

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, : CR-1324-2022
:
V. :
:
: CRIMINAL DIVISION
ILEMPSI SANCHEZ-GARCIA, :
Defendant. :
: Motion to Dismiss

OPINION AND ORDER ON MOTION TO DISMISS

I. BACKGROUND

This matter came before the Court on October 11, 2024, for an evidentiary hearing on Defendant’s Motion to Dismiss Pursuant to Pa. R. Crim. P. Rule 600. The matter was subsequently briefed, and is now ready for decision. Based upon documents filed of record, and evidence introduced at the October 11th hearing, the Court makes the following Findings of Fact:

1. A complaint was initially filed in this matter on August 9, 2022.
2. The preliminary hearing was initially scheduled for September 20, 2022, but continued at the request of Defense counsel to October 11, 2022 (delay of twenty-one (21) days). The preliminary hearing was conducted on that date, and the matter was held for court.
3. By Order dated October 24, 2022, the Court confirmed that Defendant waived arraignment.
4. Defendant filed an Omnibus Pretrial Motion on November 22, 2022, which was subsequently denied on June 12, 2023.
5. By Order dated December 13, 2022, the Court granted Defendant’s Motion for Continuance to the next trial term, and stated “this time from today’s date to April 10, 2023, shall run against the Defendant for Rule 600 purposes.” (delay of one hundred eighteen (118) days from December 13, 2022 to April 10, 2023).
6. By Order dated March 6, 2023, the Court granted Defendant’s request to move the matter to the June 5, 2023, trial term, and stated “this time from today’s date to June 5, 2024, shall run against the Defendant for Rule 600 purposes.” (delay of fifty-five (55) days from April 11, 2023 to June 5, 2023).

7. By Order dated May 8, 2023, the Court granted Defendant's Motion for Continuance to July 31, 2023, and stated "this time from today's date to July 31, 2023, shall run against the Defendant for Rule 600 purposes." (delay of fifty-five (55) days from June 6, 2023 to July 31, 2023).
8. By Order dated July 7, 2023, the Court granted Defendant's Motion for Continuance to October 9, 2023, and stated "this time from today's date to October 9, 2023, shall run against the Defendant for Rule 600 purposes." (delay of sixty-nine (69) days from August 1, 2023 to October 9, 2023).
9. The cases which are listed for jury selection by the Office of the Court Administrator of Lycoming County are chosen based upon a variety of factors (civil jury trials are often scheduled far in advance for a date certain based upon availability of counsel, criminal jury trials are listed based upon availability of defense counsel, Rule 600 considerations, etc.).
10. While the Office of the District Attorney provides the Office of the Court Administrator Rule 600 calculations, the Office of the District Attorney does not select which cases will be listed for jury selection, and in which order.
11. By attachment to email of September 29, 2023, First Assistant District Attorney Martin Wade provided a list of cases to Deputy Court Administrator April McDonald to list for jury selection during the October to December 2023 trial term (Commonwealth Exhibit 9A-D). This matter was on the attached list.
12. Multiple matters were listed for jury selection on October 23, 2023, before three (3) separate judges. This matter was not among the cases listed, as disclosed by Commonwealth Exhibit 18A-C and 19. Thus, no jury was selected on that date, for the trial term beginning October 24, 2023. Although the period from October 24, 2023, through November 19, 2023, is not delay caused by Defendant, that period is not attributable to any delay by the Commonwealth (delay of twenty-six (26) days).
13. By Order dated November 20, 2023, the Court granted Defendant's Motion for Continuance to January 22, 2024, and stated "this time from today's date to January 22, 2024, shall run against the defendant for Rule 600 purposes." (delay of sixty-three (63) days).
14. By attachment to email of January 10, 2024, First Assistant District Attorney Martin Wade provided a list of cases to Deputy Court Administrator April

McDonald of adjusted Rule 600 dates (Commonwealth Exhibit 10A-E). This matter was on the attached list.

