

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-683-2016
 :
 TERRANCE CEASEAR, : Opinion and Order re Defendant's
 Defendant : Petition for ROR Bail Pursuant to Rule 600

OPINION AND ORDER

This matter came before the court on Defendant's Petition for ROR Bail Pursuant to Rule 600. The relevant facts follow.

On April 12, 2016, the police filed a criminal complaint against Defendant, charging him with two counts of delivery of a controlled substance, three counts of possession with intent to deliver a controlled substance, five counts of possession of a controlled substance, three counts of possession of drug paraphernalia, two counts of criminal use of a communication facility, and one count of tampering with physical evidence. Defendant was unable to post bail on these charges and was incarcerated in the Lycoming County Prison.

On April 18, 2016, Defendant waived his preliminary hearing and signed a criminal case scheduling form which requested a future plea date. His court arraignment was scheduled for May 9, 2016.

In an order dated April 26, 2016 and docketed May 9, 2016, the court noted that Defendant waived his arraignment and scheduled this case for a guilty plea on June 24, 2016. The court specifically noted that all time from May 9, 2016 through June 24, 2016 would run against Defendant for Rule 600 purposes.

On June 21, 2016, defense counsel requested a continuance of the June 24 guilty plea hearing. The court granted defense counsel's request, continued the matter to August 19, 2016, and noted that the time was excludable against Defendant.

On August 19, 2016, Defendant indicated that he wished to hire private counsel or file a motion for newly appointed counsel. He was not willing to plead guilty, and the Commonwealth was unable to provide an offer because the labs were not back. The court entered an order noting these facts. In light of this information, the court placed the case on the September 27, 2016 pre-trial list, the call of the list scheduled for October 18, 2016, and the October 24-November 18, 2016 trial term.

On October 13, 2016, the court issued an order scheduling a hearing for December 5, 2016, because the court had received a letter from Defendant which the court interpreted as a motion for newly appointed counsel. The court denied Defendant's motion on December 5.

On December 21, 2016, Defendant, through his counsel, filed a motion for nominal bail pursuant to Rule 600. Defendant asserted that he had been incarcerated on the charges since April 12, 2016, and more than 180 days had passed without him being brought to trial.

On January 19, 2016, the court held a hearing and argument on Defendant's motion. The Commonwealth disputed Defendant's assertion that he was entitled to nominal bail and asserted that the vast majority of the time since the filing of the complaint was excludable due to delays caused by Defendant and his counsel.

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.

(3)(a) When a judge or issuing authority grants or denies a continuance:

...

(ii) the judge shall record the identity of the party requesting the continuance and the reasons for granting or denying the continuance. The judge also shall record to which party the period of delay caused by the continuance shall be attributed, and whether the time will be included in or excluded from the computation of time within which trial must commence in accordance with this rule.

(b) The determination of the judge or issuing authority is subject to review as provided in paragraph (D)(3).

...

(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.

(3) Any requests for review of the determination in paragraph (C)(3) shall be raised in a motion or answer filed pursuant to paragraph (D)(1) or paragraph (D)(2).

Although two hundred and eighty-two (282) calendar days elapsed between

the filing of the criminal complaint on April 12, 2016 and the hearing on Defendant's motion on January 19, 2017, the court finds that there are significant periods of excludable time in this case.

First, the court finds that the time period between April 16, 2016 and June 24, 2016 is excludable. On April 16, 2016, Defendant indicated that he wished to enter a guilty plea. As a result, this case was not placed on a trial list, but was given a guilty plea date. When a defendant "tenders" a guilty plea, the time from the tender until it is revoked is excludable. See *Commonwealth v. Bowes*, 839 A.2d 422, 425 (Pa. Super. 2003); *Commonwealth v. Graham*, 576 A.2d 371, 374 (Pa. Super. 1990). A "tender" is "any good faith offer by the defendant stating his intent to enter a plea." *Bowes*, supra. The Superior Court has acknowledged that "it would be unreasonable to expect the Commonwealth to schedule a trial when the accused has indicated during good faith plea negotiations that he will enter a guilty plea." *Graham*, supra.

At the request of defense counsel, the court continued the guilty plea date from June 24, 2016 until August 19, 2016. Any delay that results from a continuance granted at the request of the defendant or the defendant's attorney is excluded. Pa. R. Cr. P. 600, Comment.

On August 19, 2016, Defendant indicated that he was not willing to plead guilty. Defendant could not be tried on August 19, though. The call of the list and jury selection dates for the next available trial term began on October 18, 2016. This delay also resulted from defense counsel's continuance request.

On October 13, 2016, the court received a letter from Defendant. In the letter, Defendant requested new counsel. The court treated the letter as a motion and scheduled a hearing and argument for December 5, 2016. It was revealed at the hearing that Defendant refused to accept his discovery from counsel in October and he refused to meet with counsel in November. Therefore, the court denied Defendant's request for new counsel and informed Defendant that if he still wished to hire private counsel, he should do so immediately.

The court finds that the time period between October 13, 2016 and December 5, 2016 is time attributable to Defendant. The case could not be tried until the court ruled on Defendant's request for new counsel. Furthermore, it is clear that Defendant was not ready for a trial in October.

The court finds that Defendant is not entitled to nominal bail. The vast majority of the time between the filing of the complaint and the hearing on Defendant's motion is excludable due to delay caused by Defendant.

There are two hundred and eighty-two (282) days between the filing of the complaint on April 12, 2016 and the hearing on Defendant's motion on January 19, 2017. The time between April 19, 2016 and December 5, 2016 is all delay attributable to the Defendant and his attorney. Sixty-six (66) days between April 19 and June 24, 2016 are excludable due to Defendant's "tender" of a guilty plea. Fifty-six (56) days from June 24, 2106 to August 19, 2016 are excludable due to defense counsel's continuance request. Sixty (60) days from August 19, 2016 to October 18, 2016 are excludable because that was the first available trial term after Defendant decided not to plead guilty. Another forty-eight (48)

days are excludable because Defendant sought the appointment of new counsel.¹ Therefore, there are two hundred and thirty (230) days of excludable time. As a result, Defendant has been held in pretrial incarceration for only fifty-two (52) days for Rule 600 purposes, and he is not entitled to nominal bail.

Even if the court did not exclude the sixty (60) days from the date Defendant indicated he was no longer willing to plead guilty and the next available trial term, Defendant still would not be entitled to nominal bail.²

ORDER

AND NOW, this 31st day of January 2017, the court DENIES Defendant's motion for nominal bail pursuant to Rule 600.

By The Court,

Marc F. Lovecchio, Judge

cc: Melissa Kalas, Esquire (ADA)
Kirsten Gardner, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work File

¹ Although Defendant made his request for new counsel on October 13, 2016, the court calculated the delay from this request beginning on October 18, 2016 so that the court did not "double count" the time between October 13, 2016 and October 18, 2016.

² The court notes that a jury was selected in this case on January 24, 2017, and Defendant's trial is scheduled for February 17, 2017.