

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

vs.

**AARON PINKNEY,
Defendant**

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CR-75-2016

MOTION TO DISMISS-RULE 600

OPINION AND ORDER

Defendant, Aaron Pinkney, was charged with Robbery¹, Aggravated Assault² and related criminal offenses from an incident which allegedly occurred on December 19, 2015, in the City of Williamsport. According to the docket transcript, the complaint was filed on December 24, 2015, when an arrest warrant was issued by Magisterial District Judge Allen P. Page III and served on the Defendant on January 4, 2016. His preliminary hearing was held on January 14, 2016, after which all charges were bound over for court. Defendant waived his formal court arraignment scheduled for February 1, 2016. Defendant's case was placed on the March 8, 2016, pretrial list. The Defendant is currently scheduled for Jury selection on Friday, April 21, 2017, with trial scheduled on May 25, 2017.

On March 13, 2017, Defendant filed a Motion to Dismiss pursuant to Rule 600 of the Pennsylvania Rules of Criminal Procedure. Defendant submits that the charges should be dismissed against him as he was not brought to trial within 365 days of the date the charges were filed due to the Commonwealth's failure to exercise due diligence. An argument and hearing was scheduled for April 10, 2017, at which time Counsel submitted two joint exhibits. Joint Exhibit #1 represented the testimony that

1 18 Pa.C.S. § 3701(a)(1)(i) and (v).

2 18 Pa.C.S. § 2702(a)(1).

the Deputy Court Administrator would provide had she been called to testify about the chronology of the case including an email chain of a discussion between the parties. Joint Exhibit #2 represents an order issued by this Court on May 16, 2016, in which this Court granted original defense counsel's motion for leave to withdraw, leaving the Defendant without counsel.

In the Joint Exhibit #1 the parties agreed to the following time frames in the case:

2/1/16 Arraignment

3/8/16 Pretrial-represented by Christian Lovecchio—defense continuance to May pretrial (70 days)

4/15/16-Motion to withdraw as counsel filed by Lovecchio

5/16/16-Motion heard and granted

5/17/16-Jerry Lynch, Conflict Counsel appointed

5/20/16-Trisha Hoover (Jasper)-appointed due to conflict w/ Lynch

5/16/16 Call of List-case not called because of change in attorneys

6/28/16 Pretrial-DA only available 7/21; Defendant not available 7/19, 21, 22, 25, 26, 29, 8/1, 2. **Trial term 7/12-8/5**

7/12/16 Call of the List-case not called due to above unavailability

8/16/16 Pretrial-DA continuance to September 27 pretrial over objection of defense

9/27/16 Pretrial-DA unavailable 10/31-11/6; Def unavailable 10/24, 28, 11/22, 3, 4, 7, 8, 9, 14, 15, 16, 11/17

10/18/16 Call of the List-case not called

Trial term 10/24-11/18

12/6/16 Pretrial-DA ok for entire term; Def unavailable 1/31-2/2,6,7,9,10,13,14,21,24,27, 3/1-3,7

1/24/17-Call of List-case not called

3/28/17-Pretrial-DA ok for entire term; Def unavailable 4/25-28, 5/2-5, 9, 10,15,16,24,26,30,31, 6/2, 9

4/18/17-Call of List

Trial term 4/25 – 6/2

5/25/17-Trial scheduled

Rule 600 sets forth the speedy trial requirements and provides in pertinent part:

Rule 600. Prompt Trial.

(A)(3) Trial in a court case in which a written complaint is filed against the defendant, when the defendant is at liberty on bail, shall commence no later than 365 days from the date on which the complaint is filed.....

(C) In determining the period for commencement of trial, there shall be excluded therefrom:

(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 unknown and could not be determined by due diligence;

(2) any period of time for which the defendant expressly waives Rule 600;

(3) such period of delay at any stage of the proceedings as results from:

(a) the unavailability of the defendant or the defendant's attorney;

(b) any continuance granted at the request of the defendant or the defendant's attorney.....

(G) For defendants on bail after the expiration of 365 days, at any time before trial, the defendant or the defendant's attorney may apply to the court for an order dismissing the charges with prejudice on the ground that this rule has been violated. A copy of such motion shall be served upon the attorney for the Commonwealth, who shall also have the right to be heard thereon.

In determining whether an accused's right to a speedy trial has been violated, consideration must be given to society's right to effective prosecution of criminal cases, both to restrain those guilty of crime and to deter those contemplating it.

