

II. ISSUE PRESENTED

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

III. ANSWER TO ISSUE PRESENTED

Defendant's Motion for Nominal Bail 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.

...

(B) Pretrial Incarceration. 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

(1) 180 days from the date on which the complaint is filed; or

(2) 180 days from the date on which the order is filed transferring a court case from the juvenile court to the trial or criminal division; or

(3) 180 days from the date on which the order is filed terminating a defendant's participation in the ARD program pursuant to Rule 318; or

(4) 120 days from the date on which the order of the trial court is filed granting a new trial when no appeal has been perfected; or

(5) 120 days from the date of the written notice from the appellate court to the parties that the record was remanded.

(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.

(2) For purposes of paragraph (B), only periods of delay caused by the defendant shall be excluded from the computation of the length of time of any pretrial incarceration. Any other periods of delay shall be included in 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.

(2) Except in cases in which the defendant is not entitled to release on bail as provided by law, when a defendant is held in pretrial incarceration beyond the time set forth in paragraph (B), at any time before trial, 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. 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). 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. A complaint was initially filed in this matter on June 25, 2024.
2. At the time set for formal arraignment on August 5, 2024, the matter was set for a pretrial on September 16, 2024.
3. At the time set for pretrial, upon request of the Defendant, the matter was continued to October 28, 2024, for jury selection.
4. Defendant’s Motion for Nominal Bail Pursuant to Pa. R. Crim. P. Rule 600 was filed on January 2, 2025.
5. For the period of September 16, 2024 through October 28, 2024, the Court concludes that there was a period of **forty-two (42) days of excludable time** due to Defendant’s continuance request, as more fully set forth in the Order of September 16, 2024.
6. **One Hundred Eighty (180) days plus forty-two (42) days of excludable time due to Defendant’s continuance request, as more fully set forth in the Order of September 16, 2024, yields a total of Two Hundred Twenty-Two (222) days.**
7. **Two Hundred Twenty-Two (222) days from June 25, 2024, would be February 2, 2025.**
8. **Nothing in the record supports the conclusion that the Commonwealth attempted to evade Defendant’s right to a speedy trial.**

ORDER

AND NOW, this 22nd day of January 2025, for the reasons stated above, Defendant's Motion for Nominal Bail filed January 2, 2025, 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 (JF)
Stacey Henry c/o Lycoming County Prison
Tyler Calkins, Esquire