15. Although the period from January 23, 2024, through February 25, 2024, is not delay caused by Defendant, that period is not attributable delay by the Commonwealth (delay of thirty-three (33) days).
16. By attachment to email of February 15, 2024, First Assistant District Attorney Martin Wade provided a list of cases to Deputy Court Administrator April McDonald of adjusted Rule 600 dates with the notation "Please schedule as many jury selections as possible. Please schedule trials according to Rule 600 priority whenever possible" (Commonwealth Exhibit 11A-D). This matter was on the attached list, with a calculation of Rule 600 date as "August 22, 2024."
17. By email dated February 12, 2024, Defense counsel indicated that he was unavailable February 26 and February 27 for jury selection, although he offered to have another attorney pick the jury. Defense counsel also stated that he was unavailable February 28 and March 7 (Commonwealth's Exhibit 20A).
18. Since the Commonwealth's email of February 15, 2024, included this matter on the attached list, it appears that the Commonwealth was prepared to proceed to trial in the matter during the February-March 2024, trial term. Thus, any delay in bringing the matter to trial during that trial term resulted either from the unavailability of Defense counsel as reflected in Commonwealth's Exhibit 20A, or the fact that the matter was not reached. Thus, the period from February 26, 2024 through March 6, 2024 (a period of nine (9) days), is not attributable to any delay by the Commonwealth.
19. By attachment to email of March 13, 2024, First Assistant District Attorney Martin Wade provided a list of cases to Deputy Court Administrator April McDonald of adjusted Rule 600 dates with the notation "Please use this list to assist you in scheduling criminal trials. Older Rule 600 dates should be scheduled first if possible" (Commonwealth Exhibit 12A-D). This matter was on the attached list, with a calculation of Rule 600 date as "August 22, 2024."
20. By attachment to email of April 2, 2024, Deputy Court Administrator April McDonald provided a list of cases to First Assistant District Attorney Martin Wade, stating "Attached is the final trial list that I have - looks like there are 40 cases for trial this term." Later, the email states "If you could get me the Rule 600 list and

unavailability of the Commonwealth by April 8 at 5:00 that would be great” (Commonwealth Exhibit 13A).

21. By attachment to email of April 8, 2024, First Assistant District Attorney Martin Wade provided a list of cases to Deputy Court Administrator April McDonald of adjusted Rule 600 (Commonwealth Exhibit 13A-C). This matter was in seventh (7th) position on the attached list, with a calculation of Rule 600 date as “August 22, 2024.”
22. By attachment to email of May 13, 2024, First Assistant District Attorney Martin Wade provided a list of cases to Deputy Court Administrator April McDonald of adjusted Rule 600 (Commonwealth Exhibit 14A-C). This matter was in fifth (5th) position on the attached list, with a calculation of Rule 600 date as “August 22, 2024.”
23. Since it appears that the Commonwealth was prepared to proceed to trial in this matter in March or April or May of 2024, the period from March 7, 2024 through May 3, 2024, while not any delay caused by Defendant, is not attributable delay by the Commonwealth (delay of fifty-seven (57) days).
24. This matter was among the cases listed for trial during the July 2024, trial term. By Order dated August 19, 2024, the Court noted that this matter was listed for the July 2024 trial term, but the Court ran out of jurors. Thus, the Court continued the matter for jury selection on August 12, 2024, but stated that “for Rule 600 purposes, this time shall not run against the Commonwealth.”
25. Although the period from July 24, 2024 through August 12, 2024, is not delay caused by Defendant, that period is not attributable delay by the Commonwealth (delay of nineteen (19) days).
26. On July 12, 2024, the Commonwealth filed a Motion to Amend the Information. After oral argument on that Motion, the Court entered its Order of August 2, 2024, granting the Motion subject to an opportunity to the Defendant to request for a second preliminary hearing on the proposed new charges.
27. After the Commonwealth’s Motion to Amend was filed, but before the Order of August 27, 2024, the matter was listed for jury selection on August 12, 2024. At that time, President Judge Butts conducted a conference with counsel. Because counsel for the Defendant advised the Court that he intended to seek a second preliminary hearing pursuant to the Order of August 2, 2024, President Judge Butts

stated “But what I’m going to do is administratively I’m going to take the hit on this one. I’m going to require that you file that request as soon as possible...I’m just making sure that the Commonwealth knows that I’m not choosing sides here. I’m just trying to figure this out. And I’m not going to pick this jury until you have that subsequent hearing or the Commonwealth decides that they’re going to take an interlocutory appeal. So it’s going to be excusable delay I’m going to characterize it as. I’m going to move it to the 9th of September. Jury selection is August 19. That’s the first day of jury selection is September 9th.”

