

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 03-10,880
:
:
vs. : CRIMINAL
:
MICHAEL McCLOSKEY, :
Defendant : Request for Release

O R D E R

AND NOW, this 2nd day of March 2004, the Court **DENIES** the Defendant's Oral Request for Release on Nominal Bail, pursuant to Pa.R.Cr.P. 600(e).

The Court notes the Defendant made this request after the jury was selected for trial in this case. The request was made orally by counsel at sidebar. The trial is scheduled to be held on March 9 and 10, 2004. The jury was selected on February 24, 2004.

The Court also notes the Defendant previously filed a motion for release pursuant to Rule 600(e), which was heard by the Honorable Dudley Anderson. In an Order dated December 1, 2003, Judge Anderson denied the motion, but stated:

Defense Counsel may file, without prejudice, a new Motion for Dismissal pursuant to Rule 600 should the time that has elapsed trigger the basis for a new Motion.¹

¹ While the term dismissal is used in Judge Anderson's Order, this Court believes he is referring to the Defendant's request for release from incarceration pursuant to Rule 600. A review of the Defendant's actual petition reveals that the Defendant is only claiming entitlement to nominal bail.

The Defendant did not file a new motion. He orally requested nominal bail pursuant to Rule 600(e) after selection of the jury. Since the jury has been selected in this case, and trial is scheduled to proceed in a reasonable time frame, the Court believes the nominal bail provision of Rule 600(e) is not applicable. See Commonwealth v. Martin, 479 Pa. 609, 612-613, 388 A.2d 1361, 1363-64 (1978) (oral application for dismissal pursuant to former Rule 1100 prior to swearing of the jury but subsequent to selection of the jury was untimely since voir dire of the jury is considered a first step in a trial for purposes of Rule 1100); see also Pa.R.Cr.P. 600 Comment.²

Accordingly, the Defendant's oral request for nominal bail is denied.

By The Court,

Kenneth D. Brown, P.J.

cc: William Simmers, Esquire(AD)
R. Bruce Manchester, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)

² The Comment states in relevant part:

"A trial commences when the trial judge determines that the parties are present and directs them to proceed to *voir dire* or to opening argument, or to the hearing of any motions which had been reserved for the time of trial, or to the taking of testimony, or to some other such first step in the trial."