

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	No. 96-10,643
	:	
vs.	:	CRIMINAL
	:	
RICHARD WILLIAMS,	:	
Defendant	:	

ORDER

AND NOW, this day of July, 1999, upon consideration of the Commonwealth's oral motion to dismiss the defendant's Rule 1100 motion, the Court denies the Commonwealth's motion. The Court finds that the defendant's motion is neither untimely nor waived. Although this case was listed on the call of the list several times, it was not called to trial for purposes of Rule 1100(b). The comment to the Rule clearly indicates that preliminary calendar call are not meant to constitute commencement of trial. Rather, trial commences when the trial judge determines the parties are present and directs them to proceed to voir dire or opening statements or some other first step in the trial. No such event occurred in this case. Also, the Court finds that the defendant did not waive his right to raise this issue when the defense attorney requested a continuance because he was scheduled for a vacation during the first week of this Court's June 1999 trial term. While this time is excludable under Rule 1100(c)(3), the Court does not believe that such a request results in a total relinquishment of any Rule 1100 claim.

In light of this ruling, the Court requests the Court Scheduling Technician schedule a hearing on the defendant's Rule 1100 motion at the earliest practical date. The

Court estimates that one and one-half to two (1 ½ - 2) hours will be needed for this hearing.

By The Court,

Kenneth D. Brown, J.

cc: Jay Stillman, Esquire (APD)
Kenneth Osokow, Esquire (ADA)
Eileen Grimes, Court Scheduling Technician
Work file