

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-635-2012
 :
 JUSTIN GARY ROSATO, : Opinion and Order re:
 Defendant : Defendant's Motion to Dismiss Pursuant to
 : Rule 600

OPINION AND ORDER

This matter came before the Court on Defendant's Motion to Dismiss Information Pursuant to Rule of Criminal Procedure 600.

Rule 600 states in relevant part:

Rule 600. Prompt Trial

(A) Commencement of Trial; Time for Trial

* * *

(2) Trial shall commence within the following time period.

(a) Trial in a court case in which a written complaint is filed against the defendant shall commence within 365 days from the date on which the complaint is filed.

* * *

(C) Computation of Time

(1) For purposes of paragraph (A), periods of delay at any stage of the proceedings caused by the Commonwealth when the Commonwealth has failed to exercise due diligence shall be included in the computation of the time within which trial must commence. Any other periods of delay shall be excluded from the computation.

* * *

(D) Remedies

(1) When a defendant has not been brought to trial within the time periods set forth in paragraph (A), at any time before trial, the defendant's attorney, or the defendant if unrepresented, may file a written motion requesting that the charges be dismissed with prejudice on the ground that this rule has been violated. 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.

In his motion, Defendant acknowledges that the criminal complaint was filed on October 26, 2011 and that the following periods of time are excludable from Rule 600 calculations as a result of continuances granted at the request of Defendant:

12/16/11 to 04/12/12 (118 days)

08/21/12 to 9/14/12 (23 days)

09/14/12 to 11/02/12 (48 days)

12/07/12 to 02/01/13 (55 days)

02/01/13 to 04/26/13 (83 days) and

05/10/13 to 08/16/13 (97 days).

Defendant contends that when these times are excluded, his Rule 600 run date was December 23, 2013; therefore, he is entitled to dismissal. The Court cannot agree.

There are two additional periods of delay that either are attributable to Defendant or at least were not caused by the Commonwealth. On February 20, 2013, defense counsel requested a continuance of the pre-trial conference scheduled for March 15, 2013, because his motion to withdraw as counsel was not scheduled to be heard until March 26, 2013. This continuance request was granted. The case was re-scheduled for a pre-trial conference on May 10, 2013. Therefore, the period from April 26, 2013 to May 10, 2103 (14 days) is excludable under Rule 600(C)(1).

This case also was scheduled for jury selection on August 27, 2013, but

Defendant failed to appear and a bench warrant was issued for his arrest.¹ The bench warrant was vacated on October 14, 2013 and Defendant was directed to appear on January 7, 2014 for call of the list. The Court did not hold Defendant in contempt because there may have been some miscommunication between Defendant and members of the court administrator's office about whether Defendant would receive written confirmation of his jury selection date. Regardless of whether the delay was attributable to Defendant or the court administrator's office, the delay was not caused by the Commonwealth. Therefore, the time from August 27, 2013 through January 7, 2014 (133 days) is also excludable time under Rule 600(C)(1).

When these additional periods of delay are excluded, Defendant's adjusted Rule 600 run date would be on or about May 19, 2014. Accordingly, the following order is entered:

ORDER

AND NOW, this ___ day of January 2014, the Court DENIES Defendant's Motion to Dismiss.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
G. Scott Gardner, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file

¹ During this period of time, Defendant was not represented by counsel.