

**IN THE COURT OF COMMON PLEAS LEBANON COUNTY
PENNSYLVANIA**

CRIMINAL DIVISION

**COMMONWEALTH OF
PENNSYLVANIA**

vs.

JOHN PLAIN

: NO. CR-1074-2024

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ORDER OF COURT

AND NOW, this 15th day of January, 2025, in accordance with the attached Opinion, the Order of this Court is as follows:

1. Charges in the above-referenced matter are DISMISSED pursuant to Pa.R.Crim.P. 600.
2. A copy of this Order is to be served upon the District Attorney of Lebanon County and upon the Defendant's counsel.
3. All prior Scheduling Orders entered in the above-referenced matter are vacated.

BY THE COURT:



BRADFORD H. CHARLES J.

BHC/pmd

cc: District Attorney's Office
Jaime M. Keating, Esq.//Office of the Attorney General, 16th Floor,
Strawberry Square, Harrisburg, PA 17120
Michael Light, II, Esq.//Public Defender's Office
Court Administration

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COMMONWEALTH OF PENNSYLVANIA	:	NO. CR-1074-2024
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vs.	:	
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JOHN PLAIN	:	

APPEARANCES

Jaime M. Keating, Esquire	For Commonwealth of Pennsylvania
ATTORNEY GENERAL'S OFFICE	

Michael Light, II, Esquire	For Defendant
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OPINION BY CHARLES, J., January 15, 2025

Whenever a person accused of a crime disappears, a prosecutor must decide whether and under what circumstances he/she should be extradited. When the accused's identifying information is inserted in a National Crime Information Center (NCIC) locator system, the prosecutor must identify a geographic location within which extradition proceedings will be sought. The designation selected has more than mere semantic import. If an accused is apprehended by law enforcement within a jurisdiction from which extradition will not be sought, the accused will be released from custody,

often along the side of a road. Sometimes, the state from which the accused absconded is not even notified about events occurring in the so-called asylum state.

Here, the Lebanon County District Attorney chose not to seek extradition of a defendant charged in 2019 with DUI and accidents involving death or injury. Five years passed from the time of the criminal incident until John Plain (hereafter DEFENDANT) came to be in custody in Lebanon County. Shortly after his arrest, DEFENDANT filed a Motion to Dismiss under Pa.R.Crim.P. 600, alleging that the Commonwealth did not use due diligence to bring him to trial in a prompt fashion. We issue this Opinion today to address whether or how a prosecutor's decision not to extradite impacts a defendant's right to a speedy trial.

I. FACTS and PROCEDURAL BACKGROUND

On October 16, 2019, a two-vehicle collision occurred on Gravel Hill Road in East Hanover Township, Lebanon County. Trooper Justin Summa responded. He learned that the collision involved vehicles driven by DEFENDANT and an individual by the name of Doreen Zimmerman. Ms. Zimmerman was removed from her vehicle by emergency medical personnel and was transported by ambulance to the Hershey Medical Center for treatment.

When Trooper Summa interviewed DEFENDANT, he observed that DEFENDANT appeared to be confused and his speech was abnormally slow. Because of the seriousness of the collision, DEFENDANT was also

transported to the Hershey Medical Center. There, blood was removed for medical purposes.

Trooper Summa undertook an investigation. When she was able to cogently respond, Trooper Summa interviewed Doreen Zimmerman, who reported that DEFENDANT's vehicle crossed over a double yellow line and collided head-on with the vehicle she was operating. In addition, Trooper Summa sought and obtained the results of DEFENDANT's blood draw to determine whether drugs or alcohol were in his system.

On December 13, 2019, Trooper Summa filed charges against DEFENDANT. Those charges included Aggravated Assault by Vehicle While DUI, Accidents Involving Death or Injury While Not Licensed, DUI charged as a third offense and Possession of Drugs and Drug Paraphernalia. By the time charges were filed, DEFENDANT's whereabouts were unknown. Eventually, on February 12, 2020, an Arrest Warrant was issued for DEFENDANT.

Trooper Summa was initially responsible for seeking to ascertain the whereabouts of DEFENDANT. When he entered paperwork into the appropriate computer search databases, Trooper Summa checked the box for "no extradition." Trooper Summa indicated that he checked the "no extradition" box because the Lebanon County District Attorney's Office would not agree to extradite DEFENDANT.

