

COMMONWEALTH OF PENNSYLVANIA : PHILADELPHIA COUNTY  
 : COURT OF COMMON PLEAS  
 v. : TRIAL DIVISION  
 :  
 JEFFREY WILLIAMS : NO. 9410-0516

OPINION

RICHARD B. KLEIN, J.

Date: August 21, 2000

Jeffrey Williams was convicted of possessing crack cocaine with the intent to deliver it; drug possession; simple assault, and resisting arrest. He was sentenced only on the possession with intent to deliver, and given the minimum mandatory sentence for that offense of three to six years in prison and a \$5,000 fine.

His third counsel in the case filed a laundry list of complaints, most in general terms, and a laundry list of claims of ineffectiveness. Because of the general nature of the complaints and the failure to specifically refer to *why* the Court made an error, it is suggested they should be deemed waived. In any event, none of the complaints have merit. With respect to the ineffectiveness claims, even without a hearing, one can see the strategic reasons for them. If not, then the matter should be remanded for a Post Conviction Hearing Act hearing.

**FACTS**

This is a case with an unusual twist. What appears to have happened is that Richard Young, probably a fellow drug dealer, was mad at Williams. Young called the police with a made-up

story that Williams had told Young that Williams had just killed somebody. Whatever happened, the police believed that Williams was a murderer. Young went with the police and told them where Williams was. Williams had nothing to do with any homicide, and there probably was no homicide. When the police saw him on the third floor of what looked like a crack house, the officers said they wanted to talk to him and went downstairs. When the officers told Williams he was suspected of a homicide, Williams pushed an officer and ran. When Officer Alminde caught up with him Williams hit Officer Paul Alminde. When he was arrested, the officers took five baggies of twelve packs each, or sixty packs, of what turned out to be crack cocaine. Williams also had three packets of a substance that looked like cocaine but in fact was not. Williams had a prior drug sales conviction from the late 1980's, and although that sale occurred prior to the enactment of the mandatory sentencing provisions for repeat drug offenders, the mandatory three to six year sentence and \$5,000 fine applies.

**1925(b) Statement of Matters Complained of on Appeal**

**1. Alleged Error in Not granting Suppression Motion.**

Counsel in his 1925(b) statement does not indicate any reason *why* there was an error in the suppression decision, so this argument should be deemed waived.

Even if not, there is no merit to the claim. The police were told that Williams had confessed to a murder. He voluntarily came downstairs from the room in the house where the person who claimed he confessed said he was. Then he pushed the officer and ran, and the testimony was that he hit the officer when the officer caught up with him. Therefore, the officers were justified in arresting Williams for an assault, and the recovery of the drugs was a search incident to an arrest.

While Williams disputes what Young said, his version, which well may be true, explains the motivation for the false charge by Young. Williams testified that Young sold him bad drugs, and when Williams went to Young to get his money back, Young told him to go to hell. Williams way to get justice was to break Young's car window with a brick. It appears that Young's way to get justice for the broken window was to make up a story that Williams confessed to a murder to get him in trouble. It does appear that Young's efforts worked. Nonetheless, the *police* did not do anything wrong. They just went to investigate someone who allegedly confessed to a murder, chased Williams when he ran, arrested him after he hit one of the officers, and searched him after the arrest. There is no police action that comes close to requiring a suppression of evidence.

## 2. Alleged error in failure to grant Rule 1100 Motion.

The mechanical run date for Rule 1100 was March 30, 1995. Trial began in July, 1996. It is the Commonwealth's responsibility to act reasonably to bring a criminal case to trial within the period proscribed by Rule 1100. Commonwealth v. Browne, 526 Pa. 83, 584 A.2d 902 (1990). The Court must determine that 1) the Commonwealth exercised due diligence, and 2) that the circumstances occasioning the postponement were beyond the control of the Commonwealth. Commonwealth v. Payton, 673 A.2d 361 (Pa. Super. 1996).

In this case the delay was beyond the control of the Commonwealth. It was the defendant who failed to appear on December 2, 1994, for trial, and a bench warrant was issued. It took several listings to have a bench warrant hearing. Apparently he was picked up shortly afterwards, and the first bench warrant hearing was scheduled for January 9, 1995. Between failures to bring the defendant to court and Judge Jones' schedule, it was January 20, 1995, when the case was scheduled for a trial date on April 17, 1995. There was a defense request for a continuance on April 17, 1995, so the time from then until May 30, 1995, the next trial date, is excludable. The Court was not available and there was a one day continuance until May 31, 1995. There was a jury trial in progress, and the judge's next available day was September 18, 1995. The real problem occurred because on June 16, 1995, he received a state sentence for a

theft from Judge Means.

