

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-300-2010  
vs. :  
DELORES BRYANT, : Order denying Defendant's Motion to Dismiss  
Defendant :  
:

**OPINION AND ORDER**

This matter came before the Court on Defendant's Motion to Dismiss For Violation of Rule 600. The relevant facts follow.

1. On December 8, 2009, the police filed a criminal complaint against Defendant charging her with various drug offenses.
2. The police arrested Defendant on February 8, 2010.
3. A preliminary hearing was held on February 22, 2010 and all the charges were held for court.
4. Arraignment and the initial status conference were scheduled for March 29, 2010.
5. On April 21, 2010, Defendant filed an Omnibus Pre-trial motion.
6. A hearing was held on the Omnibus Pre-trial Motion on June 2, 2010.
7. The Court issued a written Opinion and Order on June 30, 2010, in which the Court decided the issue raised in the Omnibus Pre-trial Motion.
8. A pre-trial conference was held on July 27, 2010. At that conference, the Commonwealth requested a continuance, which the Court granted over the objection of the defense. On that date, the Commonwealth also filed a motion to consolidate this case with the case of Izone Jackson (No. 303-2010).

9. A hearing on the motion to consolidate was held on September 14, 2010. Mr. Jackson's counsel, who had recently been appointed, was given 30 days to inform the Court of his client's position regarding consolidation.

10. In an Order dated October 15, 2010 and docketed October 18, 2010, the Court denied the Commonwealth's motion to consolidate.

11. On December 8, 2010, Defendant filed her Rule 600 motion to dismiss.

12. A hearing was held on the motion to dismiss on December 21, 2010.

### DISCUSSION

Rule 600 states, in relevant part:

(A)(3) Trial in a court case in which a written complaint is filed against the defendant, when the defendant is at liberty on bail, shall commence no later than 365 days from the date on which the complaint is filed.

(C) In determining the period for commencement of trial, there shall be excluded therefrom:

(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;

Pa.R.Cr.P. 600. Clearly, there is excludable time in this case. Defendant filed an Omnibus Pre-trial motion on April 21, 2010, which was decided on June 30, 2010. There were no

continuances related to this motion and both sides were prepared for and exercised due diligence in handling or responding to this motion. Therefore, the time from April 21, 2010 to June 30, 2010 is excludable under Rule 600 (C). Commonwealth v. Hill, 558 Pa. 238, 736 A.2d 578 (1999). If only this time is excluded, approximately 296 days have passed from the filing of the criminal complaint to the filing of Defendant's motion to dismiss.<sup>1</sup> Therefore, Defendant is not entitled to dismissal under Rule 600 at this time, because more than 365 non-excludable days have not passed since the filing of the criminal complaint.

---

<sup>1</sup> According to the Order entered on March 29, 2010, defense counsel requested a continuance and the case was continued to the status conference and pre-trial dates of July 16, 2010 and July 27, 2010, respectively. Defense counsel argued that she did not request a continuance on that date and the case was simply given a scheduling order. The Court indicated it would get a transcript of the proceedings held on March 29, 2010. However, given the excludable time attributable to Defendant's Omnibus Motion, the Court does not need to decide this issue to render a decision on Defendant's motion to dismiss.

The Commonwealth also argued that the period of time from September 14, 2010 to October 18, 2010 is excludable due to a request for additional time made by counsel for the co-defendant to inform the Court of his position on the Commonwealth's motion to consolidate. In all likelihood this time is not excludable because the delay was not attributable to Defendant or her counsel, but rather to co-defendant's counsel; however the time might be excusable when determining whether the Commonwealth exercised due diligence. See Commonwealth v. Jackson, 765 A.2d 389, 392-395 (Pa. Super. 2000).

**ORDER**

**AND NOW**, this \_\_\_\_ day of January 2011, for the foregoing reasons, the Court DENIES Defendant's Motion to Dismiss For Violation of Rule 600.

By The Court,

---

Marc F. Lovecchio, Judge

cc: Eric Linhardt, Esquire  
Robin Buzas, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Work file