28. After the conference conducted on the record on August 12, 2024, President Judge Butts reconsidered her decision on the issue of how to attribute the delay, and entered an Order that date, file August 22, 2024, which stated that “the delay shall be attributed to the Commonwealth as the genesis of the delay occurred as a result of the Commonwealth’s request of the Court to amend the criminal information.” That Order listed the matter for jury selection on September 9, 2024.
29. The Commonwealth contends that, had President Judge Butts announced her intention to attribute the delay to the Commonwealth during the discussion on record on August 12, 2024, the Commonwealth would have proceeded to select a jury on that date on the existing criminal information, and withdrawn its request to amend the information. Rather, in reliance on the discussion on the record, the Commonwealth did not bring the matter to jury selection on that date.
30. Immediately prior to the jury selection scheduled for September 9, 2024, Defendant filed a Motion to Dismiss under Pa. R. Crim. P. Rule 600, and filed a Motion to Continue the trial on that basis. The Motion to Dismiss has since been pending.

II. ISSUE PRESENTED

Whether Defendant's Motion to Dismiss the matter should be granted, for failure to timely bring the matter to trial.

III. ANSWER TO ISSUE PRESENTED

Defendant's Motion to Dismiss the matter should NOT be granted, for failure to timely bring the matter to trial.

IV. DISCUSSION

Rule 600 of the Pennsylvania Rules of Criminal Procedure provides the following:

(A) Commencement of Trial; Time for Trial

(1) For the purpose of this rule, trial shall be deemed to commence on the date the trial judge calls the case to trial, or the defendant tenders a plea of guilty or nolo contendere.

(2) Trial shall commence within the following time periods.

(a) Trial in a court case in which a written complaint is filed against the defendant shall commence within 365 days from the date on which the complaint is filed.

....

(C) Computation of Time

(1) For purposes of paragraph (A), periods of delay at any stage of the proceedings caused by the Commonwealth when the Commonwealth has *failed to exercise due diligence* shall be included in the computation of the time within which trial must commence. Any other periods of delay shall be excluded from the computation.

....

(D) Remedies

(1) When a defendant has not been brought to trial within the time periods set forth in paragraph (A), at any time before trial, the defendant's attorney, or the defendant if unrepresented, may file a written motion requesting that the charges be dismissed with prejudice on the ground that this rule has been violated. A copy of the motion shall be served on the attorney for the Commonwealth concurrently with filing. The judge shall conduct a hearing on the motion.

PA. R. CRIM. P. 600 (emphasis added).

Our Superior Court has articulated—time and time again—that, in their evaluation of Rule 600 issues, they review a trial court’s decision under an abuse of discretion standard:

In evaluating Rule 600 issues, our standard of review of a trial court's decision is whether the trial court abused its discretion. Judicial discretion requires action in conformity with law, upon facts and circumstances judicially before the court, after hearing and due consideration. An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill will, as shown by the evidence or the record, discretion is abused.

The proper scope of review ... is limited to the evidence on the record of the Rule 600 evidentiary hearing, and the findings of the trial court. An appellate court must view the facts in the light most favorable to the prevailing party.

Additionally, when considering the trial court's ruling, this Court is not permitted to ignore the dual purpose behind Rule 600. Rule 600 serves two equally important functions: (1) the protection of the accused's speedy trial rights, and (2) the protection of society. In determining whether an accused's right to a speedy trial has been violated, consideration must be given to society's right to effective prosecution of criminal cases, both to restrain those guilty of crime and to deter those contemplating it. However, the administrative mandate of Rule 600 was not designed to insulate the criminally accused from good faith prosecution delayed through no fault of the Commonwealth.

So long as there has been no misconduct on the part of the Commonwealth in an effort to evade the fundamental speedy trial rights of an accused, Rule 600 must be construed in a manner consistent with society's right to punish and deter crime. In considering these matters ..., courts must carefully factor into the ultimate equation not only the prerogatives of the individual accused, but the collective right of the community to vigorous law enforcement as well.

Commonwealth v. Peterson, 19 A.3d 1131, 1134–35 (Pa. Super. Ct. 2011) (emphasis added), *aff'd*, 44 A.3d 655 (Pa. 2012) (quoting *Commonwealth v. Ramos*, 936 A.2d 1097, 1100 (Pa. Super. Ct. 2007) (*en banc*)); *cf.* *Commonwealth v. Harth*, 252 A.3d 600, 614 n.13 (Pa. 2021) (noting that when the “dispositive question implicates legal issues, [the appellate court’s] review is plenary....”) (citation omitted).