Trooper Allen Wolff was primarily responsible for attempting to locate DEFENDANT starting in 2021. Trooper Wolff described the robust efforts

he took to locate DEFENDANT through various internet-related methodologies. Trooper Wolff also contacted DEFENDANT's parents on multiple occasions. He also contacted law enforcement officials in Maryland, which was where DEFENDANT had been reported to reside. However, Trooper Wolff acknowledged that his search efforts were hampered by the decision of the District Attorney's Office not to extradite DEFENDANT. Trooper Wolff testified that police in other jurisdictions would not detain DEFENDANT and would not notify Pennsylvania State Police officials unless a promise of extradition was included with the warrant information.

DEFENDANT also testified at the Rule 600 hearing. DEFENDANT stated that he resided in Virginia and owned a house in that jurisdiction prior to 2022. DEFENDANT stated that he moved to Missouri in 2022. He was then incarcerated in Kansas later in 2022. Thereafter, DEFENDANT lived and worked at various locations in Pennsylvania, including New Providence, PA, Peach Bottom, PA, and Philadelphia, PA.

According to DEFENDANT, he was the subject of "numerous police contacts" during 2021 and 2022. He also was involved in PFAs and "domestic relations disputes" in both Missouri and Kansas. DEFENDANT stated that he was incarcerated in Kansas in 2022. During this period of time, officials from Cumberland County, Pennsylvania, imposed a detainer upon him. Trooper Wolff stated that he was not notified about any of the

legal difficulties involving DEFENDANT that occurred in any of the other jurisdictions.

Following the Rule 600 hearing, this Court solicited briefs on the limited issue of how the District Attorney's decision not to extradite impacted the question of due diligence. We advised the parties that we were aware from a general perspective that due diligence is not evaluated by examining what could have been done; the issue focuses upon what law enforcement did do. That said, we did not know the import of the District Attorney's decision not to extradite, and we wanted research completed on that topic. Both parties filed briefs in late December. The Rule 600 issue presented by DEFENDANT is now before this Court for disposition.

II. DISCUSSION

The 6th Amendment to the United States Constitution guarantees that an accused "shall enjoy the right to a speedy and public trial." Article 1, Section 9 of the Pennsylvania Constitution similarly affords accused persons with the right to "a speedy trial by an impartial jury of the vicinage." These Constitutional precepts that guarantee an accused's right to a speedy trial have been codified in Pennsylvania within Pa.R.Crim.P. 600. From a very general perspective, Rule 600 prohibits pre-trial incarceration for more than 180 days and any prosecution after 365 days.

Most litigation involving Rule 600 involves exceptions to the imposed time limits. Specifically, delay attributable to the judicial system, the

defendant or the defense attorney has been deemed to be “excludable time” for purposes of calculating entitlement to relief under Rule 600. See, **Commonwealth v. Martz**, 926 A.2d 514 (Pa. Super. 2007).

Implicated in this case is the question of whether and under what circumstances Rule 600 applies when a defendant is a fugitive. Generally speaking, time that passes when a defendant escapes prosecution via flight is excludable for purposes of a defendant's right to a speedy trial. See, e.g. Pa.R.C.P. 600(c)(3)(a); **Commonwealth v. Baird**, 975 A.2d 1113 (Pa. 2009). However, §§(C)(1) of Rule 600 states: “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.” Volumes of decisional precedent exist with respect to what constitutes “due diligence”.

The question of whether the Commonwealth has exercised “due diligence” is fact-specific and a court must make a determination on a case-by-case basis. See, **Commonwealth v. Ramos**, 936 A.2d 1097 (Pa. Super. 2007). Due diligence does not require “perfect vigilance and punctilious care.”; all the Commonwealth must show is that it put forth “reasonable effort” to locate the defendant. See, **Commonwealth v. Thompson**, 136 A.3d 178 (Pa. Super. 2016); **Commonwealth v. Lynn**, 815 A.2d 1053 (Pa. Super. 2003). Generally speaking, a due diligence analysis focuses upon what the Commonwealth did do to locate the defendant as opposed to what it could have done with the exercise of perfect diligence. See, e.g.

Commonwealth v. Ingram, 591 A.2d 734 (Pa. Super. 1991). The official comment to Rule 600 states: “If the delay occurred as a result of circumstances beyond the Commonwealth’s control and despite its due diligence, the time is excluded.” Pa.R.Crim.P. 600, official comment, citing ***Commonwealth v. Browne***, 584 A.2d 902 (Pa. 1990).