However, the administrative mandate of Rule [600] was not designed to insulate the criminally accused from good faith prosecution delayed through no fault of the Commonwealth. COMMONWEALTH V. AARON, 804 A.2D 39, 42 (PA. SUPER. 2003). So long as there has been no misconduct on the part of the Commonwealth in an effort to evade the fundamental speedy trial rights of an accused, Rule [600] must be construed in a manner consistent with society's right to punish and deter crime. COMMONWEALTH V. HUNT, 858 A.2D 1234, 1239 (PA. SUPER. CT. 2004). If the court, upon hearing, shall determine that the Commonwealth exercised due diligence and that the circumstances occasioning the postponement were beyond the control of the Commonwealth, the motion to dismiss shall be denied and the case shall be listed for trial on a date certain. Id.

"Due diligence is a fact-specific concept that must be determined on a case-by-case basis." COMMONWEALTH V. HILL, 736 A.2D 578, 581 (PA. 1999). "Due diligence does not require perfect vigilance and punctilious care, but rather a showing by the Commonwealth that a reasonable effort has been put forth." Id. The inquiry then becomes whether any delay in bringing Defendant to trial was **excusable** because the Commonwealth exercised due diligence in bringing Defendant to trial and the circumstances occasioning the postponement were beyond the control of the Commonwealth. SEE HILL, *SUPRA* AT 263, 736 A.2D AT 591 (EMPHASIS ADDED).

"Reasonable effort" includes such actions as the Commonwealth listing the case for trial prior to the run date "to ensure that [defendant] was brought to trial within the time prescribed by Rule [600]." AARON, *SUPRA* AT 43-44. SEE ALSO HILL, *SUPRA* AT 264, 736 A.2D AT 592 (finding Commonwealth exercised due diligence when it initially

scheduled trial well within time requirements of Rule [600] but trial was delayed by actions beyond Commonwealth's control). "Excusable delay" is not expressly defined in Rule 600, but the legal construct takes into account delays which occur as a result of circumstances beyond the Commonwealth's control and despite its due diligence. Pa. R. Crim. P. 600(G). COMMONWEALTH V. HUNT, 858 A.2D 1234, 1241 (PA. SUPER. 2004).

Defense Counsel argues two specific instances in which the Commonwealth failed to exercise due diligence justifying dismissal: the delay of trial due to the prosecutor's unavailability in the Aug/September 2016 term and the victim's unavailability from January to March 2017.

This Court finds the delay attributable to the Commonwealth at the August 16, 2016, pretrial as excusable delay and therefore time to be subtracted from the Rule 600 time calculations. The documents in the case file establish the Commonwealth was ready for trial; however, due to an emergency medical procedure required by the prosecuting officer, the Commonwealth asked for a continuance. Since this unavailability was not the fault of the Commonwealth, the delay is excusable. The Commonwealth cannot be said to have failed to exercise due diligence for its failure to predict the emergency.

In the second instance, at the time of jury selection in January 2017, the Commonwealth was notified by the victim that he was unavailable due to a college obligation. Again, using the definition of due diligence above, the delay attributed to the victim's unavailability was not a matter under the control of the Commonwealth. This case was not continued; it was still available to be tried during the trial term. Had

the Deputy Court Administrator been called to testify, she would have testified that had another date come open the case would have been called for trial. Therefore, the Court finds this delay in trial also excusable.

Defendant's Rule 600 motion was filed on March 13, 2017. The total number of days from December 24, 2015, and March 13, 2017, is 445 days. The time attributed to the Defendant as delay when the motion to withdraw as counsel was granted was 70 days, reducing the number to 375. Calculating the time delay of trial, over the objection of Defendant for the prosecuting officer's illness from August 16, 2016, to September 27, 2016, the Court determines this to be 42 days, reducing the number of days from the filing of the complaint to 333 days. Subtracting the time at which the case was ready for trial but not reached, from January 24, 2017, to March 13, 2017, when the Motion to Dismiss was filed represents 48 days. After subtracting this last excusable time, the Court determines that the Defendant's Rule 600 day count is 285 days. As such, the Motion to Dismiss based upon Rule 600 is denied because one) 365 days of nonexcludable time have not passed since criminal charges were filed and two) the Commonwealth has exercised due diligence in bringing the matter to trial.

ORDER

AND NOW, this 19th day of April, 2017 after argument and consideration of the

evidence, Defendant's Motion to Dismiss Pursuant to Rule 600 is hereby **DENIED**.

BY THE COURT,

Nancy L. Butts, P.J.

cc: A. Melissa Kalas, Esq.
Trisha Hoover Jasper, Esq.
Gary Weber, Esquire (Lycoming Reporter)