

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 00-11,870

VS :

ANTONIO JOHNSON :

OPINION AND ORDER

Before the Court is Defendant's Motion to Dismiss alleging a violation of Rule 600. After hearing on April 12, 2004, the Court determines these to be the relevant facts.

A criminal complaint was filed before District Justice James Carn and warrant issued for the Defendant on May 2, 2002. Defendant was arrested on the warrant on May 6th. Defendant's preliminary hearing was continued to June 11, 2002 from May 14, 2002 at his request. A Commonwealth continuance request was granted moving the hearing from June 11 to June 25, 2002. After the charges were held for Court, the Defendant was ultimately scheduled for jury selection on March 4, 2003. When the Defendant failed to appear, a bench warrant was issued and he was picked up on July 16, 2003. However, the next trial term once the Defendant was available began November 11, 2003. Defendant's case was not reached for trial during the November-December trial term. On December 16, 2003, over the objection of Defense, a continuance was granted to the Commonwealth until February 17, 2004. Defendant's case was not reached during the February-March trial term.

Defendant first asserts that his adjudication of guilt was made in violation of Pa.R.Crim.P. 600. Defendant argues that the time between the filing of the complaint and the filing of his Rule 600 motion was in excess of 365 days. 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 the instant case, the criminal complaint was filed against the Defendant on May 2, 2002, with his Rule 600 motion filed on March 5, 2004. The total time elapsed was 673 days.

Excluded from the total elapsed time, however, also are delays resulting from the unavailability of the Defendant, and any continuances granted at the request of the Defendant or the Defendant's attorney¹, and times between the filing and disposition of pre-trial motions if the filing of the pretrial motion causes the delay in the commencement of trial. Commonwealth v. Hill, 558 Pa. 238, 736 A.2d 578, (1999). In the instant case, there were several continuances and a bench warrant on behalf of the Defendant that resulted in the delay of the commencement of trial. The total excludable time calculated by the Court is 274 days. After subtracting the total amount of excludable time of 274 days from the total time elapsed of 673, a balance of 399 days count toward the expiration of 365 days under Rule 600. The Court therefore finds the Defendant was not tried in compliance with Rule 600.

ORDER

AND NOW, this 14th day of April, 2004 after hearing and based upon the foregoing analysis, the Defendant's Motion to Dismiss pursuant to Rule 600 is

¹ Pa.R.Crim.P. 600(C) (3) (b),

GRANTED. It is ORDERED AND DIRECTED the charges are DISMISSED against the Defendant. Costs to be placed on Lycoming County.

By The Court,

Nancy L. Butts, Judge

DA
James Protasio, Esquire
Gary Weber
Law Clerk
Judges
Honorable Nancy L. Butts