

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-1341-2014  
 :  
 RONDELL HOLMES, :  
 Defendant :

**OPINION AND ORDER**

This matter came before the court on Defendant's motion for nominal bail in accordance with Pa.R.Crim.P. 600(E).<sup>1</sup> The relevant facts follow.

On July 28, 2014, Defendant was charged with five (5) counts of possession with intent to deliver a controlled substance, one count of possession of a firearm with an altered serial number, one count of possession of a controlled substance, and one count of possession of drug paraphernalia. Defendant was incarcerated because he was not able to post bail.

A preliminary hearing was held on August 12, 2014 and all the charges were held for court. Defendant waived his arraignment scheduled for September 2, 2014. On September 8, 2014, Defendant filed an omnibus pretrial motion, which included a motion to compel discovery; a motion for notice of any Pa.R.E. 404(b) evidence that the Commonwealth intended to introduce at trial; two motions to suppress evidence; and a petition for writ of habeas corpus. A conference was held during motions court on

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<sup>1</sup>The court believes defense counsel has cited to the provisions of the version of Rule 600 that was rescinded effective July 1, 2013. The current subparagraph that permits a defendant to file for release on nominal bail when a defendant has been held in pretrial incarceration for more than 180 days is Pa.R.Crim.P. 600(D)(2).

September 22, 2014. At the conference, the court ruled on the motion related to Rule 404(b) evidence, reduced the amount of Defendant's bail and made him eligible for intensive supervised bail, noted that it appeared that the parties had resolved the discovery motion, and scheduled a hearing on the remainder of the omnibus pretrial motion for October 28, 2014. Despite the modifications to Defendant's bail, Defendant was still unable to post bail.

The hearing on the remainder of the motion was held on October 28, 2014, as scheduled, and the parties were given until November 13, 2014 to provide the court with case law on the issues. The court denied Defendant's omnibus pretrial motion on January 27, 2015.

In the interim, the case was on the pretrial list for December 21 or 22. Due to the outstanding pretrial motion, defense counsel sent an email to the District Attorney's office seeking the prosecutor's concurrence in a continuance. The prosecutor concurred. The pretrial was not held and the case was not called during the January trial term.

Defendant filed his motion for nominal bail on February 9, 2015. A hearing was held on that motion on February 24, 2015. At the hearing, the parties stipulated to the timeline of events related to Defendant's incarceration and the filing, hearing, and decision on his omnibus pretrial motion. In addition, defense counsel stipulated that the pretrial was continued due to his email about the outstanding motion.

The sole issue was whether the time between the filing of Defendant's omnibus pretrial motion and the court's decision on the motion was excludable due to Defendant's unavailability.

## DISCUSSION

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;  
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(C) Computation of Time

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(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

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(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.Crim.P. 600.

The comment to Rule 600 explains that periods of delay will be excluded from the computation of time when the defendant or the defense has been instrumental in causing the delay. Pa.R.Crim.P. 600, comment. The periods of delay that were previously enumerated in the text of former Rule 600(C) are excludable, including but not limited to, such periods of delay at any stage of the proceedings that result from either the unavailability

of the defendant or the defendant's attorney or any continuance granted at the request of the defendant or the defendant's attorney. *Id.* Although the mere filing of a pretrial motion does not automatically render a defendant unavailable, a defendant is considered unavailable if the pretrial motion causes a delay in the commencement of trial. *Commonwealth v. Hill*, 558 Pa. 238, 736 A.2d 578, 587 (1999).

The court finds that Defendant's omnibus pretrial motion caused a delay in the commencement of trial. Due to Defendant's outstanding motion and defense counsel's request to continue the December pretrial, this case could not be tried during the January 2015 trial term. Therefore, Defendant is considered unavailable during the period from September 8, 2014 through January 27, 2015. When this time is excluded, approximately 70 days have elapsed between the filing of the criminal complaint and the hearing on Defendant's motion for nominal bail on February 24, 2015.

### **ORDER**

**AND NOW**, this \_\_\_ day of March 2015, the court DENIES Defendant's motion for nominal bail.

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Donald Martino, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Work file