

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	<b>CP-41-CR-0000161-2017</b>
	:	<b>CP-41-CR-0000411-2017</b>
<b>v.</b>	:	<b>CP-41-CR-0000580-2017</b>
	:	
<b>WAYNE O. CRIPPEN,</b>	:	
<b>Defendant</b>	:	<b>Second Rule 600 Bail Motion</b>

**ORDER**

On August 22, 2017, Defendant, Wayne Crippen filed a Second Motion for Release on Nominal Bail pursuant to Rule 600. Defendant's first Motion for Rule 600 bail was heard by Judge Dudley N. Anderson<sup>1</sup> on September 13, 2017.

At the time of the initial argument, Judge Anderson noted in his order dismissing the Rule 600 motion that there were two orders attributable to a Defense request for continuance which would have been considered excludable time. The first order dated April 17, 2017 indicated that the case had been continued from April 17, 2017 to May 1, 2017. This request was made by Defendant himself to enable him to hire a local attorney since he was not represented by counsel at that time. As of that date the Defendant had been incarcerated in the Lycoming County Prison since February 22, 2017.

However, on May 25<sup>th</sup>, 2017, this Court granted a continuance request to Attorney Peter Campana to enable him to have additional time to review the files having just been hired by Defendant. On June 19, 2017, this Court granted the Public Defender's Office leave to withdraw as counsel and Peter T. Campana,

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<sup>1</sup> Retired from active judicial service on December 31, 2017.

Esquire entered his appearance. As a result of the continuance the case was placed on the August 22, 2017, call of the list. This Court noted that both Judge Anderson in his order and the continuance order indicated that the time delay in would be assessed against the Defendant.

Ultimately on September 13, 2017, Judge Anderson dismissed the original Motion for Nominal Bail and calculated that the excludable time up to that point as 103 days. The charges had been filed against the Defendant on February 17, 2017. Therefore only 105 days had run.

In the interim, Defendant's counsel filed an Omnibus Pretrial Motion on July 6, 2017. That motion was originally scheduled for hearing on October 27, 2017. The Court took testimony but the hearing could not be completed due to the unavailability of a Commonwealth witness. The matter was rescheduled for completion on December 11, 2017.

On November 17, 2017, Defense counsel filed his second Motion to Release on Nominal Bail pursuant to Rule 600, once again asserting that more than 180 days had passed without Defendant being brought to trial; the hearing on the Rule 600 motion was also scheduled for December 11, 2017.

Around the time of the hearing on December 11, 2017, Defendant had been out of the Lycoming County Prison in the custody of Philadelphia County for court there. When Defense Counsel had reached out to Philadelphia they assured him that his client would be returned in time; however he was not returned timely and unable to participate in both his Rule 600 bail motion and the

continuation of the Motion to Suppress. Although neither directly due to the Defendant nor the Lycoming County District Attorney's Office, this caused these hearings to be rescheduled to a later date when the Defendant was back in Lycoming County. As a result, both the Suppression and a new motion to Consolidate filed by the Commonwealth were continued to March 9, 2018. The Defendant's Rule 600 bail motion was now scheduled for January 25, 2018.

For reasons not stated in this Court's order, Defense counsel requested that this January 25th hearing be moved to March 9, 2018 with the other matters. However, then this Rule 600 bail motion appeared on this Court's schedule on February 26, 2018.

During the hearing on February 26th, the Defense again argued that more than 180 days had elapsed without him being brought to trial. The Commonwealth alleges that all of the delay is attributable to both the Defendant's and his attorney's requests or outstanding motions filed by Defense.

Since the hearing on the second Rule 600 bail motion, the Defendant has been present for the remaining portion of the Motion to Suppress held on March 9<sup>th</sup> by this Court. However, Defense Counsel requested that a transcript be prepared of the October 27<sup>th</sup>, 2017 hearing with the opportunity for a briefing schedule. As of this date, the transcript has not yet been prepared; the Motion to Suppress has yet to be decided.

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).

As Judge Lovecchio set forth in his opinion in **Commonwealth v. Holmes**,<sup>2</sup> 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. Those 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).

**Holmes, supra** at p.4.

From the date of filing of the charges to the filing of the Second Motion to Release on Nominal Bail is 273 days<sup>3</sup>. Subtracting the excludable time determined by Judge Anderson on September 13, 2017 of 103 days leaves a net total of 170 days that have run. Therefore, the Defendant is not yet entitled to release on Rule 600 bail.

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<sup>2</sup> **Commonwealth v. Holmes**, Lyc. Cty. CP-41-CR-1341-2014 (Lovecchio, J., Mar. 12, 2015).

<sup>3</sup> The time from filing to rule on the Defendant's second Rule 600 motion can also be excluded in its entirety. **See Commonwealth v. McCarthy**, 2018 WL 731615 (Pa. Super. 2018).

**ORDER**

**AND NOW**, this 26<sup>th</sup> day of March, 2018, the Defendant's Second Motion for Rule 600 Bail is hereby **DENIED**.

By the Court,

Nancy L. Butts, P. J.

cc: Peter T. Campana, Esq.  
Martin Wade, Esq.  
April McDonald, CST