

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR- 875-2023
: CR-870-2023
:
vs. : Opinion and Order regarding
: Defendant's Motion for Bail
EDWARD NICHOLAS, : Pursuant to Rule 600
Defendant :

OPINION AND ORDER

Edward Nicholas (Defendant) filed a Nominal Bail Motion on July 1, 2024.¹ This Court held a hearing on the motion on August 9, 2024. The Commonwealth presented no witnesses and asked the court to take judicial notice of the orders and docket entries contained in both files.² Since the motion was filed to each of Defendant's cases, they will be reviewed separately. For the following reasons, Defendant's motion is denied.

Background and Procedural History

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On June 21, 2023, the Williamsport Bureau of Police filed the charges of Robbery, Kidnapping and related offenses against Defendant. The charges arise out of an incident that occurred on June 20, 2023 at the Sunoco gas station, High Street in the City of Williamsport. Defendant was arrested and arraigned on June 26, 2023. Bail was set at \$85,000 good bail

¹ The Motion was filed by Defendant's previous attorney who was granted leave to withdraw on August 9, 2024 at the same time the Rule 600 bail motion was scheduled to be heard. Although Defendant will be assigned a new conflict attorney, the Court colloquied the Defendant on proceeding without an attorney when he did not want to wait to have new counsel represent him on the Rule 600 bail motion.

² See Pa. R. E. 201(c)(1), (d)(providing that the court may take judicial notice on its own at any stage of the proceeding). The Court will take judicial notice of the records filed in the case.

which the Defendant has been unable to post. As of the date of the filing of the motion, Defendant has been continuously incarcerated for 371 days. However, there were several periods of time that the Defendant requested a continuance.

In reviewing the court file, the Complaint was filed on June 21, 2023 and the Defendant was arrested on June 26, 2023. On August 27, 2023 Defense counsel withdrew a motion to withdraw as counsel. On September 19, 2023, the Court granted Defense a 30-day extension to file omnibus pretrial motions and afterward a series of continuance orders were requested by the defense. The Order of September 19, 2023 continued the case on the Defense request until December 4, 2023 with the time delay attributed to the defense. On October 19, 2023 Defendant filed an omnibus pretrial motion scheduled for hearing on February 29, 2024. At the pretrial conference on November 21, 2023, defense counsel requested an additional continuance to the next jury selection with the time from December 4, 2024 until January 22, 2024 running against the Defendant for Rule 600 purposes.

At the pretrials on January 4, 2024 defense counsel again requested a continuance to the next trial term to enable him to litigate the omnibus motion and the case was continued to jury selection on February 26, 2024, with the time from January 22, 2024 to February 26, 2024 as excludable time for Rule 600. On February 13, 2024, the defense requested an additional continuance which moved the jury selection date to March 25, 2024. The delay from February 26, 2024 to March 25, 2024 ran against the defendant for Rule 600 purposes. On March 11, 2024, the defense requested an additional continuance to the next jury selection on April 22, 2024 with the time from March 25, 2024 to April 22, 2024 running against Defendant for Rule 600 purposes. On April 1, 2024, the defense requested yet

another continuance to move the case to jury selection on May 20, 2024, with the time from April 22, 2024 until May 20, 2024 running against Defendant for Rule 600.

On April 25, 2024, new counsel was appointed to represent Defendant as the Public Defender's office discovered a conflict in their representation of Defendant with a client they were concurrently representing. New counsel asked to move the case to the next trial list as she was recently appointed to represent the Defendant. The next trial term had the first day of jury selection scheduled on June 17, 2024. The time between May 20, 2024 to June 17, 2024 would also be excludable time against the Defendant for Rule 600 purposes.

On June 4, 2024, this Court issued its opinion and order on the omnibus pretrial motion. Shortly thereafter on June 12, 2024 the defense asked for an additional continuance to the jury selection date on July 15, 2024. The time from June 17, 2024 until July 15, 2024 would run against Defendant for Rule 600 purposes. On July 1, 2024 counsel filed the Motion for Nominal Bail pursuant to Rule 600. On July 11, 2024, the defense requested a continuance to move this case to the August 12, 2024 jury selection date making the time from July 15, 2024 until August 12, 2024³ excludable time for Rule 600 purposes.

875-2023

The Lycoming County Narcotics Enforcement Unit (LCNEU) filed charges of Delivery of a Controlled Substance, Criminal Use of Communication Facility and Possession

³ On August 9, 2024 at the hearing since the Defendant had not yet received an appointment for new counsel, he asked for a continuance to the next jury selection day on September 9, 2024. Accordingly, the time from August 12, 2024 until September 9, 2024 would also be excludable for Rule 600 purposes.

of Drug Paraphernalia on May 23, 2023 against Defendant. These charges arise out of a drug delivery and possession with the intent to deliver controlled substance on April 3 and 5, 2023. Defendant was arrested and arraigned on June 26, 2023. Bail was also set at \$85,000 good bail which the Defendant has also been unable to post. As of the date of the filing of the motion, Defendant has been continuously incarcerated for 371 days to this case as well. However, there were an almost identical number of periods of time that the defense requested continuances that would be considered excludable time under Rule 600.

In reviewing the court file, the Complaint was filed on May 23, 2024 but the Defendant was not arrested until June 26, 2023. On August 27, 2023, defense counsel withdrew his motion to withdraw as counsel. On September 19, 2023, the Court granted the defense a 30-day extension to file omnibus pretrial motions. The Order of September 19, 2023 entered as a result of a continuance requested by defense moved the case to the jury selection date of December 4, 2023 with the time delay from September 19, 2023 until December 4, 2023 attributed to the defense. On October 19, 2023, Defendant filed an omnibus pretrial motion scheduled for hearing on March 1, 2024. At pretrial conferences on November 21, 2023, the defense requested an additional continuance to the next jury selection with the time from December 4, 2024 until January 22, 2024 running against Defendant for Rule 600 purposes.

