

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1200-2018
 :
 JAMES D. CHOICE III, : Commonwealth's Motion to Dismiss
 Defendant : Defendant's Omnibus Motion

OPINION AND ORDER

This matter came before the court on the Commonwealth's Motion to Dismiss the Defendant's Omnibus Pretrial Motion. The facts related to this motion follow.

On or about July 18, 2018, the police charged Defendant with various firearms and controlled substance offenses. At the time of his preliminary hearing, Defendant was represented by Donald Martino. The charges were held for court. Thereafter, Defendant hired Edward J. Rymsza to represent him. Mr. Rymsza filed on Omnibus Pretrial Motion, which included a motion to suppress evidence, on September 26, 2018. In support of this motion to suppress, Defendant argued that the search warrant failed to allege the requisite probable cause, the search warrant was not sufficiently particularized, and that the police violated Rule 208 of the Pennsylvania Rules of Criminal Procedure by not serving the search warrant and affidavit on Defendant until after the search had been conducted. The Honorable Nancy L. Butts held a hearing on this motion on December 6, 2018. In an Opinion and Order entered on December 19, 2018, Judge Butts denied Defendant's motion.

On April 8, 2019, the court permitted Mr. Rymsza to withdraw and it appointed a public defender to represent Defendant. Due to a conflict of interest with the Public Defender's Office, the court appointed W. Jeffrey Yates to represent Defendant on

April 15, 2019. On November 4, 2019, Mr. Yates filed a Motion to Suppress Evidence/Frank's Motion on Defendant's behalf. In this motion, Defendant asserted that the items seized pursuant to the search warrant should be suppressed because the affiant knowingly and intentionally utilized false statements with reckless disregard for the truth in obtaining the warrant. Defendant also argued that the search warrant failed to establish the requisite probable cause because the affiant did not "independently corroborate" information from a third party, Raymond Richards. The court held a hearing on November 6, 2019. In an Order entered on November 19, 2019, the court denied Defendant's motion.

On November 24, 2019, Andrea Pulizzi filed a praecipe to enter her appearance to represent Defendant. She also filed a Motion to Substitute Counsel, so that she would replace Mr. Yates as counsel, which was granted on December 10, 2019. Attorney Yates was granted leave to withdraw on December 11, 2019.

On December 11, 2019, the court granted Defendant leave to file a motion to reconsider the court's November 6, 2019 Order. On December 30, 2019, however, Attorney Pulizzi filed an Amended Motion to Reconsider the court's December 19, 2018 Order. This motion was summarily denied.

On February 24, 2019, Ms. Pulizzi filed another Omnibus Motion on Defendant's behalf, which included both a motion to suppress and a petition for habeas corpus. In addition to requesting habeas corpus relief, the motion again sought suppression based on allegedly false allegations in the affidavit of probable cause. Defendant claimed that Raymond Richards was coerced by the affiant to state that he had purchased drugs from

Defendant inside the residence, that Richards was a known a drug dealer, that Richards was not reliable or credible and that the information provided by the affiant to obtain the search warrant “was fabricated.” Accordingly, Defendant argued that the search warrant lacked the requisite probable cause.

A hearing was scheduled for March 19, 2020, but was continued at the request of defense counsel to May 4, 2020. The hearing scheduled for May 4, 2020 was not be held due to the COVID-19 pandemic.

On June 22, 2020, Attorney Pulizzi indicated that Defendant’s motion consisted of different or separate issues than raised previously. Subsequently, and because the Commonwealth disagreed with Attorney Pulizzi’s assessment, on July 24, 2020, the Commonwealth filed a Motion to Dismiss Defendant’s Omnibus Motion.

The Commonwealth asserted that the Omnibus Motion was untimely, the Motion to Suppress contained therein was previously litigated, and the Motion for Writ of Habeas Corpus summarily asserted that the evidence was insufficient and did not allege any specific averments. The court held an argument on the Commonwealth’s motion for August 25, 2020.

Following the argument, the court issued an order giving the parties 15 days to submit any case citations to the court. The court indicated that it would review the transcript of the prior hearing and any submissions and render a decision. Neither party submitted citations to the court.

DISCUSSION

The court will grant the Commonwealth's Motion to Dismiss for several reasons. First, Defendant's motion is patently untimely. The arraignment in this matter, which was waived by Defendant, was on August 27, 2018. Pursuant to Rule 579(A) of the Pennsylvania Rules of Criminal Procedure, except as otherwise provided in the Rules, an omnibus pretrial motion must be filed and served within 30 days of arraignment. Defendant's current motion was filed long after 30 days from arraignment. Additionally, no representation was made by Defendant that the grounds for the motion did not exist or that Defendant or his counsel was not aware of the grounds for the motion until it was filed. Indeed, all of the information in support of the motion was testified to by Raymond Richards during the hearing held on November 6, 2019. Further, the issues raised by Defendant were specifically addressed in this Court's November 6, 2019 Order. Contrary to Defendant's representations during the nuanced argument in this matter, there is no substantive difference between the issues raised in the present motion to suppress and the prior one filed by Attorney Yates.

While the court may permit a late motion in the interests of justice pursuant to Rule 578 of the Pennsylvania Rules of Criminal Procedure, to permit the motion to be heard at this time would be contrary to the interests of justice. A defendant cannot be permitted to file substantially similar, if not identical, motions simply because new counsel is retained. To permit an exception whenever a defendant retains a new attorney would ill-serve the ordinary administration of justice. *Commonwealth v. Page*, 371 A.2d 890, 891 (Pa. Super. 1997).

Attorney Pulizzi entered her appearance on December 10, 2019. The motion was still not filed within 30 days despite the factual basis for the motion being likely known

to counsel, and certainly known to Defendant when Attorney Yates filed his motion on November 4, 2019 and no later than November 6, 2019 when Mr. Richards testified under oath. The Rules require a certain process not only to protect the respective interests of the parties but to eventually progress the case so it is ready for trial or a pretrial disposition. The filing of multiple motions in contravention of the Rules would not advance those interests. This case has been on the trial list for a very long period of time and numerous continuances were granted because of the outstanding, serial motions. While not ascribing any particular motive to Defendant in this case, the filing of multiple motions in contravention of the Rules would invite manipulation and significantly lengthen the pretrial process to the detriment of witnesses whose memories would naturally be expected fade over time. Finally, in this particular case, Defendant has not advanced one reason in support of the interest of justice standard.

With respect to Defendant's Petition for Habeas Corpus, it too is untimely and there is no justifiable reason for filing it at this late stage. The interest of justice would not be served by permitting it to be filed. As well, it is a boilerplate motion that fails to specify the elements of the offenses for which the Commonwealth allegedly has not established a prima facie case. Accordingly, Defendant has waived his right to habeas corpus relief.

ORDER

AND NOW, this ___ day of October 2020, following a hearing and argument, the Commonwealth's Motion to Dismiss Defendant's Omnibus Motion is **GRANTED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Lee Fry, Esquire (ADA)
Andrea Pulizzi, Esquire
Gary Weber, Esquire
Work File