

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 01-10,303
	:
	:
vs.	: CRIMINAL DIVISION
	: Petition for ROR Bail
GORDON BISSETT,	:
Defendant	:

OPINION AND ORDER

Before the Court is Defendant's Petition for ROR Bail for violation of Pa. R.C.P. 600, filed July 12, 2001. Argument on the Petition was heard July 24, 2001.

Defendant was charged on December 21, 2000 with arson and related counts and committed to the Lycoming County Prison in lieu of \$50,000.00 bail. Defendant remains incarcerated at this point and has not yet gone to trial. In his Motion for ROR Bail, Defendant contends he is entitled to release pursuant to Pa. R.C.P. Rule 600.

Rule 600 provides, in pertinent part:

- (2) Trial in a court case in which a written complaint is filed against the defendant, when the defendant is incarcerated on that case, shall commence no later than 180 days from the date on which the complaint is filed.
- (C) In determining the period for commencement of trial, there shall be excluded therefrom:
 - (3) 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.

- (E) No defendant shall be held in pre-trial incarceration on a given case for a period exceeding 180 days excluding time described in paragraph (C) above. Any defendant held in excess of 180 days is entitled upon Petition to immediate release on nominal bail.

Pa. R.C.P. Rule 600.

The Complaint in this matter was filed December 21, 2000. A preliminary hearing was scheduled for January 8, 2001 but continued at the Defendant's request until February 5, 2001. The preliminary hearing was held on February 5, 2001. At the time of the preliminary hearing, arraignment was scheduled for March 12, 2001, case monitoring was scheduled for May 25, 2001, and pre-trial conference was scheduled for June 22, 2001. Defendant filed a Petition for Writ of Habeas Corpus on March 8, 2001 which Petition was scheduled for argument April 27, 2001. The Petition was heard on April 27, 2001 and an Order issued denying the Petition on May 8, 2001. At the time of the pre-trial conference on June 22, 2001, the Commonwealth asked for a continuance based on "so many officers on vacation" and the pre-trial was continued until August 23, 2001.

Considering the complaint having been filed December 21, 2000, the 180th day would ordinarily be June 19, 2001. Twenty-eight days must be excluded, however, based upon Defendant's request for a continuance of the preliminary hearing. The 180th day is thus extended to July 17, 2001.

The Commonwealth argues that Defendant's Petition for Writ of Habeas Corpus causes the exclusion of 61 days, from March 8, 2001 through May 8, 2001. The mere filing of a pre-trial motion by a defendant does not automatically render him unavailable, however. Rather, a Defendant is unavailable for trial only if a delay in the commencement of trial is caused by the filing of the pre-trial motion. Commonwealth v Hill, 736 A.2d 578 (Pa. 1999). In the instant case, the dates for monitoring and pre-trial were set at the time of the preliminary hearing on February 5, 2001, and the Habeas Petition filed March 8, 2001 disposed of on May 8, 2001, did not delay commencement of trial.

Since the Commonwealth's request for a continuance from June 22, 2001 has delayed the

matter past the run date of July 17, 2001, the Court finds that Rule 600 has indeed been violated and that Defendant is entitled to immediate release on nominal bail.

ORDER

AND NOW, this day of July, 2001, for the foregoing reasons, Defendant's Motion for ROR Bail is hereby granted and Defendant is immediately released on ROR bail to his Michigan detainer.¹

By the Court,

Dudley N. Anderson, Judge

cc: DA
 PD
 Gary Weber, Esq.
 Hon. Dudley N. Anderson

¹It appears that after Defendant was arrested on the instant charge, Michigan lodged a parole detainer.