On September 18, 1995, it was discovered that the defendant was in State Prison and the case was continued until October 26, 1995. The defendant was not brought down from state prison despite a writ requiring him to be brought down, probably because of prison overcrowding. In Philadelphia, the Court does not have the power to make sure a prisoner is brought from the state system. Because of prison overcrowding, Diannne Granlund, a Deputy Managing Director, has the power to cancel writs issued by judges to bring prisoners in from State Correctional Institutions. As some appellate courts have noted, perhaps this should not happen, but it does. The case was continued until January 11, 1996 because he was not brought down. He still was not brought down on January 11, 1996, and the case was continued until March 18, 1996. On March 18, 1996, the judge was on trial and it was continued for three days until March 21, 1996. On March 21, 1996, the defense asked for the continuance for preparation, so the time from then until June 17, 1996 is clearly excludable.

The bottom line is that the case was not tried earlier because of the case load of Judge Collins and the difficulties in having the defendant brought to Philadelphia from the State Correctional Institution in Green County, all the way across Pennsylvania. Since neither of those delays are attributable to

the Commonwealth, the time did not run and the Motion to Dismiss because of Rule 1100 was properly denied. See, Com. v. Harris, \_\_ Pa.Super. \_\_, 462 A.2d 725 (1983).

**[note: please shepardize and check for cases saying court delay isn't attributable to the DA.]**

3. Alleged error in failing to allow the defense to inquire into the criminal record of Commonwealth witness Richard Young.

[Note - at this point I'm not sure exactly what the conviction was for or when it was for. There may be a formal motion in limine on this in the Quarter Sessions file - but I don't have it - try and get it, either from the DA or quarter sessions - I'm just guessing what it was and why I didn't let it in to impeach.]

The conviction was for [a misdemeanor not involving criminally falsi] [a crime committed \_\_ years ago, so it should be considered remote.] [NOTE: This is now covered by the Pennsylvania Rules of Evidence. Check them.]

During trial, defense counsel attempted to ask Young if he sold drugs. This did not relate to anything asked on direct, and was an obvious effort of defense counsel to get the fact that Young once sold drugs before the jury, although as noted in general it is inadmissible. Either Young would admit it, doing the damage, or he would deny it, opening up the door to cross

examination on his prior conviction. Defense counsel may not do indirectly what they may not do directly. The initial ruling was proper.

However, even if the ruling was improper, Young's conviction for drugs was admitted and put before the jury. Young told the jury he would never sell drugs. Therefore, the defense was permitted to have Young admit to the jury that he pled guilty to selling drugs in 1992 and received an eleven and one-half to twenty-three month jail sentence for it (NT. 7/22/96, pp. 329-330).

4. Allegation of error in failing to hold a hearing on a telephone call made by one juror to counsel about juror confusion.

Defense counsel claims that one of the jurors called trial counsel to say that the jury only thought that Williams had what turned out to be fake drugs, although he did plan to share (or "distribute") the non-drugs. However, they did not think he was in possession of the larger amount of actual drugs, the sixty packets of crack cocaine, which would sustain a finding of possession with intent to deliver.

There is no question that the jury charge was adequate to make it clear that the possession of the counterfeit drugs was

not a crime, and delivering counterfeit drugs was not a crime. There also is no question that the other actual drugs found could sustain the conviction.

The law is clear that unless there is some showing of tampering or fraud, it is not permissible to go into what happened in the jury room. The sanctity of the jury room outweighs concerns of what might have happened in an individual case. All Williams claims is that the jury made a mistake. There is no claim of jury tampering. As noted, there is also no claim of erroneous instructions.

**[NOTE: Add the cases that say you don't inquire into what happened into the jury room or consider what an individual juror says.]**

5. Allegation of error in sentencing under an enhancement statute.

The mandatory three to six year sentence applied because the amount of drugs in the 60 packets of crack cocaine taken from the defendant was over \_\_\_\_ grams, and the defendant had a 1988 conviction for possession with intent to deliver a controlled substance. Defendant argues that since the prior conviction was before the enactment of the mandatory sentencing provisions, the act should not be applied, despite the fact that the present offense and conviction occurred after the statute was enacted.

Under the plain language of the act, if at the time of sentencing he has a prior traffic conviction, the mandatory applies. **[cite and quote]**. This provision has been upheld by the appellate courts and is not considered "retroactive." **[Find the cite.]**

6. Allegation of error in denying the defense motion in limine regarding the admission of defendant's prior criminal record.

The reason this allegation is without merit is that it did not happen. The court refused to allow the prosecution to introduce any criminal record of the defendant, since it was not clear that he was resentenced on that within a ten year period. In fact, the defendant did testify and his record was not introduced. Obviously, appellate counsel, who was not trial counsel, misunderstood this.

7. Ineffectiveness claims.

BY THE COURT:

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R. B. Klein, J.