

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PA** :  
**vs.** : **No. CR-1008-2012**  
:   
**RYAN A. SMITH,** :   
**Defendant** :

**OPINION AND ORDER**

Defendant is charged by Information filed on July 6, 2012 with numerous drug related crimes. The charges were filed on December 27, 2011. Following the filing of the charges an arrest warrant was issued for Defendant. On May 14, 2012, Defendant was apprehended on the warrant and was committed to the Lycoming County Prison after being unable to post the monetary bail set at \$75,000.00.

Defendant has remained incarcerated since May 14, 2012. On December 4, 2012, Defendant filed a Petition for ROR Bail pursuant to Rule 600 of the Pennsylvania Rules of Criminal Procedure. An argument and hearing on the petition were held before the Court on December 31, 2012.

Defendant asserts that as of December 31, 2012 he has been confined for 232 days, well beyond 180 days and, accordingly, he is entitled to immediate release on nominal bail pursuant to Rule 600 (E).

The Commonwealth concedes that Defendant has been held in pretrial incarceration for a period exceeding 180 days but contends that the Court should refuse to set bail, arguing that there is no condition of combination of conditions of bail that would ensure that Defendant would appear in court as required or not commit any further criminal offenses. The Commonwealth contends that: Defendant has at least four different misdemeanor convictions over the past five years; if convicted on the current offenses, there is a great

likelihood that he will be sentenced to state incarceration; he has bench warranted on pending cases at least three to four times over the past year; he has a history of failing to appear when required; and in May of 2012 the Court revoked Defendant's bail on another matter and specifically refused to set bail concluding that there was no condition of combination of conditions of bail that would ensure Defendant's future appearance.

Being familiar with Defendant's bench warrant history and failure to appear when required, the Court agrees with the Commonwealth that it has little faith that if Defendant is released on nominal bail that he would appear when required. Nonetheless, the Court is uncertain as to whether, under the circumstances and in light of the clear mandate of Rule 600, it can refuse to set bail.

Rule 600 (E) states: "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." Pa. R. Cr. P. 600 (E). While the Commonwealth concedes that there is no excludable time, it contends that despite the clear language of Rule 600 no bail should be set.

This case arguably involves an interplay between Rule 600 and Article 1, Section 14 of the Pennsylvania Constitution. Article 1, Section 14 provides that "all prisoners shall be bailable by sufficient sureties...unless no condition of combination of conditions other than imprisonment will reasonably assure the safety of any person in the community when the proof is evident or presumption great..." Pa. Const. Art. 1, §14.

Pennsylvania Supreme Court precedent holds that a trial court has no discretion to ignore the Rule 600 (E) mandate that an accused be released on nominal bail after 180 days of pretrial detention. Commonwealth v. Abdullah, 539 Pa. 351, 652 A.2d 811 (Pa. 1995). The Supreme Court has also held, however, that a defendant's release on nominal bail pursuant to Rule 600 may be subject to non-monetary conditions of release such as electronic monitoring or reporting requirements. Commonwealth v. Sloan, 589 Pa. 15, 907 A.2d 460 (2006).

Further, "while Rule 600 generally protects a defendant's right to a speedy trial, there is no constitutional significance to the number of days or the procedure chosen by the Court in enacting Rule 600 (E) that could trump the constraints of Article 1, Section 14." Sloan, 907 A.2d at 468. Indeed, there may be instances where a trial court deems a defendant "too dangerous" to be released even subject to the consideration of conditions and in spite of Rule 600. Id. at 467 n. 10, citing Commonwealth v. Jones, 899 A.2d 353 (Pa. Super. 2006).

While the Court is greatly concerned as to whether Defendant will appear if he is released on bail, this is not a situation where any evidence has been presented by the Commonwealth to support a conclusion that Defendant is "too dangerous to be released even subject to consideration of conditions." Indeed, the Commonwealth argued that Defendant was a significant flight risk, not that Defendant was dangerous.

Accordingly, the Court will grant, in part, Defendant's petition. While the Court will release Defendant on nominal bail, it will also impose non-monetary conditions in order to provide adequate assurances that Defendant will appear for trial.

**ORDER**

AND NOW, this \_\_\_\_ day of January 2013 following a hearing and argument, the Court **GRANTS** in part Defendant's Petition for Bail pursuant to Rule 600. Bail is set at \$1.00 nominal bail with the non-monetary conditions that: Defendant be placed on the Intensive Supervised Bail Program which includes electronic monitoring or global positioning; Defendant be placed on house arrest except for employment, medical appointments and religious services; and Defendant be required to wear a drug patch. Moreover, Defendant shall not be permitted to consume any alcoholic beverages whatsoever, no alcoholic beverages whatsoever shall be permitted in Defendant's residence, and Defendant shall not be permitted in any establishment in which alcoholic beverages are served. Furthermore, Defendant shall not be permitted to possess any firearms or weapons whatsoever and the residence in which Defendant resides shall not have any firearms present.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: DA (AB)  
PD (NS)  
APO  
Harry Rogers, Prison  
Gary Weber, Esquire (Lycoming Reporter)  
Work File