

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **CP-41-CR-90-2017**
v. :
: :
JOSEPH COLEMAN, : :
Defendant : **Rule 600/Amend Information**
:

OPINION AND ORDER

The Commonwealth filed a Motion to Amend Information on counts seven (7) and eight (8) of CR 90-2017 on July 30, 2018. Joseph Coleman (“Defendant”) filed a Motion to Dismiss Pursuant to Rule 600 on August 1, 2018. This Court held a hearing for both motions on August 14, 2018.

Background

Joseph Coleman (Defendant) was charged with Criminal Homicide (two open counts);¹ Criminal Conspiracy (criminal homicide);² Robbery;³ Criminal Conspiracy (robbery);⁴ Criminal Attempt (robbery);⁵ Persons not to Possess Firearms;⁶ Firearms not to be Carried without a License;⁷ and Possessing Instruments of a Crime.⁸ The charges arise from a shooting that occurred on October 31, 2016, at 613 Poplar Street in Williamsport, PA. The complaint in this case was filed on November 1, 2016 and Defendant was arrested on November 18, 2016. A preliminary hearing was scheduled for November 29, 2016, which was continued by Judge Christian Frey until January 17, 2017 for security concerns. On January 1, 2017, Defendant

¹ 18 Pa.C.S. § 2501(a).

² 18 Pa.C.S. § 903(a)(1).

³ 18 Pa.C.S. § 3701(a)(1)(iii).

⁴ 18 Pa.C.S. § 903(a)(1).

⁵ 18 Pa.C.S. § 901(a).

⁶ 18 Pa.C.S. § 6105(a)(1).

⁷ 18 Pa.C.S. § 6106.

⁸ 18 Pa.C.S. § 907(b).

filed a Petition for Habeas Corpus relief. Arraignment was waived on February 7, 2017, and Defendant filed a Motion for Extension of Time to File Omnibus Pretrial Motion on March 7, 2017, which was granted by Order of this Court extending time to file thirty (30) days from date of discovery on March 16, 2017. Defendant's Omnibus Pretrial Motion was filed on May 3, 2017. A conference was held on May 25, 2017, which the Court granted a continuance on behalf of Defendant and placed the case on the Call of the List (COL) for August 22, 2017. The individual gun charges involved in these motions were severed by Order of this Court on June 22, 2017. The Court denied Defendant's Omnibus Pretrial Motion on November 13, 2017. Then this Motion to Dismiss Pursuant to Rule 600 was filed on August 1, 2018.

Discussion

Whether Commonwealth's Motion to Amend Information Should be Granted

"According to Pa. R. Crim. P. 564, the court may permit amendment of an information 'when there is a defect in form, the description of the offense(s), the description of any person or any property, or the date charged, provided the information as amended does not charge an additional or different offense.'" *Commonwealth v. Mentzer*, 18 A.3d 1200, 1202 (Pa. Super. 2011) (quoting Pa. R. Crim. P. 564). The Superior Court "'look[s] more to substantial justice than to technicalities' when reviewing the validity of an amended information." *Commonwealth v. Grekis*, 601 A.2d 1284, 1289 (Pa. Super. 1992) (quoting *Commonwealth v. Fuller*, 579 A.2d 879, 885 (Pa. Super. 1990)). "Where the crimes specified in the original information involved the same basis elements and arose out of the same factual situation as the crime added by the amendment, the [defendant] is deemed to have been placed on notice regarding his alleged criminal conduct and no prejudice to defendant results." *Mentzer*, 18 A.3d at 1202-03. The factors which the trial court must consider in determining whether an amendment is prejudicial are:

(1) whether the amendment changes the factual scenario supporting the charges; (2) whether the amendment adds new facts previously unknown to the defendant; (3) whether the entire factual scenario was developed during a preliminary hearing; (4) whether the description of the charges changed with the amendment; (5) whether a change in defense strategy was necessitated by the amendment; and (6) whether the timing of the Commonwealth's request for amendment allowed for ample notice and preparation.

Id. at 1203.

The Pennsylvania Superior Court has not strayed from this analysis following amendments to Pa. R. Crim. P. 564 and continues to take the same approach. *See Commonwealth v. Hill*, 2018 WL 3598850 (Pa. Super. 2018); *Commonwealth v. Goldsmith*, 2018 WL 1477790 (Pa. Super. 2018); *Commonwealth v. Dixon*, 2017 WL 5946524 (Pa. Super. 2017); *see also* Pa. R. Crim. P. 564 cmt. (“[t]he rule was amended in 2016 to more accurately reflect the interpretation of this rule that has developed since it first was adopted in 1974”).

