

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 00-10,559

VS :

JEREMY MICHAEL BALL :

OPINION AND ORDER

Before the Court is Defendant's Motion to Dismiss pursuant to Pa.R.Crim.P. 600. After a review of the file and the arguments presented, the Court finds the following procedural facts relevant to the motion. On March 1, 2000, a criminal complaint was filed against the Defendant for statutory sexual assault, indecent assault, and corruption of a minor, as a result of an incident that occurred on September 10, 1999. On March 30, 2000, Defendant appeared for, and waived his preliminary hearing after agreeing to a negotiated plea agreement of six (6) months incarceration and an additional five years parole. The Pre-trial Conference, and date set for the Defendant to enter his plea was scheduled for September 13, 2000. On or about September 7, 2000, the Defendant requested a continuance, as the Commonwealth, through a different Assistant District Attorney, notified Defendant's attorney that they would not be honoring the plea previously negotiated.

On October 5, 2000, Defendant's counsel filed a Motion to Remand for a Preliminary Hearing, which was granted by this Court on December 12, 2000. The Preliminary Hearing was held April 19, 2001. On June 28, 2001, Defendant's Counsel filed a Motion for Leave to Withdraw, which was granted by this Court on August 6, 2001. On September 25, 2001, Defendant, through new counsel filed several motions, including the instant motion, alleging that his case should be dismissed because the

Commonwealth failed to bring his case to trial within 365 days as is required under the speedy trial rule.

Pa.R.Crim.P. 600 provides that trial in a case in which a written complaint is filed against the defendant, where the defendant is at liberty on bail, shall commence “no later than 365 days from the date on which the complaint is filed.” In determining the period for commencement of trial, excludable times include continuances granted at the request of the defendant or the defendant's attorney *Pa.R.Crim.P. 600(C)(3)(b)*, and times between the filing and disposition of pre-trial motions if the delay in the commencement of trial is caused by the filing of the pretrial motion. [Commonwealth v. Hill](#), 558 Pa. 238, 736 A.2d 578, (1999).

In the instant case, a total of 692 days has passed from the date the criminal complaint was filed against the Defendant on March 1, 2000. Excluded from that time, however, is the continuance filed on behalf of the Defendant: September 7, 2000 – October 5, 2000 (28 days). Also excluded from that are the times between the filing and disposition of pretrial motions: Motion to Remand for Preliminary Hearing, October 5, 2000 – April 19, 2001 (196 days) and Rule 600 Motion to Dismiss, September 25, 2001 – January 24, 2002 (125 days). After subtracting the excludable time from the total time elapsed, the Court finds that only 343 days count toward the expiration of the 365 day speedy trial rule. As the 365 days has not yet elapsed, the Court denies Defendant's Motion to Dismiss on this basis.

ORDER

AND NOW, this _____ day of January, 2002, it is ORDERED and DIRECTED that the Defendant's Motion to Dismiss pursuant to Pa.R.Crim.P.600 is DENIED.

Further, after a brief conference with regard to Defendant's Motion to Suppress, Motion to Remand, and Habeas Motion, it appears that the transcript of the Preliminary Hearing has been discovered this date. It is therefore ORDERED and DIRECTED that these Motions be Continued to Friday, February 8, 2002 at 4:00 p.m., to give counsel an opportunity to review the transcript, and file amended motions, if necessary.

By The Court,

Nancy L. Butts, Judge

xc: Robert Ferrell, Esquire, ADA
Donald Martino, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire