

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	CRIMINAL DIVISION
Plaintiff	:	
	:	
v.	:	NO. 368-2007
	:	
LARUE FENSTERMAKER	:	

OPINION

This opinion is written to clarify the reasons for this court’s denial of the defendant’s Motion to Dismiss Charges for Violation of Rule 600, after a hearing held on May 1, 2008.

The complaint was filed on January 10, 2007. An arraignment was scheduled for March 26, 2008, at which time the matter was scheduled for a status conference on May 18, 2007.¹ The period of time elapsing from January 10, 2007 through May 18, 2007 is 129 days.

On May 18, 2007, the defendant requested a continuance, and the conference was continued to July 3, 2007. On July 3, 2007, the defendant’s attorney withdrew and the case was continued to give the defendant time to apply for a public defender. The matter was scheduled for a status conference on August 1, 2007, at which time the matter was scheduled for another status conference on September 25, 2007, and a pre-trial on December 18, 2007. The court will exclude the time from May 18, 2007 through August 1, 2007, as the matter was continued twice at the request of the defendant.

On September 25, 2007 a status conference was held, and the case continued to be scheduled for pre-trial on December 18, 2007. The number of days from August 1, 2007 to December 18, 2007 is 140 days.

On December 18, 2007, the defendant requested a continuance, and the case was continued to February 14, 2008.² On February 14, 2008, the case was not reached for trial. As testified to by Deputy Court Administrator Eileen Dgien, this was because both the Commonwealth and defense counsel were unavailable on certain days, and on the days when both were available, the court scheduled other trials with earlier Rule 600 dates.

The case was set for another pre-trial on April 10, 2008. The court will exclude the time between February 14, 2008 and April 10, 2008, as the court finds the Commonwealth exercised due diligence and the circumstances occasioning the postponement were beyond the control of the Commonwealth. See Rule 600(G).

At the pre-trial on April 10, 2008, it was determined the Commonwealth was available for the entire trial term. The defendant was unavailable on May 13, 2008, May 14, 2008, May 15, 2008, and May 19, 2008. Trial was scheduled for May 20, 2008 and May 21, 2008. The court will exclude the time period from May 13, 2008 until May 20, 2008, due to the unavailability of defense counsel. The court will include the time period from April 10, 2008 until May 12, 2008, for a total of 33 days.

¹ The court notes that arguably, the court could exclude the time period from March 26, 2007 through May 18, 2007, because the defendant requested another status conference rather than a pre-trial conference, which would have immediately put him on the trial track.

Adding 129 days, 140 days, and 33 days equals only 302 days, which does not exceed the 365 days stated in Rule 600.

The court is well aware of the backlog of criminal cases, and accepts its own responsibility to act with due diligence to bring cases to trial in a timely manner. However, given the testimony of Ms. Dgien, the court concludes that a reasonable and good faith effort was made to bring this case to trial and the delay, although unfortunate, was unavoidable, based upon the court backlog. The court also concludes that the Commonwealth exercised due diligence and the delay was not occasioned by the Commonwealth.

BY THE COURT,

Richard A. Gray, J.

cc: District Attorney
Public Defender
Gary Weber

² The court could find no documentation regarding this continuance request, but we accept the defendant's assertion contained in his motion that the defendant requested a continuance.