

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 00-11,151

VS :

DARRYL VESEY :

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 June 13, 2000, a criminal complaint was filed against the Defendant for attempt to deliver a controlled substance, conspiracy and related charges. Defendant was arrested on June 27, 2000 and incarcerated on the charges. On July 24, 2000, Defendant was released on supervised bail. On November 15, 2000, a bench warrant was issued for a violation of supervised bail. Defendant was picked up on the bench warrant on July 25, 2001. Defendant has been incarcerated since that date.

At the December 18, 2001 pre-trial conference, Defendant requested a continuance to the next pre-trials. On January 25, 2002, Defendant filed the instant motion, alleging that 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. Alternatively, Defendant argues that he should be released on bail since he has been incarcerated longer than 180 days on this case.

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 delays resulting from the unavailability of the Defendant, and any continuances granted at the request of the defendant or the defendant's attorney *Pa.R.Crim.P. 600(C)(3)(b)*. Also excluded is the time between the filing and disposition of Defendant's Motion to Dismiss on speedy trial grounds. [Commonwealth v. Williams](#), 726 A.2d 389, (1999), appeal denied 560 Pa. 745, 747 A.2d 368.

In the instant case, a total of 612 days has passed from the date the criminal complaint was filed against the Defendant on June 13, 2000. Excluded from that time, however, is the time between the filing of the bench warrant and the time he was picked up on the warrant: November 15, 2000 – July 25, 2001 (251 days); the continuance requested by Defendant: December 18, 2001 – January 31, 2002 (54 days); and the time between the filing and the disposition of the instant motion: January 31, 2002 – February 15, 2002 (15 days). After subtracting the excludable time from the total time elapsed, the Court finds that only 292 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.

Defendant's alternative argument is that he should be released on bail, since more than 180 days has elapsed from the filing of the complaint. *Pa.R.Crim.P. 600(A)(2)* provides that "trial in a case in which a written complaint is filed against the defendant, when the defendant is incarcerated on the case shall commence no later than 180 days from the date on which the complaint is filed." A defendant is therefore entitled to be released on nominal bail once he has been held in pretrial incarceration for more than 180 days. In the instant case, the Defendant has been

held in pretrial incarceration for a total of 233 days: June 27, 2000 – July 24, 2000 (27 days); and July 25, 2001 – February 15, 2002 (206 days). Excluded from that time, however, are the continuance granted on behalf of the defense, and the time between the filing and disposition of the instant motion: December 18, 2001 – January 31, 2002 (54 days); and the time between the filing and the disposition of the instant motion: January 31, 2002 – February 15, 2002 (15 days). Subtracting these 69 days leaves a balance of 164 days. Since 180 days has not elapsed, the Court denies Defendant's motion on this basis as well.

ORDER

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

By The Court,

Nancy L. Butts, Judge

xc: DA
Edward J. Rymsza, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire