



On July 14, 1998, Defendant was questioned about the April 15<sup>th</sup> incident. Subsequently, on September 22, 1998, the government filed an Information in the Commonwealth Superior Court charging Defendant with assault and battery as a result of the alleged April 15<sup>th</sup> incident.

On December 30, 1998, Defendant filed the instant motion to dismiss contending that the Superior Court lacks jurisdiction to hear this matter or, in the alternative, for unjustifiable preaccusatorial delay in bringing this matter against him.

### **III. ISSUES**

1. Whether the Superior Court has jurisdiction to hear the matter?
2. Whether the preaccusatorial delay in filing the Information justifies dismissal?

### **IV. ANALYSIS**

#### **A. Jurisdiction**

In support of his motion, Defendant contends that the Superior Court has no jurisdiction in this matter as the information was filed after he turned eighteen. As such, the case against him must be dismissed.

As cited by the government, the Court finds the holding in In re the Matter of Sintoshi S. Suda, 3 CR 15 (N.M.I. Trial Ct.1986) to be dispositive on this issue. In Suda, the government filed a criminal complaint in juvenile court charging the defendant with several criminal offenses. At the time of filing, the defendant was over the age of eighteen although the complaint alleged that the offenses were committed several weeks prior to the defendant reaching eighteen. The issue before the Suda court was whether the juvenile court had jurisdiction over a case where the alleged offense occurred while the offender was under the age of eighteen, yet the criminal charges were filed after the offender reached eighteen. Although acknowledging that state jurisdictions are split on this issue, [p. 3] the Suda court held that the juvenile court has no jurisdiction over persons eighteen years of age even if at the time of the alleged criminal activity the defendant was under eighteen.

It is the age at the time of the commencement of the proceedings which governs jurisdiction.<sup>1</sup>

In the case at bar, Defendant was eighteen at the time he was charged, although he was under eighteen at the time the alleged offenses occurred. Therefore, in light of the Suda holding, the Court finds that it does have jurisdiction over this matter.

#### B. Preaccusatorial delay

Defendant contends that the delay in filing charges against him violated due process as it resulted in the loss of juvenile court jurisdiction. As such, his case must be dismissed.

Although no constitutional right to juvenile court jurisdiction exists, federal and state supreme courts have determined that preaccusatorial delay may violate due process under certain circumstances. See United States v. Lovasco, 431 U.S. 783, 97 S.Ct. 2044, 52 L.Ed.2d 752 (1977); State v. Dixon, 792 P.2d 137 (Wash.1990). Deliberate or even negligent prosecutorial delay resulting in the loss of juvenile court jurisdiction is considered by the court in determining whether a due process violation has occurred. State v. Alvin, 746 P.2d 807, 808 (Wash. 1987).

In support of his motion, Defendant cites to the Washington Appellate Court case of State v. Frazier, 918 P.2d 964 (Wash.App.Div.2 1996) for the proposition that once juvenile court jurisdiction is lost, it creates a presumption of prejudice to the defendant. However, the Frazier court, in quoting from Lovasco, supra, laid out the ultimate test when determining whether a juvenile is prejudiced by preaccusatorial delay:

When balancing the State's interest against the prejudice to the accused, *the ultimate issue is 'whether the action complained of . . . violates those "fundamental conceptions of justice which lie at the base of our civil and political institutions."*

Id. at 970, quoting Lovasco, supra, 97 S.Ct. at 2049.(emphasis added).

In the case at bar, Defendant turned eighteen on May 28 ,1998, forty-three days after the alleged incident. Defendant was then questioned about the alleged incident on July 14, 1998 and the [p. 4] Information at issue was filed on September 22, 1998. Although Defendant turned eighteen shortly after the alleged offense, the procedural timeline above shows that the Information

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<sup>1</sup> The Court notes that the Suda decision comports with the Ninth Circuit's position on this issue - that juvenile jurisdiction is determined by the accused's age at the time the information is filed. See United States v. Araiza-Valdez, 713 F.2d 430 (9<sup>th</sup> Cir. 1980); United States v. Doe, 631 F.2d 110 (9<sup>th</sup> Cir. 1980).

was filed only five months after the alleged incident occurred and only two months after Defendant was questioned. As such, the Court finds any preaccusatorial delay in this case insufficient to prove a level of prejudice violative of the Court's notion of substantial justice, especially here where Defendant cites to and relies entirely upon cases involving preaccusatorial delays of seventeen months or more. See Lovasco, supra (indictment filed 18 months after commission of offense); Frazier, supra (juvenile charged 17 months after confession).

Moreover, the Court is not swayed by the suggestion of defense counsel at the hearing on this matter that the government must somehow expedite the processing of juveniles nearing their eighteenth birthday or dismiss the matter altogether. If that were the case, the government would be forced to rush the filing of an information which would, in all likelihood, necessitate that cases be filed without adequate investigation or consideration. In the alternative, if an information wasn't filed before the offender turned eighteen, an accused juvenile could commit a crime and yet go unpunished for it. This notion is particularly true here where Defendant allegedly committed the crime six weeks before turning eighteen. None of these consequences are consistent with the purposes of the Juvenile Justice section of the Commonwealth Code<sup>2</sup> or with the ideal of due process of law. The Court therefore rejects the notion that the government must specially treat any juvenile suspects nearing their eighteenth birthdays.

## V. CONCLUSION

For all the reasons stated above, Defendant's motion to dismiss is **DENIED**.

So ORDERED this 10 day of March, 1999.

/s/ Timothy H. Bellas

TIMOTHY H. BELLAS, Associate Judge

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<sup>2</sup> See 6 CMC § 5101, et seq.