Defendant contends that adding the language “.22 Ruger” to counts seven (7) and (8) will in fact lead to a separate charge, this contention is not accurate. When viewing the factors, the amendment does not change the factual scenario or add facts previously unknown to Defendant. The proposed amended information is evident from the Affidavit of Probable Cause, the testimony at the preliminary hearing, and information Defendant was aware he had given during police questioning. Specifying the caliber and model does not change the factual scenario. This scenario was established during the preliminary hearing. There is no change to the charges or the elements Commonwealth needs to prove. Additionally there is no allegation by Defendant this will change his strategy or that the timing has hindered his defense. Therefore the Court will grant Commonwealth's Motion to Amend Information.

Whether the Case Must to be Dismissed Pursuant to Rule 600

Rule 600 has a dual purpose, to protect the defendant's right to a speedy trial while at the same time protecting society's right to an effective prosecution of criminal cases.

Commonwealth v. Selenski, 994 A.2d 1083, 1088 (Pa. 2010). Ultimately dismissal shall be granted when the Commonwealth fails to bring a defendant to trial within three hundred and sixty-five days of the complaint being filed, subject to certain exclusions. Pa. R. Crim. P.

600(A)(3). However,

to protect society's right to effective prosecution prior to dismissal of charges, rule 600 requires the court to consider whether the commonwealth exercised due diligence, and whether the circumstances occasioning the delay of trial were beyond the Commonwealth's control. If the Commonwealth exercised due diligence and the delay was beyond the Commonwealth's control, the motion to dismiss shall be denied.

Commonwealth v. Bradford, 46 A.3d 693, 701 (Pa. 2012) (internal citations omitted).

This Court "must exclude from the time for commencement of trial any periods during which the defendant was unavailable, including any continuances the defendant requested and any periods for which he expressly waived his rights under Rule 600." *Commonwealth v. Hyland*, 875 A.2d 1175, 1189-90 (Pa. Super. 2005) (citing Pa.R.Crim.P. 600(C)). Time excluded from a Rule 600 calculation includes the time from the date a defendant asks to file or files a motion, which delays trial, till the motion is decided by the court. *Id.* at 1191.

First, the Court will not make determinations regarding the period between the filing of the complaint on November 1, 2016 until the filing of Defendant's Petition for Habeas Corpus on January 30, 2017. The Commonwealth admits that this is arguable time and it makes no difference in light of the Court's ultimate decision, so for argument purposes this Court will consider that period of ninety (90) days against the Commonwealth. Brief in Opposition to Defendant's Motion to Dismiss, 09/05/18, at 9.

Defendant's contention that the time during which his Petition for Habeas Corpus relief was pending, should not be excluded is incorrect. He bases this contention on it "no way affect[ing] trial timing on his severed gun counts." But at the time he filed his Petition for Habeas Corpus relief the gun counts were not severed, which did not occur until June 22, 2017. Order Scheduling Hearing, 06/22/2017. By the time the charges were severed both Defendant's Omnibus Pretrial Motion and Amended Omnibus Pretrial Motion had been filed. This time is excludable and does not count towards Rule 600. *Hyland*, 875 A.2d at 1191. Additionally, Defendant's contention that the time waiting for discovery before he could file his Omnibus is irrelevant. By time the decision was rendered on his Habeas Corpus petition, Defendant has already filed another pending motion, which stops the clock for Rule 600 purposes. *See* Memorandum of Law in Support of Rule 600 Motion to Dismiss and in Opposition to Commonwealth's Motion to Amend Information, 08/28/17, at 8-9 (Defendant acknowledges this point, but misconstrues dates). Amended Omnibus Habeas Pretrial Motion was decided by this Court on November 13, 2017. *See id.* at 9 (Defendant acknowledges).

The clock for all intensive purpose would again begin running, and the Commonwealth again contends the period from November 13, 2017 until Defendant's Motion to Dismiss Pursuant to Rule 600 is arguably not excusable/excludable. Brief in Opposition to Defendant's Motion to Dismiss, 09/05/18, at 9. Therefore this Court will again not make a determination on that period of time as it does not change the ultimate outcome. This period accounts for two hundred and sixty (260) days. In total the sum is three hundred and fifty (350) days without making determinations into the two periods explained above. There is no violation of Rule 600's three hundred and sixty-five (365) day requirement and therefore the case will not be dismissed.

ORDER

AND NOW, this day of September, 2018 after hearing and argument on the Commonwealth's Motion to Amend Information and the Defendant's Motion to Dismiss Pursuant to Rule 600, the Motion to Amend Information is GRANTED and the Defendant's Motions to Dismiss Pursuant to Rule 600 is DISMISSED.

It is ORDERED AND DIRECTED that the trial of Joseph Coleman proceed on amended information.

By The Court,

Nancy L. Butts, President Judge

DA (MW);
William J Miele, Esq.; Nicole J. Spring, Esq.
Deputy Court Administrator