Regarding the nature of “due diligence” and the differences between “excusable delay” and “excludable time,” our Superior Court opined the following:

“Due diligence is fact-specific, to be determined case-by-case; it does not require perfect vigilance and punctilious care, but merely a showing the Commonwealth has put forth a reasonable effort.” *Commonwealth v. Selenski*, 606 Pa. 51, 994 A.2d 1083, 1089 (2010)...A panel of this Court in *Commonwealth v. Booze*, 953 A.2d 1263 (Pa.Super.2008), delineated the difference between excludable time and excusable delay, stating: “Excludable time” is defined in Rule 600(C) as the period of time between the filing of the written complaint and the defendant's arrest, ... any period of time for which the defendant expressly waives Rule 600; and/or such period of delay at any stage of the proceedings as results from: (a) the unavailability of the defendant or the defendant's attorney; (b) any continuance granted at the request of the defendant or the defendant's attorney. “Excusable delay” is not expressly defined in Rule 600, but the legal construct takes into account delays which occur as a result of circumstances beyond the Commonwealth's control and despite its due diligence. *Booze, supra* at 1272–1273. In *Hunt, supra*, this Court determined that a joint continuance is excludable delay.

Commonwealth v. Peterson, 19 A.3d 1131, 1137 (Pa. Super. Ct. 2011), *aff'd*, 44 A.3d 655 (Pa. 2012); *see, e.g., Commonwealth v. Martz*, 232 A.3d 801, 809 (Pa. Super. Ct. 2020) (restating the meaning of “due diligence,” “excusable delay,” and “excludable time”).

Delays caused by the defendant, e.g. defense continuances, constitute “excludable time.” *See Commonwealth v. Jones*, 886 A.2d 689, 702 (Pa. Super. Ct. 2005), *appeal denied*, 897 A.2d 452 (Pa. 2006) (noting that defense continuances in the sum of 249 days were excludable). The time from the initial filing of a Rule 600 motion to its disposition is also excludable time. *Commonwealth v. Booze*, 953 A.2d 1263, 1277 (Pa. Super. Ct. 2008), *appeal denied*, 13 A.3d 474 (Pa. 2010). Moreover, as remarked by the *Martz* Court on interlocutory appeals in the Rule 600 context, “Commonwealth's unsuccessful two-year interlocutory appeal to the Supreme Court of Pennsylvania tolled the speedy trial rule time, when such appeal was taken for tactical reasons and not for delay” and that “[n]otably, such holdings applied even though the Commonwealth's appeals were unsuccessful. The touchstone inquiry in deciding whether time taken to seek interlocutory appellate review for pretrial motions counts toward the 365-day calculation turns on whether the Commonwealth acted in bad faith in taking the appeal.” 232 A.3d at 812 n.5 (citing

Commonwealth v. Coleman and *Commonwealth v. Matis*). A variety of permutations are also noted by our Superior Court:

Reasonable effort includes such actions as the Commonwealth listing the case for trial prior to the run date to ensure that [defendant] was brought to trial within the time prescribed by Rule [600]. [*Commonwealth v. Aaron*, 804 A.2d 39, 43-44 (Pa.Super.2002)]. *See also* [*Commonwealth v. JHill, supra* [558 Pa. 238] at 264, 736 A.2d [578] at 592 [1999] (finding Commonwealth exercised due diligence when it initially scheduled trial well within time requirements of Rule [600] but trial was delayed by actions of defendant beyond Commonwealth's control). Further, this Court has held the Commonwealth exercised reasonable effort when within the run date the Commonwealth was ready to commence trial and was prevented from doing so by an administrative error which resulted in a trial date three days beyond the run date. [*Commonwealth v. JWroten, supra* [305 Pa.Super. 340, 451 A.2d 678] at 680-81 [1982] (holding inadvertent administrative error is not enough to defeat due diligence). *See also* [*Commonwealth v. Corbin*, 390 Pa.Super. 243, 568 A.2d 635 (1990)] (holding **inadvertent listing beyond run date due to overburdened docket, meager staff, and administrative breakdown at detention center, excused Commonwealth with respect to unavailability of its witness**).

