

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE	)	
	)	
v.	)	Case No. 1110008709
	)	
SARAH BOZEMAN,	)	
Defendant	)	

**ORDER DENYING MOTION TO RE-OPEN**

Upon consideration of the Motion to Re-Open dated March 29, 2012 (the “Motion”) of the Delaware Department of Justice to vacate the Court’s dismissal of this Case under Court of Common Pleas Criminal Rule 48(b) (“Rule 48(b)”); the Response to State’s Motion to Re-Open (the “Response”) filed by counsel for Defendant Sarah Bozeman; and after review of the file, the Court determines as follows:

In order to succeed on a motion to vacate a Rule 48(b) dismissal, the State must demonstrate good cause for its failure to be prepared for trial before this Court on March 5, 2012. *See State v. Giordano*, 1999 WL 1876066, \*1 (Del. Com. Pl. 1999). This Court addressed the State’s motion for reargument in *Giordano* after the charge was dismissed because the Deputy Attorney General failed to show up for a hearing. The Court also noted in *Giordano* that “the Court has power and authority, inherent, if not express to reopen a criminal proceeding on a timely application and for good cause show...” *Id.*

In *Giordano*, there was, in fact, good cause presented by the State where the assigned Deputy Attorney General to that case stated he was in the wrong courtroom for trial at the misdirection of the Court’s bailiff. Therefore, the Court having held that the Deputy Attorney General may reasonably rely on trained court personnel’s representations about the courtroom

assignments, the Court granted the State's motion to vacate in *Giordano* and reopened the matter for good cause shown. *Id.*

In the instant matter, the State was not prepared to go forward when this matter was first called for trial on March 5, 2012, because the victim, Deborah Dugan, and certain witnesses were not present. Counsel for Ms. Bozeman then moved to have the case dismissed under Rule 48(b). Upon request from the State, the Court checked whether notice had been provided to the Ms. Dugan and other potential witnesses. According to the records of the Court, notice had been provided. The State then stated that it had no good faith basis to oppose a motion under Rule 48(b). Accordingly, the Court dismissed the matter under Rule 48(b) for failure to prosecute. The Court's determination to dismiss was based upon the record before the Court on March 5, 2012.

Subsequently, the State filed the Motion, arguing that good cause exists to vacate the dismissal as Ms. Dugan claims that "she never received any notice that the case had been transferred from the Justice of the Peace to the Court of Common Pleas." Motion at ¶3. Moreover, according to the Motion, cause exists to vacate the dismissal because Ms. Dugan has advised the State that she did not receive notice from the Court regarding the trial date of March 5, 2012. Motion at ¶4. However, the State does not address in the Motion whether the notice of the trial date was sent to the correct addresses nor does the State attach an affidavit from Ms. Dugan in support of the Motion. The Response denies that Ms. Dugan and other witnesses did not receive notice, contending that "[n]otice is presumed when it is deposited into the mail to the last known address of the party." Response at ¶4. The Response does not provide the Court with any legal authority that supports this proposition.

The Court would note that the March 5, 2012 trial date was the first time that this Case was set for trial. Both parties appear to be diligently pursuing this Case in good faith.

The Court finds and holds that the State has not demonstrated “good cause” for the State’s failure to be prepared for trial on March 5, 2012, *see, e.g., State v. Mantyla*, Case No. 1007027205, Welch, J., (Del. Com. Pl. March 23, 2011); *State v. Giordano*, 1999 WL 1876066, \*1 (Del. Com. Pl. 1999). The State carries the burden in this situation. The bare allegations contained in the Motion if supported by an affidavit or additional facts may have met this high burden. However, here, the Motion is not supported by an affidavit from Ms. Dugan nor is there any plausible explanation (i.e., Ms. Dugan’s actual address is different from that contained in the Court’s records) provided as to why Ms. Dugan did not receive the notice. Without more, the Court holds that the State has not met its burden of showing good cause for vacating a dismissal under Rule 48(b).

**IT IS HEREBY ORDERED** that the Motion is **DENIED**.

Dated: May 4, 2012  
Wilmington, Delaware

*Eric M. Davis*

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Eric M. Davis  
Judge

cc: Jamie McCloskey, Esquire  
Timothy M. Terranova, Esquire