A key principle applicable to this case is that mere incarceration in another state does not automatically render a defendant “unavailable” for purposes of Rule 600. In ***Commonwealth v. Morgan***, 239 A.3d 1132 (Pa. Super. 2020), the defendant was charged in Pennsylvania with the crime of Escape. Six days later, he was arrested on Homicide charges in Georgia. Within 30 days, the Bucks County Sheriff’s Office lodged a detainer and stated: “We will extradite on this matter.” However, Georgia officials refused to release the defendant until the Homicide charges were resolved. Two years later, the defendant was convicted of Involuntary Manslaughter and sentenced to 10-20 years of incarceration. In 2012, four years after it had agreed to extradite and two years after the defendant was sentenced in Georgia, Bucks County officials reached out to ask about the defendant’s status. Several years later, the defendant was extradited to Pennsylvania to face the Escape charge. The trial court denied the defendant’s Motion to Dismiss based upon Rule 600. The defendant appealed.

The Superior Court decided in ***Morgan*** that the Commonwealth could not establish due diligence “simply by lodging the initial detainer with the Georgia Sheriff’s Office...” The Court emphasized:

“Our review of the certified record in the present case reveals no such communication from Georgia indicating that it was unwilling or unable to extradite Appellant during his post-conviction incarceration. To the contrary, the communications from the Georgia Sheriff’s Office advised only that Appellant would be unavailable for extradition while he was in custody during the adjudication of his charges...Our caselaw is replete with precedent holding the Commonwealth accountable for such unexplained delays in initiating extradition proceedings...While we recognize that the Commonwealth cannot force another jurisdiction to act, inaction on the Commonwealth’s part, without some reliance on the assurances of the other state, does not constitute due diligence.”

Id at page 1140.

We recognize that the facts of ***Morgan*** do not closely align with the facts of this case. Here, Lebanon County was not actually aware of DEFENDANT’s location. However, it is likely that Lebanon would have been aware had the Commonwealth indicated in its detainer paperwork that it would seek extradition. Essentially, the decision of the Commonwealth in this case not to extradite rendered it unlikely that police contact in other states would be communicated to officials here in Lebanon County.

Surprisingly, there are no cases that directly control the question now before this Court. However, there are several cases we found that provide guidance. In no particular order of importance, those cases include the following:

(1) ***Cmw. v. Koonce***, 515 A.2d 543 (Pa. 1986)

In this case, the defendant was charged with attempted homicide. He was arrested in Virginia on unrelated offenses. Pennsylvania State

Police Troopers traveled to Virginia and lodged a detainer there. Subsequently, conversations occurred between the Cumberland County District Attorney and Virginia authorities. The defendant was not returned to Pennsylvania until more than a year after the detainer was lodged. The Court stated:

“In a letter dated June 21, 1982, the Virginia authorities notified the District Attorney’s Office that Appellee’s sentencing in Virginia was continued pending the outcome of an appeal Appellee had filed. Because he had not been sentenced, Appellee was not a prisoner who had begun a term of imprisonment and, therefore, he was not at the time subject to the Detainers Act. The Virginia authorities further advised that at such time that the Appellee entered into the Virginia penal system as a sentenced prisoner, the District Attorney would be notified so that proceedings under the Detainers Act may be initiated.”
Id at page 546-547.

The Court determined under the circumstances that the Commonwealth’s “informal” communications with Virginia were sufficient to establish due diligence. The Court concluded: “Considering all of the facts and circumstances in this case, the Commonwealth made a reasonable effort.” The Court emphasized that the prosecution at all times “attempted” to secure the Appellee’s return to Pennsylvania.

(2) ***Commonwealth v. Booze***, 947 A.2d 1287 (Pa. Super. 2008)

The defendant was charged with theft related offenses stemming from events that occurred in January of 2006. Police learned that the defendant was incarcerated in a jail in Maryland and in fact interviewed him in Maryland on February 1, 2006. Thereafter, the

Pennsylvania detective faxed a copy of the Criminal Complaint to Maryland officials, indicating that “it was his intent that the Complaint would act as a detainer.” Nothing else was done until mid-January of 2007, when the defendant was transported to Pennsylvania to face charges. Police officials acknowledged that “neither formal extradition papers nor detainers were filed with the State of Maryland”.

The Superior Court began its analysis by emphasizing that “mere incarceration in another state does not make a defendant unavailable within the meaning of Rule 600.” *Id* at page 1291. The Court concluded:

“Here, the Commonwealth knew Appellee was being held in Maryland yet failed to follow the proper steps to secure her upon the disposition of the Maryland charges. Clearly, there was a lack of due diligence. Although the Commonwealth faxed a copy of the Complaint to the Maryland authorities, there were no assurances made on behalf of Maryland that this would in fact serve as a detainer. In fact, there is no testimony, except for the testimony of Detective Barbour, that he was in contact with Maryland authorities.”
Id at page 1291.

