

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

DANIEL HYKES,
Defendant

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No.: 1105-2009
2209-2009

OPINION AND ORDER

On December 11, 2009 a hearing was held on the Defendant's Rule 600 Motion as well as the Commonwealth's Motion to Consolidate the above captioned cases for trial. No testimony was presented by either side; both the Commonwealth and the Defendant who is currently representing himself argued their respective points. Assistant Public Defender Aaron Biichle was also present to assist Defendant as stand by counsel.

Discussion

The charges against Defendant should either be dismissed or in the alternative Defendant should be released on nominal bail pursuant to Rule 600

Defendant alleges that the charges against him should be dismissed against him as there have been more than 365 days since his extradition from the State of Oregon or at a minimum he should be released on nominal bail. He further alleges that since there is no excludable time, the charges should be dismissed with prejudice. A brief history of the Defendant's time within the Lycoming County legal system must be presented.

Defendant was arrested on November 12, 2008 by the Pennsylvania State Police (PSP) for violations of Megan's Law, specifically sections 4915(a)(1) and 4915(a)(2), alleging that he failed to comply with the Megan's Law registration requirement pursuant to 42 Pa.C.S. 9795.1(b)(2). Since the Defendant is an Out of State Sexual Offender subject to lifetime registration, Commonwealth alleges that he failed to inform the PSP of his change of residence within 48 hours of the change, failed to verify his address, and be fingerprinted and photographed as required under 42 Pa.C.S. §9596. On April 7, 2009 after a hearing on the Habeas Corpus petition filed by Counsel on Defendant's behalf and without additional testimony from the Commonwealth, this Court granted Defendant's request and dismissed the charges. Commonwealth filed a timely Reconsideration motion on April 17, 2009.

On May 14, 2009 after additional testimony was presented by the Commonwealth on the Habeas claim, this Court orally granted the Commonwealth's request to reconsider. However, once the Court realized that it no longer had jurisdiction to reconsider the Commonwealth's request as 37 days had elapsed since the original order was issued, the charges under 2037-2008 remained dismissed. Charges against the Defendant were then refiled on May 15, 2009. At the time of Defendant's arraignment he was given a pretrial date of December 15, 2009, with trial to commence in January 2010.

Rule 600 of the Pennsylvania Rules of Criminal Procedure provides that "trial in a court case in which a written complaint is filed against the defendant, when the defendant is incarcerated on that case, shall commence no later than 180 days from the date on which the complaint is filed." The rule also sets forth specific periods of time

considered to be excludable from Rule 600 calculation; those time periods set for in (C) are as follows:

- (1) the period of time between the filing of the written complaint and the defendant's arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence;
- (2) any period of time for which the defendant expressly waives Rule 600;
- (3) such period of delay at any stage of the proceedings as results from:
 - (a) the unavailability of the defendant or the defendant's attorney;
 - (b) any continuance granted at the request of the defendant or the defendant's attorney.

As further set forth in Rule 600(E), "No defendant shall be held in pre-trial incarceration on a given case for a period exceeding 180 days excluding time described in paragraph (C) above. Any defendant held in excess of 180 days is entitled upon petition to immediate release on nominal bail." And under Section (G), "For defendants on bail after the expiration of 365 days, at any time before trial, the defendant or the defendant's attorney may apply to the court for an order dismissing the charges with prejudice on the ground that this rule has been violated." After reviewing the record in this case, the Court finds two specific areas in which Defendant's case was not advanced; the time from arrest to the preliminary hearing and the time taken by the Court to rule on the Defendant's Habeas motion.

On the docket transcript filed in this case, it sets forth that the charges were filed and the Defendant was preliminarily arraigned on May 15, 2009. The address given by Defendant at the time of his arrest was 121 Florence Drive, Cogan Station, PA. His preliminary hearing was originally scheduled for May 20, 2009; however the hearing was begun but was continued to June 17, 2009 due to the need for more time to

complete the hearing. The hearing was then continued from June 17, 2009 until July 8, 2009 due to the Magisterial District Judge's unavailability. From the time of the original preliminary hearing date until the date it was finally held is a total of 49 days, with the first due to the Defendant's request. Since these times are attributable to the Defendant, under Rule 600(C)(3)(b) this is considered to be excludable time.

In addition, Defendant also filed a Habeas Corpus motion heard by this court on August 31, 2009 with the opinion issued on December 15, 2009. The mere filing of a pretrial motion by a defendant does not automatically render him unavailable. Rather, a defendant is only unavailable for trial if a delay in the commencement of trial is caused by the filing of the pretrial motion. Commonwealth v. Hill, 736 A.2d 578, 587 (Pa. 1999) The Court determines that although its decision on the Defendant's outstanding habeas motion was delayed, that delay did not affect the commencement of trial and should not be considered excludable time. Defendant's pretrial hearing is scheduled for December 17, 2009 for trial in January 2010. Therefore, in calculating the time since the Defendant's arrests until the date his Rule 600 motion was filed on November 30, 2009 the Court determines that 199 days have elapsed between the filing of the charges and the Rule 600 motion with 28 days excluded leaving a total of 171 days. Since the calculation neither exceeds 180 days under Rule 600(e) nor 365 days under Rule 600 (g) the Defendant's motion fails.

The cases under 1105- 2009 and 1022-2009 should be consolidated for trial

The Commonwealth asserts that the charges in the two pending cases against Defendant should be consolidated for trial pursuant to Pa R. Crim. Pro 582. *Pro se* Defendant objects generally to the consolidation of his informations for trial.

Rule 582 of the Pennsylvania Rules of Criminal Procedure provides in relevant part as follows:

(1) Offenses charged in separate indictments or informations may be tried together if:

(a) the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion; or

(b) the offenses charged are based on the same act or transaction.

Whether or not separate indictments should be consolidated for trial is within the sole discretion of the trial court and such discretion will be reversed only for a manifest abuse of discretion or prejudice and clear injustice to the defendant. Commonwealth v. Lark, 543 A.2d 491 (Pa. 1988).

Examining the first prong of Rule 582, Commonwealth asserts the evidence of one of the offenses would be admissible in the trial of the other. Evidence of other crimes may be introduced for the limited purposes of showing (1) motive; (2) intent; (3) absence of mistake or accident; (4) a common scheme, plan or design embracing commission of two or more crimes so related to each other that proof of one tends to prove the others; or (5) to establish the identity of the person charged with the commission of the crime on trial. Commonwealth v. Newman, 598 A.2d 275, 278 (Pa.

1991) Consolidation of indictments requires only that there are shared similarities in the details of each crime. See Commonwealth v. Morris, 425 A.2d 715, 721 (Pa. 1981).

Here, Defendant is charged with the identical offenses within the space of several months and would be admissible in the trial of the other offense to prove common design or absence of mistake or accident. The charges are not technical in nature or so complex that a jury would be confused; but are clearly distinct so that a jury would be able to separate the facts and circumstances. Therefore, the Commonwealth's motion will be granted.

ORDER

AND NOW, this 15th day of December, 2009, after hearing, argument and based upon the forgoing, it is ORDERED AND DIRECTED that the Defendant's Motion for Relief Pursuant to Rule 600 is hereby DENIED.

The Commonwealth's Motion for Joinder is hereby GRANTED, and it is additionally ORDERED AND DIRECTED that Information numbers 1105-2009 and 1022-2009 are hereby joined for trial.

By The Court,

Nancy L. Butts, Judge.

xc: Paul Petcavage, Esq.
Aaron Biichle, APD
Defendant, Lycoming County Prison
Gary Weber, Esq. (LLA)