Commonwealth v. Jones, 886 A.2d 689, 701-2 (Pa. Super. Ct. 2005) (emphasis added), *appeal denied*, 897 A.2d 452 (Pa. 2006); *see Commonwealth v. Wilson*, 2021 WL 4704100, *4 (Pa. Super. Ct. 2021) (unpublished memorandum) (“[A]lthough the Commonwealth filed a motion to amend its information, the delay caused thereby was due to the time it took the court to decide the motion. Furthermore, there is no indication that the Commonwealth attempted to evade Wilson's right to a speedy trial.”); *cf. Commonwealth v. Marnoch*, 316 A.3d 1041, 1045 (2024) (“[T]here is no indication that the failure to ‘correct’ the information delayed the trial in any way. At most, it was a ministerial act that could have been done at any time without delaying trial as it did not prejudice Appellee. Thus, the trial court abused its discretion in finding that the Commonwealth failed to act with due diligence that caused delay to the trial in this case.”).

Conclusions of Law:

1. The Complaint in this matter was filed on August 9, 2022.
2. Defendant's Motion to Dismiss Pursuant to Pa. R. Crim. P. Rule 600 was filed on September 4, 2024, which was seven hundred fifty-seven (757) days after the filing of the Complaint.
3. For the period of September 20, 2022 to October 11, 2022, the Court concludes that there was a period of **twenty-one (21) days of excludable time** due to Defendant's continuance request.
4. For the period of December 13, 2022 to April 10, 2023, the Court concludes that there was a period of **one hundred eighteen (118) days of excludable time** due to Defendant's continuance request.
5. For the period of April 11, 2023 to June 5, 2023, the Court concludes that there was a period of **fifty-five (55) days of excludable time** due to Defendant's request to continue the matter to the June 2023 trial term.
6. For the period of June 6, 2023 to July 31, 2023, the Court concludes that there was a period of **fifty-five (55) days of excludable time** due to Defendant's continuance request.
7. For the period of August 1, 2023 to October 9, 2023, the Court concludes that there was a period of **sixty-nine (69) days of excludable time** due to Defendant's continuance request.
8. For the period of October 24, 2023 to November 19, 2023, the Court concludes that there was a period of **twenty-six (26) days of excusable delay** not caused by the Defendant or the Commonwealth.
9. For the period of November 20, 2023 to January 22, 2024, the Court concludes that there was a period of **sixty-three (63) days of excludable time** due to Defendant's continuance request.
10. For the period of January 23, 2024 to February 25, 2024, the Court concludes that there was a period of **thirty-three (33) days of excusable delay** not caused by the Defendant or the Commonwealth.
11. For the period of February 26, 2024 to March 6, 2024, the Court concludes that there was a period of **nine (9) days of excusable delay** not caused by the Defendant or the Commonwealth.
12. For the period of March 7, 2024 to May 3, 2024, the Court concludes that there was a period of **fifty-seven (57) days of excusable delay** not caused by the Defendant or the Commonwealth.
13. For the period of July 24, 2024 to August 12, 2024, the Court concludes that there was a period of **nineteen (19) days of excusable delay** not caused by the Defendant or the Commonwealth.

14. The aggregate combined periods of excludable time and excusable delay between the date of filing of the Complaint and the date of filing of Defendant's Motion to Dismiss was five hundred twenty-five (525) days. Subtracting that sum from the seven hundred fifty-seven (757) day period between the filing of the Complaint and the filing of Defendant's Motion to Dismiss leads the Court to conclude that, as of the date of filing of Defendant's Motion, only Two Hundred Thirty-Two (232) days had elapsed which were neither excludable time or excusable delay.
15. Although the Commonwealth filed a motion to amend its information, the delay caused by the filing of that motion was due to the time it took the Court to decide the motion.
16. Nothing in the record supports the conclusion that the Commonwealth attempted to evade Defendant's right to a speedy trial. On the contrary, the aggregate period of excludable time and excusable delay of five hundred twenty-five (525) days is attributable to either requests for continuance by defense counsel or by the inability of the Court to secure a jury for trial.

ORDER

AND NOW, this 4th day of December 2024, for the reasons stated above, Defendant's Motion to Dismiss (filed September 4, 2024) Pursuant to Pa. R. Crim. P. Rule 600 is **DENIED**.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

CC: Court Administrator
District Attorney's Office (PY)
Robert Hoffa, Esquire