The Court also referenced the absence of extradition proceedings and stated:

“Further, the Commonwealth never initiated proper extradition proceedings to secure Appellee to face charges in Pennsylvania. In fact, the Commonwealth still had not taken action in this matter as late as when Appellee filed her motion to dismiss. The Commonwealth chooses to excuse its inaction by stating “Rather than extradite the defendant to Pennsylvania prior to the resolution of her Maryland criminal charges, [police] maintained awareness of the defendant’s Maryland

prosecution.” This Court has previously rejected this assertion.” *Id* at page 1291...

Thus in accord with the **Alexander** decision [**Commonwealth v. Alexander**, 464 A.2d 1376 (Pa. Super. 1983)], the Commonwealth should at least *initiate* extradition proceedings within 365 days from the filing of the Complaint for defendants who are imprisoned in another state in order to meet its duty as to due diligence. We note that the **Alexander** Court conceded that the Extradition Act is not a mandatory requirement; however, it also held ‘this fact does not discount the availability of the Extradition Act as a means by which Appellant’s return could have been *initiated*.’”

Id at page 1291, citing **Alexander** at page 1383 (emphasis in original.)

The Court also determined that the Commonwealth was under no legal duty to file a formal detainer until the defendant was sentenced in Maryland. The Court stated: “Thus, the statute does not require a filing of formal detainers until a term of imprisonment has been imposed in the asylum state. Accordingly, in this case, the Detainers Act would have been an appropriate means of securing Appellee as of October 4, 2006.” *Id* at page 1292.

The Court in **Booze** determined that the Commonwealth did not do enough to secure the defendant’s presence in Pennsylvania. Therefore, charges were dismissed.

(3) **Commonwealth v. Alexander**, 464 A.2d 1376 (Pa. Super. 1983)

Although **Alexander** was decided under Rule 1100, which was the predecessor to Rule 600, the facts and circumstances of **Alexander** are analogous to the ones now before this Court.

In **Alexander**, the defendant was charged in Allegheny County with Rape. Shortly thereafter, he was charged in New Jersey with Burglary and other related offenses. The Complaint in Pennsylvania was filed on March 21, 1979. Allegheny County officials learned that the defendant was incarcerated in New Jersey on January 16, 1980. On January 23, 1980, an Assistant District Attorney procured a Bench Warrant for the defendant's arrest. The District Attorney was notified on March 20, 1980, that the defendant had been sentenced in New Jersey. Therefore, he initiated a request for custody pursuant to the Uniform Agreement on Detainers Act, 42 Pa. C.S.A. §9101. When the District Attorney did not hear anything, he telephoned New Jersey authorities on July 10, 1980, and was told that the Defendant had been transferred to another prison in New Jersey. Thereafter, on October 23, 1980, the District Attorney was advised that the Defendant was released from New Jersey and was "on the streets".

The Superior Court analyzed the Assistant District Attorney's efforts. The Superior Court agreed that the Commonwealth could not use the Agreement on Detainers because the defendant was not a sentenced prisoner in New Jersey. However, the Commonwealth could have initiated a request for extradition. The Court stated:

"Although we acknowledge that the request for extradition under §§(a) of §9126 is directory and not mandatory, this fact does not discount the availability of the Extradition Act as a means by which Appellant's return could have been initiated. Extradition was the appropriate procedure for

commencing securement of Appellant's return to Pennsylvania prior to his conviction and sentencing in New Jersey. The extradition proceedings could have been started on January 22, 1980, while Appellant was incarcerated awaiting trial in the asylum state."

The Superior Court concluded: "We think it abundantly clear that the Commonwealth did not use such reasonable efforts [as to constitute due diligence.]" *Id* at page 1384.

Most pertinent to our decision, the Superior Court stated:

"It is true that *if* the Commonwealth had followed the proper procedures for the Extradition Act and *if* Appellant or the [New Jersey] authorities had contested his transfer, the time so consumed would have been excluded from the period of Rule 1100. Here, however, the Commonwealth did not begin the proper procedures [under the Extradition Act]... and neither Appellant nor the [New Jersey] authorities contested the Commonwealth's action. the Commonwealth, then, may not use Appellant's incarceration in [New Jersey] as an excuse for failing to comply with Rule 1100...Because the Commonwealth did not file such a request [for extradition], the transfer could not have been contested. Ergo, the period [between when the Commonwealth became aware of the Appellant's whereabouts and when a request under the Uniform Detainers Act was filed] are not excludable."
Id at page 1384.

The import of **Alexander** is that the Commonwealth's choice not to extradite is a choice relevant to a speedy trial analysis.

