

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

**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**ARNOLD OVERTON CAVANAUGH, JR.,  
Defendant**

:  
:  
:  
:  
:  
:  
:

**CR-2021-2016**

**NOMINAL BAIL PURSUANT  
TO RULE 600**

**OPINION AND ORDER**

Arnold Cavanaugh, Jr. (Defendant) filed a Nominal Bail Motion on June 23, 2017. A hearing was held on the motion August 8, 2017.

**Background**

Defendant is charged with Count 1 Drug Delivery Resulting in Death<sup>1</sup>, a felony of the first degree; Count 2 Possession with Intent to Deliver<sup>2</sup>; an ungraded felony; and Count 3 Possession of a Controlled Substance<sup>3</sup>, an ungraded misdemeanor. The charges arise out of an alleged course of events occurring on July 2, 2016 through July 5, 2016, the date of Chase McKissick, the victim's death.

**Timeline**

An arrest warrant was issued for Defendant on August 26, 2016. He was not arrested on the warrant until September 28, 2016; Defendant has been incarcerated continuously since that date. As of the date of the nominal bail hearing, August 8, 2017, Defendant had been incarcerated for 314 calendar days.

---

<sup>1</sup> 18 Pa.C.S. § 2506(a).

<sup>2</sup> 35 P.S. § 780-118(a)(30).

<sup>3</sup> 35 P.S. 780-113(a)(16).

## Discussion

Pa.R.Crim.P.600 (prompt trial) provides that no Defendant shall be held in pretrial incarceration in excess of 180 days from the day on which the complaint is filed. Pa.R.Crim.P.600 (B) (pretrial incarceration). 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 time shall be included in the computation. Pa.R.Crim.P.600(C) (computation of time).

When the defendant or the defense has been instrumental in causing the delay, the period of delay will be excluded from the computation. The following time must be excluded from the computation:

- (1) The period of time between the filing of the written complaint and the defendant's arrest, provided that the defendant could not be apprehended because his or her whereabouts were known and could not be determined by due diligence
- (2) Any period of time for which the defendant expressly waives Rule 600
- (3) Such period at any stage of the proceedings as results from the unavailability, either of the defendant or the defendant's attorney or any continuance granted at the request of the defendant or the defendant's attorney.

For periods of delay that result from the filing and litigation of omnibus pretrial motions for relief or other motions, see Commonwealth v. Hill and Commonwealth v. Cornell 736 A.2d. 578 (1999) (the mere filing of a pretrial motion does not automatically render defendant unavailable; only unavailable if delay in commencement of trial is caused by filing pretrial motion).

*Comment, Pa.R.Crim.P.600 (computation of time).*

An Omnibus Pretrial Motion was filed on December 21, 2016. The Court was scheduled to hear the Omnibus Pretrial Motion on March 14, 2017. Defense Counsel requested a continuance of the Omnibus Pretrial Hearing set for that date due to the

impending Nor'easter. Defense Counsel also requested a continuance for the trial scheduled for the April 18, 2017 Call of the List moving the trial to the next term. The case is currently on the August 22 Call of the list.

Defense Counsel argues that the last continuance request was for a pretrial conference and not for the actual trial, and that it should not be considered excluded from the computation of time. The Commonwealth argues that a continuance request is not required when pretrial motions are outstanding and all of the time while pretrial motions are pending is excludable.

After the hearing on April 24, 2017, when the Omnibus Pretrial Motion would have been ripe for decision, the Court received a letter from Defense Counsel asking to withdraw stipulations made at the time of the initial Motion hearing. Hearing on that request was held on June 27, 2017.

Applying the applicable provisions of Rule 600, the Court finds that all of the time from the filing of the Omnibus Pretrial Motion, on December 21, 2016, is excludable time. The Court calculates that time to be 257 days as they were due primarily to the filing of both a Defense continuance request and Omnibus Pretrial Motion. Additionally, the 29 days between October 13, 2016, and November 10, 2016 representing a Defense continuance of the preliminary hearing is also excluded from the computation of time. Therefore, the Court finds that only 57 days of pretrial incarceration cannot be attributed to the Defense's unavailability.

**ORDER**

**AND NOW**, this 24th day of August, 2017, based on the foregoing opinion Defendant's Motion for Nominal Bail is hereby DENIED.

BY THE COURT,

---

Nancy L. Butts, P.J.

cc: DA (KO)  
David Lampman, II Esq.  
2 Public Square  
Wilkes Barre, PA 18701  
Gary Weber, Esq.