

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1199-2018**
 :
 v. :
 :
 :
 MAUREECE BOWERS-BARKSDALE, : **RULE 600 DISMISSAL**
 Defendant :

OPINION AND ORDER

Maureece Bowers-Barksdale (Defendant) filed a Motion to Dismiss Pursuant to Rule 600 on September 19, 2019. A hearing on the Motion was held on November 25, 2019. For the following reasons Defendant’s Motion is **DENIED**.

Discussion

“Trial in a court case in which a written complaint is filed against the defendant shall commence within 365 days from the date on which the complaint is filed.” Pa. R. Crim. P. 600(A)(2)(a). At any time prior to trial a defendant “may file a written motion requesting that the charges be dismissed with prejudice on the ground that this rule has been violated.” Pa. R. Crim. P. 600(D)(1). In computing the time for purposes of Rule 600, only “when the Commonwealth has failed to exercise due diligence” shall that time be included against the Commonwealth, “[a]ny other periods of delay shall be excluded from the computation.” Pa. R. Crim. P. 600(C)(1). When determining whether a violation of Rule 600 occurred two important functions must be weighed “the protection of the accused's speedy trial rights, and the protection of society. 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.” *Commonwealth v. Moore*, 214 A.3d 244, 248 (Pa. Super. 2019). “Excludable time is classified as periods of delay caused by the defendant,” whereas “[e]xcusable delay occurs

where the delay is caused by circumstances beyond the Commonwealth's control and despite its due diligence.” *Id.* at 248-49. Neither excludable or excusable time counts towards a defendant’s Motion to Dismiss Pursuant to Rule 600. *Id.* at 249 “[T]ime attributable to the normal progression of a case simply is not ‘delay’ for purposes of Rule 600.” *Commonwealth v. Mills*, 162 A.3d 323, 325 (Pa. 2017). Additionally, “where a trial-ready prosecutor must wait several months due to a court calendar, the time should be treated as ‘delay’ for which the Commonwealth is not accountable.” *Id.*

The Court will first determine excludable time. Defendant’s criminal complaint was filed on July 30, 2018, and therefore Defendant’s initial mechanical run date was July 30, 2019. *See Commonwealth v. Barbour*, 189 A.3d 944, 947 (Pa. 2018) (Description of how to calculate and adjust mechanical Rule 600 dates). Defendant did not request any continuances or file any motions, prior to the present motion, which would constitute excludable delay therefore Defendant’s adjusted run date remains July 30, 2019.

The burden rests then on the Commonwealth to demonstrate “due diligence” to determine what amount of time is excusable delay. Although the burden rest on the Commonwealth, as noted by this Court’s Order denying the Commonwealth’s Motion to Dismiss Defendant’s Rule 600 Motion, the Commonwealth need only prove Defendant’s Rule 600 rights were not violated on August 16, 2019 when a jury was empaneled. *See* Order 10/1/19, at 2; *see also Barbour*, 189 A.3d at 953. At the hearing on Defendant’s Motion to Dismiss, the Commonwealth provided the testimony of First Assistant District Attorney Martin Wade (Wade) and Deputy Court Administrator Eileen Dgien (Dgien). Additionally, the Commonwealth provided four exhibits for the Court to examine: An Order placing Defendant’s case on the September 25, 2018 Call of the List; An October/November 2018

Trial Calendar created by Dgien; A copy of the September 25, 2018 Call of the List created by Dgien; and a document calculating the adjusted Rule 600 dates of those cases called to trial at the September 25, 2018 Call of the List that was created and used by Wade.

Wade testified that he established an adjusted Rule 600 date based upon continuances and omnibus pretrial motions. Based upon those established adjusted dates, the cases are called for trial by Dgien. At the September 25, 2018 Call of the List the following Defendants were called for trial in this order:

- Tracy Tagliaboski a non-jury trial with an adjusted Rule 600 date of May 31, 2018
- Kasan Sanders a jury trial with an adjusted Rule 600 date of April 14, 2019
- Rashawn Williams a jury trial with an adjusted Rule 600 date of October 25, 2018
- Michael Willits a non-jury trial with an adjusted Rule 600 date of June 3, 2019
- Paul Matlosz a jury trial with an adjusted Rule 600 date of July 11, 2018
- Malik Gallashaw a jury trial with an adjusted Rule 600 date of October 31, 2018
- Zachary Parson a jury trial with an adjusted Rule 600 date of July 9, 2018
- Brian Long a non-jury trial with an adjusted Rule 600 date of February 3, 2019
- Michael Willits a jury trial with an adjusted Rule 600 date of December 31, 2018¹
- James Marchese a non-jury trial with an adjusted Rule 600 date of September 6, 2018
- Philip Sailor a jury trial with an adjusted Rule 600 date of May 11, 2018
- Artie Dotson a jury trial with an adjusted Rule 600 date of August 2, 2018
- Kyle Fisher a non-jury trial with an adjusted Rule 600 date of March 10, 2019
- Brittany Borgess a jury trial with an adjusted Rule 600 date of February 22, 2019
- Jonathan Bair a jury trial with an adjusted Rule 600 date of December 29, 2018
- Nyjeana Hutchinson a jury trial with an adjusted Rule 600 date of January 11, 2019
- Joseph Coleman a jury trial with an adjusted Rule 600 date of November 27, 2018
- David Lockwood a non-jury trial with an adjusted Rule 600 date of May 20, 2019

Commonwealth's Exhibit #4.

Dgien testified that the Commonwealth did not request any continuances in Defendant's case. The next Call of the List when Defendant's case could be called for trial was January 15, 2019. On cross examination Dgien stated non-jury trials could be scheduled outside of the trial term.

¹ This defendant had two cases selected during the September 25, 2018 Call of the List, which arose from separate events and were tried separately.

Based on the above testimony the time from the September 25, 2018 Call of the List to the January 15, 2019 Call of the List would be excusable delay, 113 days. *See Mills*, 162 A.3d at 325 (“where a trial-ready prosecutor must wait several months due to a court calendar, the time should be treated as ‘delay’ for which the Commonwealth is not accountable”). All of the above listed cases called had an early adjusted Rule 600 date than Defendant. Therefore the period of 113 days would be added to Defendant adjusted Rule 600 date, July 30, 2019. Defendant’s Rule 600 date would be November 20, 2019, and since November 20, 2019 is well beyond when Defendant’s jury was empaneled on August 16, 2019, Defendant’s Rule 600 rights have not been violated. Defendant argues that since non-jury trials could have been scheduled outside of the trial term, the Commonwealth did not exercise diligence by allowing non-jury cases to be selected during the trial term. The Court gives no credence to this argument. The trial term is set aside for the courts to handle trials during that period. To make all non-jury trials be tried outside of the trial term would unduly hinder the courts from handling non-trial matters, i.e. omnibus pretrial motions, post-conviction relief petitions, guilty pleas, etc. Additionally, “[d]ue diligence is fact-specific, to be determined case-by-case; it does not require perfect vigilance and punctilious care, but merely a showing the Commonwealth has put forth a reasonable effort.” *Commonwealth v. Selenski*, 994 A.2d 1083, 1089 (Pa. 2010). The Commonwealth keeping track of the adjusted Rule 600 dates and making sure cases are called in reasonable order within the established trial terms is such due diligence. Therefore, Defendant’s Motion to Dismiss Pursuant to Rule 600 is denied.

ORDER

AND NOW, this 11th day of December, 2019, based upon the foregoing Opinion, Defendant's Motion to Dismiss Pursuant to Rule 600 is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (DW)
Jeana Longo, Esq.