

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1592-2015
v.	:	
	:	
RONELL ANTOINE WYLIE,	:	NOMINAL BAIL
Defendant	:	
	:	

OPINION and ORDER

On April 18, 2016, Defense Counsel filed a Motion for Release on Nominal Bail Pursuant to Rule 600¹. An argument and factual hearing was scheduled for June 30, 2016. Defense Counsel wrote a letter to the Court dated April 21, 2016, requesting that the hearing be moved to an earlier time stating that “Defendant is entitled to a more speedy hearing on the motion. Indeed, he is entitled to be released on nominal bail on the 181st day of his incarceration.” A hearing was scheduled for May 5, 2016. Defense Counsel did not attend the hearing; another partner from his firm appeared and requested the hearing be continued. The Court heard argument on the motion on May 20, 2016. For the following reasons, the request for Nominal Bail denied.

Background

On August 18, 2015, Defendant was charged in a criminal information with Count 1: Possession of Firearm with Altered Manufacturing Number (Felony 2)²; Count 2:

¹ Pa.R.Crim.P 600 (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 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.

² 18 Pa. C.S. § 6110.2

Persons not to Possess Firearms (Felony 2)³; Count 3: Firearms Not to be Carried Without a License (Felony 3)⁴; Count 4: Possession with Intent to Deliver (Felony)⁵; Count 5: Escape (Felony 3)⁶; Count 6: Resisting Arrest (Misdemeanor 2)⁷; two counts of Possession of a Controlled Substance (Misdemeanors)⁸; Count 9: Possession of Drug Paraphernalia (Misdemeanor)⁹; and Count 10: Disorderly Conduct (Misdemeanor 3)¹⁰.

After a Preliminary Arraignment in front of Magisterial District Judge Sortman, Defendant was remanded to the Lycoming County Prison as Defendant was unable to post bail set by Judge Sortman at \$ 200,000.00. Defendant was set for a preliminary hearing on August 27, 2016, but the preliminary hearing was continued by request of Defense Counsel. As such, the time between 8/27/2015, and 9/17/2015, (the eventual preliminary hearing date), is excluded from the calculation of the number of days Defendant has been held in pre-trial incarceration as the delay in time is due to the actions of Defense Counsel.¹¹ Defendant, through Counsel, waived his right to a formal arraignment scheduled for October 5, 2016, and was set for Call of the List on January 5, 2016. On October 2, 2015, the Commonwealth filed a Notice of Joinder stating that pursuant to Pa.R.Crim.P. 582(b)(1), that Defendants Lyden Clay, Tashi N. Clay, and the Defendant that is the subject of this Opinion and Order, Ronell A. Wylie, be tried together. The time between 9/17/2015 and 1/5/2016, is included in the computation of

³ 18 Pa. C.S. § 6105(a)(1)

⁴ 18 Pa. C.S. § 6106

⁵ 35 Pa. C.S. § 780-113(a)(30)

⁶ 18 Pa. C.S. § 5121(a)

⁷ 18 Pa. C.S. § 5104

⁸ 18 Pa. C.S. § 780-113(a)(16) and (a)(31)(i)

⁹ 35 Pa. C.S. § 780-113(a)(32)

¹⁰ 18 Pa. C.S. § 5503(a)(4)

¹¹ Pa.R.Crim.P. 600. (2012). Prompt Trial (C) Computation of Time. For purposes of paragraph (B) [Pretrial Incarceration], 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.

the 180 days as no action of the Defendant caused his trial to be set for the January Trial Term. As of January 5, 2016, Defendant spent 141 days in pre-trial incarceration, 21 of which attributable to the Defense.

On November 5, 2015, Defense Counsel filed a Motion for Modification of Bail and a Motion for Pretrial Discovery and Inspection for an Extension of Time to File Omnibus Pretrial Motion. The bail modification request was denied by this Court in an order filed December 1, 2015. The Court did order the Commonwealth to provide Defense Counsel the requested discovery by December 4, 2015, and Defense Counsel was given until January 6, 2016, to file its Omnibus Pretrial Motion (just one day after the Call of the List scheduled for 1/5/16). Because the Omnibus Pretrial Motion was not due to the court until 1/6/16, the Defendant's case was moved from the December 2015 Pretrial List to the February 2016 Pretrial List. Cases on the February 2016 Pretrial List were to be tried on between February 29, 2016, and March 18, 2016. Call of the List for the February Trial Term was February 2, 2016. Defendant's Counsel filed an Omnibus Pretrial Motion on December 29, 2015; however, this Court did not file an Opinion and Order on the Omnibus Pretrial Motion until February 29, 2016. In general, the mere filing of a pretrial motion does not automatically render Defendant unavailable. When the delay in the time for trial is attributable to the judiciary i.e. the time it takes to decide a defendant's pretrial motion, it cannot be said that the defendant is unavailable and the filing of a pretrial motion is causing a delay in the commencement of trial.

Commonwealth v. Hill, 558 Pa. 238, 255, 736 A.2d 578 (1999). Accordingly, this Court will not attribute the time between December 29, 2015 (the filing of the pre-trial motion and the present time) as attributable to an action of the Defendant. Therefore,

Defendant's 181st day of incarcerated time not attributable to an action on his part in commencing trial was March 5, 2016.

Conclusion

Rule 600 establishes a careful matrix protecting a defendant's rights to be free from prolonged pretrial incarceration and to a speedy trial, while maintaining the Commonwealth's ability to seek confinement of dangerous individuals and those posing a risk to flight, and to bring its cases in an orderly fashion. Commonwealth v. Dixon, 589 Pa. 28, 907 A.2d 468, 473 (2006). The Defendant's charges indicate that he is a flight risk and a dangerous individual. The Defendant was charged with Escape (felony 3)¹² in the criminal proceeding that is the subject of this Opinion and Order and in Docket Number CP-41-CR-0001787-2015. Multiple firearms counts coupled with drug counts are never a safe combination for the Defendant or the community in which he lives. As such it would be inappropriate for this Court to release the Defendant on nominal bail.¹³ Though the Court does find that the Defendant has been held in pretrial incarceration longer than 180 days, it also finds that are no conditions or combination of conditions other than imprisonment which will reasonably assure the safety of the community.

The Court finds that the Defendant has been incarcerated from August 18, 2015, to the present, and more than 180 days are not excludable from that computation i.e. not due to actions of the Defense. The calculation for pre-trial incarceration, excludable time, is different than, commencement of trial, excludable time; where the former

¹² 18 Pa.C.S. § 5121(a)

¹³ All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it. Pa. Const. Art. I, § 14. and See Footnote 11. Comm. v. Dixon, 907 A2d 468, 477 (2006).

excludes only time delays attributable the Defense and the latter considers the due diligence of the Commonwealth in bringing the matter to trial. Id.

Nothing in this computation for Pretrial Incarceration time¹⁴ is dispositive in the calculation of time for Speedy Trial purposes¹⁵, in the event that becomes of issue.

AND NOW, this 13th day of June, 2016, for the foregoing reasons, the Motion for Release on Nominal Bail Pursuant to Rule 600 is DENIED.

BY THE COURT,

Nancy L. Butts, President Judge

cc: Martin Wade, Esq. Assistant District Attorney
Pete Campana, Esq. Defense Counsel
Harry Rogers, Lycoming County Prison

¹⁴ Pa.R.Crim.P Rule 600(B) (2012).

¹⁵ Pa.R.Crim.P. Rule 600(A) (2012).