(4) **In re Hall**, 326 A.3d 431 (Pa. Super. 2024) (unpublished decision)

Hall was an unpublished decision that is being cited for guidance and not precedential effect. In **Hall**, an arrest warrant was issued by a Pennsylvania State Game Warden. The Warden entered

the warrant in the NCIC computer without any request for extradition. The original arrest warrant was issued on December 9, 2020. In March of 2021, the Pennsylvania Game Warden was advised by a Sheriff in Ohio that defendant was wanted on other crimes in that state. The Game Warden verbally told the Ohio Sheriff "Pennsylvania would extradite back." Later that same month, Mr. Hall was arrested and incarcerated in Ohio. He was convicted on the Ohio charges shortly thereafter.

On September 20, 2023, an arrest warrant was again issued for the defendant in Pennsylvania. When the warrant was served, the defendant filed a Motion to Dismiss under Pa.R.Crim.P. 600. The trial court granted the defendant's Motion to Dismiss. The Commonwealth appealed.

In its analysis, the Superior Court emphasized the Commonwealth's failure to initiate official extradition proceedings. The Court stated:

"The Commonwealth did not take any steps to ensure the extradition of Hall from that point [January 5, 2022] on until it sought reinstatement of the arrest warrant in August of 2023...It is the Commonwealth's burden, not the defendant's, to demonstrate that it exercised due diligence in extraditing a defendant and bringing him to trial on time."

Based upon the above analysis, the Court in *Hall* affirmed the decision of the trial court to dismiss charges based upon Rule 600.

What have we learned from the cases outlined above? The following represents what we have gleaned:

- (1) The burden of establishing whether due diligence exists to warrant an extension of the Rule 600 deadlines is upon the Commonwealth and not the defendant.
- (2) While the Commonwealth need not exercise perfect diligence, it must at all times exercise due diligence by making reasonable efforts to locate a fugitive.
- (3) Whether Pennsylvania authorities request extradition is an important factor that must be weighed in assessing due diligence.
- (4) If extradition proceedings are not initiated, time that a defendant spends in prison in another jurisdiction is not excludable for purposes of Rule 600.

In this case, the Lebanon County District Attorney's Office elected not to seek extradition of DEFENDANT. The Pennsylvania State Police Trooper responsible for locating DEFENDANT stated that this decision hampered his efforts. In fact, the State Police Trooper indicated that when law enforcement officials from other states see a detainer without an extradition request, they often take no action whatsoever regarding the detainer. As it relates to this Defendant, he was the subject of numerous police contacts and at least one period of incarceration during which law enforcement officials in other states could have, but did not, notify Lebanon County

officials. In contrast, Cumberland County officials, who did indicate a willingness to extradite, were notified when DEFENDANT was incarcerated in Kansas. Fairly summarized, the testimony presented in this case established that if a decision to extradite had been rendered when DEFENDANT's warrant was issued, information about DEFENDANT's whereabouts would have been communicated to Lebanon County significantly in advance of 2024.

So that we are clear, we do not quarrel with the efforts undertaken by Trooper Summa and Trooper Wolff to locate DEFENDANT. Appropriate computer database searches were undertaken periodically between 2019 and 2024. Efforts were made to contact DEFENDANT's family in order to ascertain his whereabouts. Moreover, Troopers followed up on tips indicating that DEFENDANT may have been located in Maryland. To the extent necessary, we reject DEFENDANT's argument that the Commonwealth failed to use due diligence because it did not search databases that would have revealed his occupation licenses or mailing addresses in locations unknown to police. But for the District Attorney's decision not to extradite, this Court would likely have determined that Trooper Summa and Trooper Wolff employed due diligence.¹

Unfortunately, we cannot and will not ignore the import of the Commonwealth's decision not to seek extradition. Based upon **Alexander**,

¹ We proclaim this to assist the Pennsylvania Superior Court in its evaluation of the inevitable appeal that our decision will trigger. Clearly, our decision today is tied to the decision not to extradite and not to the general diligence of Trooper Summa and Trooper Wolff.

Booze, and **Hall**, the Commonwealth's decision not to extradite must be viewed as a critical factor. Based upon the testimony of Trooper Wolff and the success of Cumberland County in locating DEFENDANT in 2022, we are forced to conclude that had the Commonwealth agreed to pursue extradition in its initial warrant, the opportunity to do so would have presented itself at least as of 2022 when DEFENDANT was incarcerated in Kansas. Based upon existing everything presented, we are compelled to conclude that by refusing to extradite, the Commonwealth in this case did not exercise due diligence to locate DEFENDANT. Accordingly, we are constrained under Rule 600 to dismiss all charges against DEFENDANT.

An Order to effectuate this decision will be entered today's date.