

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1478-2013
 :
 CHARLES W. ENGLISH, :
 Defendant :

OPINION AND ORDER

This matter came before the court on March 31, 2014 for a hearing and argument on Defendant's motion for release on nominal bail pursuant to Rule 600(D)(2).

The relevant facts follow.

On July 18, 2013, a criminal complaint was filed against Defendant, charging him with possession with intent to deliver a controlled substance, possession of a controlled substance, possession of drug paraphernalia, accidents involving damage to attended vehicle or property, and careless driving. The preliminary hearing was originally scheduled for July 23, 2013, but it was continued at the request of the Commonwealth and rescheduled for August 20, 2013. Due to the unavailability of defense counsel, the preliminary hearing was continued from August 20, 2013 to September 3, 2013. Following a hearing on that date, Defendant was held for court on all of the charges.

Defendant's formal court arraignment was September 23, 2013. At the arraignment, the court issued an order scheduling Defendant's case for a status conference on January 3, 2014, a pre-trial conference on January 17, 2014, and a jury selection date of February 11, 2014.

On October 1, 2013, the Commonwealth filed a motion to amend the

information to include language to support a potential school zone mandatory for count 1, possession with intent to deliver a controlled substance. On October 7, 2013, Defendant filed a motion to compel discovery. A hearing and argument on both motions was held on October 15, 2013. The court decided both motions in an Opinion and Order, which was docketed on October 22, 2013.

On October 22, 2013, Defendant filed an omnibus pretrial motion, which included, but was not limited to, a motion to dismiss count 4 and a motion to suppress evidence. The motion was scheduled to be heard on November 25, 2013, but the Commonwealth filed a continuance request on November 19, 2013, which was granted and the hearing was rescheduled for December 6, 2013.

At the beginning of the hearing on December 6, 2013, the court noted on the record that it only had 1 ½ hours to complete the hearing and argument in this case. Therefore, the court notified the parties that if the hearing could not be completed in that amount of time, the remainder of the hearing would be held on January 22, 2014.

Officer Justin Ottaviano was called as a witness for the Commonwealth. His testimony took over an hour. During cross-examination, defense counsel referenced a tape and transcript of various 911 communications and dispatches. At the close of the officer's testimony, defense counsel also marked a tape and transcript of Defendant's preliminary hearing as exhibits.

It became readily apparent that the hearing could not be completed on December 6, 2013. There was at least one other Commonwealth witness who was present,

but that testimony could not be completed in the remaining fifteen to twenty minutes.

Therefore, the court told counsel that it would review the tapes and transcripts before the next hearing, and it adjourned the hearing until January 22, 2014.

On December 31, 2013, defense counsel requested a continuance of the status conference scheduled for January 3, 2014, because holding a status conference before the evidentiary hearing was concluded would be a waste of time. This continuance request was granted and the status conference was rescheduled for March 7, 2014. The court noted that the continuance request included “excludable time against the Defendant from January 3, 2014 to March 7, 2014.”

The hearing on Defendant’s omnibus motion was completed on January 22, 2014, and the court issued its Opinion and Order deciding the motion on February 28, 2014.

Defendant filed his motion for release on nominal bail on February 3, 2014. Defendant contends he is entitled to nominal bail pursuant to Rule 600(D)(2) of the Pennsylvania Rules of Criminal Procedure because he has been incarcerated for more than 180 days.

Rule 600 states, in relevant part:

(B) Pretrial Incarceration

Except in cases in which the defendant is not entitled to release on bail as provided by law, no defendant shall be held in pretrial incarceration in excess of

(1) 180 days from the date on which the complaint is filed;

* * *

(C) Computation of Time

* * *

(2) For purposes of paragraph (B), only periods of delay

caused by the defendant shall be excluded from the computation of the length of time of any pretrial incarceration. Any other periods of delay shall be included in the computation.

(D) Remedies

* * *

(2) Except in cases in which the defendant is not entitled to release on bail as provided by law, when a defendant is held in pretrial incarceration beyond the time set forth in paragraph (B), at any time before trial, the defendant's attorney, or the defendant if unrepresented, may file a written motion requesting that the defendant be released immediately on nominal bail subject to any nonmonetary conditions of bail imposed by the court as permitted by law. A copy of the motion shall be served on the attorney for the Commonwealth concurrently with filing. The judge shall conduct a hearing on the motion.

Pa.R.Cr.P. 600.

Defense counsel requested a continuance of his preliminary hearing from August 20, 2013 to September 3, 2013, a period of 14 days. Defendant concedes that this period of time is excludable, but disputes that there is any other period of delay attributable to him.

The court recognizes that "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). Furthermore, "in order to establish that the delay was excludable, the Commonwealth must demonstrate, by a preponderance of the evidence, that it exercised due diligence in opposing or responding to the pretrial motion." Id.

Defendant contends that all of the delay related to his omnibus

pretrial motion was due to the Commonwealth's request for a continuance. He asserts that if the motion had been heard on November 25, 2013, there would not have been any delay in the trial of this matter. Instead, he would have had his status and pretrial conferences in January as originally scheduled.

While the court agrees that the time period between November 25 and December 6, 2013 is not excludable due to the Commonwealth's continuance request, the court finds that this is the only period of delay related to Defendant's omnibus pretrial motion that would not be excludable. The court cannot say that if the hearing had been held on November 25 it would have been completed on that date. The Commonwealth requested its continuance on November 19, 2013. At that time, there was an unexpected opening in the court's calendar on December 6, 2013 at 1:30 p.m.¹ If the hearing had started on November 25, but was not completed, the time slot on December 6 likely would have already been filled with other matters.

Defendant's omnibus pretrial motion and his request for a continuance of his status conference delayed the scheduling of his trial. Therefore, the court finds that the period from October 22, 2013 to November 25, 2013 and December 6, 2013 to March 7, 2014 also are excludable under Rule 600(C)(2).

According to the court's calculations, Defendant has only been

¹ The court's recollection is that time slot was available on November 19, because an Orphan's Court matter

incarcerated for about 118 days when the delay attributable to Defendant is excluded. Therefore, the court will deny Defendant's motion for nominal bail at this time.

ORDER

AND NOW, this ___ day of April 2014, the court DENIES Defendant's motion for nominal bail.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)/Melissa Kalas, Esquire (ADA)
Ronald Travis, Esquire
Work file