuance. This Court is not prepared to question Judge Pentz's determination of good cause, particularly considering that his order met the requirements for granting a continuance pursuant to Pa.R.Crim.P. 542(E)(1)-(2).

Central Court System

Defense counsel suggests that this Court proffer an opinion essentially modifying the practice of the Central Court System currently in place in Franklin County, which deals with arraignments, preliminary hearings and other procedural matters. The very reason for establishing the Central Court System was to correct the inefficiencies that consistently occurred under the old system. This Court is quick to note that there have been substantial positive results due to the establishment of Central Court. Prior to the development and implementation of the Central Court System, defense counsel could have numerous engagements in different parts of the county on a single day, resulting in clients being prejudiced by unnecessary delay through continuances. Overall, there has been less need for continuances of preliminary hearings since the inception of the Central Court. Under the old system, negotiations between parties were scarce, preliminary hearings were often held and continuances were often granted due to counsel having numerous obligations in different venues. The Central Court System operates to bring all parties and clients together, markedly eliminating the time and effort exhausted in coordinating counsels' schedules, not to mention the time needed to negotiate and then come before the court. Central Court has alleviated these problems by creating an organized, predictable manner in handling pretrial issues. Furthermore, the Case Management Committee which developed the framework for Central Court, still exists and is available to review the way in which Central Court operates. The Committee still regularly meets and issues such as those raised by defense counsel could be considered as an agenda item by all the players: Common Pleas Judges, Magisterial District Judges, prosecutors, defense counsel, Court Administration and County staff.

Professional Conduct

The Pennsylvania Rules of Professional Conduct lay out the guidelines for how attorneys should conduct themselves in practice. The Rules are important not only for each attorney's moral compass, but the legal profession as a whole benefits from the high standard of professional conduct required by the Rules. Often times the best that can be said is "About morals, I know only that what is moral is what you feel good after and what is immoral is what you feel bad after."^[1] Counsel on both sides should heed the Rules when performing the smallest tasks, such as writing memos, to the magnanimous tasks, such as advocating for clients.

An important aspect of professional conduct is making reasonable efforts to advance the litigation process. Particularly, Rule 3.2 of the Pennsylvania Rules of Professional Conduct states "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." Pa. R.Prof. Conduct 3.2. The comment to Rule 3.2 states in pertinent part:

Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates...It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay.

Id. Whether it be a preliminary hearing, pretrial conference or any other matter that must come before the court, counsel would be wise in asking whether or not unnecessary delay can be prevented.

This Court does recognize that there are instances when delay cannot be prevented. In those circumstances it is the both counsels' and the Court's responsibility to ensure that the Defendant is not unduly prejudiced by the delay. In the case *sub judice*, the Defendant was free on ROR bail during the time period when defense counsel requested a continuance and subsequently when the Commonwealth sought a continuance. Although measures could have been taken to prevent the apparent oversight by the Commonwealth to be prepared for the preliminary hearing scheduled for March 2, 2010, the Defendant did not languish in jail, as in Bernhardt and Rothhaupt-Smith. Unfortunately, the Defendant did experience the loss of an appearance fee for the stenographer and his attorney's fees for the continued hearing. Defense counsel may have considered asking for sanctions against the District Attorney, which might jeopardize his professional

relationship with the District Attorney's Office and cost the taxpayers of Franklin County monies if sanctions were awarded. Both results are hardly satisfactory in the case *sub judice*, but may be appropriate given a different set of facts or more egregious conduct on the part of the Commonwealth in failing to have witnesses secured for a preliminary hearing where defense counsel has given written notice well in advance of an intent to proceed with a preliminary hearing and has secured the services of a stenographer for the hearing.

Conclusion

The relief sought by the Defendant and his counsel is denied. Were this Court presented with different factors, perhaps if the Defendant faced a significant period of incarceration while awaiting the preliminary hearing, then this Court's analysis may have fallen in accord with the Superior Court's decisions in Bernhardt and Rothhaupt-Smith. However, this Court was presented with a Defendant who had previously requested, and been granted, a continuance and was free on ROR bail. The Court is not compelled to overturn Judge Pentz's decision or issue an opinion stating he mishandled the Commonwealth's request for a continuance. The Central Court system has provided much needed efficiency to a process that lacked organization prior to its implementation. Magisterial District Judge Pentz used his discretion to grant the Commonwealth's request for a continuance and this Court holds that he did not abuse his discretion in doing so. Counsel for the Defendant, as a regular practitioner before the bar of Franklin County, is encouraged to submit his concerns to the Case Management Committee which is chaired by the Court Administrator, Neil Burkholder, to have his concerns reviewed at its next meeting.

ORDER OF COURT

August 18, 2010, the relief sought by the Defendant as set forth in the Motion for Writ of Habeas Corpus is denied.

[1] Ernest Hemingway