At the pretrials on January 4, 2024, the defense again requested a continuance to the next trial term to enable him to litigate the omnibus motion. The case was continued to jury selection on February 26, 2024, and the time from January 22, 2024 to February 26, 2024 would be excludable time for Rule 600. On February 13, 2024, the defense requested an additional continuance which moved the jury selection date to March 25, 2024. The delay

from February 26, 2024 until March 25, 2024 ran against Defendant for Rule 600 purposes. Just prior to the omnibus hearing, defense counsel withdrew the omnibus pretrial motion on February 28, 2024.

On March 11, 2024, the defense requested an additional continuance to the next jury selection on April 22, 2024 with the time from March 25, 2024 to April 22, 2024 running against Defendant for Rule 600 purposes. On April 1, 2024, the defense requested yet another continuance to move the case to jury selection on May 20, 2024, with the time from April 22, 2024 until May 20, 2024 running against Defendant for Rule 600.

On April 25, 2024, new counsel was appointed to represent Defendant as the Public Defender's office discovered a conflict with a client they were concurrently representing. New counsel asked to move the case to the next trial list as she was recently appointed to represent Defendant. The first day of jury selection for the next trial term was June 17, 2024. The time between May 20, 2024 to June 17, 2024 would then be excludable time against Defendant for Rule 600 purposes.

On June 4, 2024, this Court issued an opinion and order on the omnibus pretrial motion filed in the other case. Shortly thereafter, on June 12, 2024, the defense asked for an additional continuance in this case to the jury selection date on July 15, 2024. The time from June 17, 2024 until July 15, 2024 would then run against Defendant for Rule 600 purposes. On July 1, 2024 counsel filed the Motion for Nominal Bail pursuant to Rule 600. On July 11, 2024 defendant requested a continuance to move his case to the August 12, 2024 jury selection date making the time from July 15, 2024 until August 12, 2024⁴ excludable time for

⁴ On August 9, 2024 at the hearing since Defendant had not yet received an appointment for new counsel, he asked for a continuance to the next jury selection day on September 9, 2024. Accordingly,

Rule 600 purposes.

Discussion

“Except in cases in which the defendant is not entitled to release on bail as provided by law, no defendant shall be held in pretrial incarceration in excess of 180 days from the date on which the complaint is filed.” Pa.R.Crim.P. 600(B)(1). At any time when a defendant is incarcerated beyond the time set forth under Pa.R.Crim.P. 600(B), “the defendant's attorney, or the defendant if unrepresented, may file a written motion requesting that the defendant be released immediately on nominal bail subject to any nonmonetary conditions of bail imposed by the court as permitted by law.” Pa. R. Crim. P. 600(D)(2). When evaluating a motion for release on nominal bail pursuant to Rule 600, “only periods of delay caused by the defendant shall be excluded from the computation...Any other periods of delay shall be included in the computation.” Pa.R.Crim.P. 600(C)(2).

The comment to Rule 600 states:

When the defendant or the defense has been instrumental in causing the delay, the period of delay will be excluded from computation of time. See, e.g., *Commonwealth v. Matis*, supra; *Commonwealth v. Brightwell*, 486 Pa. 401, 406 A.2d 503 (1979) (plurality opinion). For purposes of paragraph (C)(1) and paragraph (C)(2), the following periods of time, which were previously enumerated in the text of former Rule 600(C), are examples of periods of delay caused by the defendant. This time must be excluded from the computations in paragraphs (C)(1) and (C)(2):

- (1) the period of time between the filing of the written complaint and the defendant's arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence;
- (2) any period of time for which the defendant expressly waives Rule 600;
- (3) such period of delay at any stage of the proceedings as results from either the unavailability of the defendant or the defendant's attorney or any

the time from August 12, 2024 until September 9, 2024 would also be excludable for Rule 600 purposes. However, since the motion for Rule 600 bail was filed on July 1, 2024, this excludable time is not relevant at this time.

continuance granted at the request of the defendant or the defendant's attorney.

For periods of delay that result from the filing and litigation of omnibus pretrial motions for relief or other motions, see *Commonwealth v. Hill* and *Commonwealth v. Cornell*, 558 Pa. 238, 736 A.2d 578 (1999) (the mere filing of a pretrial motion does not automatically render defendant unavailable; only unavailable if delay in commencement of trial is caused by filing pretrial motion).

For purposes of determining the length of time a defendant has been held in pretrial incarceration pursuant to paragraph (B), only the periods of delay attributable to the defense are to be excluded from the computation. See *Commonwealth v. Dixon*, 589 Pa. 28, 907 A.2d 468 (2006).

Pa. R. Crim. P. 600, cmt.

The excludable time attributable to Defendant as listed above on each case when subtracted from the time he has been incarcerated, leaves only 85 days attributable to the running of Rule 600 for bail purposes.

Conclusion

Although Defendant has been incarcerated in lieu of bail since June 26, 2023 on both cases, there are 271 days attributed to defense continuance requests leaving only 85 days includable time for Rule 600 purposes. The requests were primarily due to pretrial motions and a change of defense counsel. Since the total amount of includable time to be considered under Rule 600(B) does not exceed 180 days, Defendant's motion shall be denied.

ORDER

AND NOW, this 12th day of August, 2024, the Court DENIES Defendant's Motion for bail pursuant to Rule 600 as 180 days has not yet run on either docket number.

By the Court,

Nancy L. Butts, President Judge

cc: Martin Wade, Esquire (ADA)
Edward Nicholas, Defendant
c/o Lycoming County Prison
Jerri Rook
Gary Weber, Esquire