

COMMONWEALTH OF PA :  
 :  
 vs. : No's. CR-215-2018 & CR-434-2018  
 :  
 ANTHONY BREELAND, :  
 Defendant : **Motion for Rule 600/Motion for Nominal Bail**

**OPINION AND ORDER**

Under 434 of 2018, Defendant is charged with two counts of possession with intent to deliver and related charges. Under 215 of 2018, Defendant is charged with two counts of delivery of a controlled substance and related charges.

On March 7, 2019, Jason Lepley, Esquire, entered his appearance on Defendant's behalf. Mr. Lepley graciously agreed to accept this Court's appointment. Shortly after his appointment, on March 18, 2019, Mr. Lepley filed a Motion for Rule 600 Nominal Bail asserting that in both cases, Defendant has been held in pretrial incarceration in excess of 180 days and that there were no periods of delay which were caused by the defendant which should be excluded from the computation of the 180 days.

A hearing and argument was held on April 3, 2019. Following a review of the docket, applicable court orders and continuance requests, the parties stipulated that the two time periods at issue were September 25, 2018 to January 15, 2019 and January 16, 2019 to March 2, 2019.

The parties agreed that if this time is excludable against Defendant, he would not be entitled to nominal bail. Conversely, the parties agreed that if this time is not excludable against Defendant, he would be entitled to nominal bail.

With respect to the time period from September 25, 2018 to January 15, 2019, Defendant's then court-appointed counsel, Ryan Gardner, Esquire, submitted a continuance

request prior to September 11, 2018 requesting that the trial ,scheduled for call of the list on September 25, 2018 (see Order of Court dated July 16, 2018), be continued due to him being recently appointed and not having sufficient time to prepare for trial. The Commonwealth did not oppose the continuance request. The court entered an Order granting the continuance request until the call of the list on January 15, 2019. The court specifically noted that the time was excludable against Defendant.

With respect to the second period of time, Defendant's then appointed attorney, Aaron Biichle, Esquire, filed a continuance request prior to January 9, 2019. Defense counsel requested that the trial be continued because the case was just reassigned to him. The Commonwealth did not object and the Court entered an Order granting the continuance request to the "February pretrial." The parties agreed that the call of the list for the February pretrial was March 2, 2019. The continuance order did not, however, address excludable time.

Defendant asserts that although the continuances were requested by his attorneys, he did not authorize or agree to the continuances. Accordingly, Defendant claims that these two time periods should not count against him for Rule 600 nominal bail purposes.

The Commonwealth counters that Defendant is bound by the continuance requests despite his wishes, the court specified the time is being excluded at least with respect to one period of time, and Defendant was at fault for causing the reassignment of counsel.

The court need only address the issue as to whether the continuances were filed by counsel of record and whether Defendant is bound by such.

Rule 600 of the Pennsylvania Rules of Criminal Procedure forbids a defendant from being held in pretrial incarceration in excess of 180 days from the date on which the criminal complaint was filed. Pa. R. Crim. P. 600(B)(1). Only periods of delay caused by the

defendant shall be excluded from the computation of the length of time of any pretrial incarceration. Pa. R. Crim. P. 600(C)(2). The Comment to Rule 600 clearly indicates that continuances granted at the request of the defendant's attorney constitute excludable time. The Comment states in relevant part:

For purposes of paragraph (C)(1) and paragraph (C)(2), the following periods of time, that were previously enumerated in the text of former Rule 600 (C), are examples of period of delay caused by the defendant. **This time must be excluded from the computations in paragraph (C)(1) and (C)(2):...**

**(3) such period of delay at any stage of the proceedings as results 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.**

Pa. R. Crim. P. 600, Comment (emphasis added).

Contrary to what Defendant argues, delays attributable solely to defense counsel's requests for continuances are excludable for Rule 600 purposes even if the defendant did not authorize the continuance request. *Commonwealth v. Watson*, 140 A.3d 696, 699 (Pa. Super. 2016). Permission of the defendant is not needed or required. *Id.* at 699. Continuances are a matter of sound trial strategy within the reasonable purview of counsel. *Id.* at 699, citing *Commonwealth v. Wells*, 521 A.2d 1388, 1391-92 (Pa. 1987).

The actions of counsel in seeking a continuance are imputed to the defendant who is bound thereby. *Wells*, 521 A.2d at 1391, citing *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972). Defense counsel's arguable failure to abide by his client's wishes is neither prejudicial in itself nor fundamentally unfair so as to deny the defendant the prophylactic effect of Rule 600 or his right to speedy trial under the Pennsylvania or United States' Constitutions. *Wells, id.*

This conclusion makes sense. Rule 600 serves the dual purpose of protecting an accused's speedy trial rights and the protection of society. *Watson*, 140 A.3d at 698. It was not designed to insulate the criminally accused from good faith prosecution. *Id.*

A defendant cannot have it both ways. The law clearly prohibits hybrid representation. *Commonwealth v. Jette*, 611 Pa. 166, 23 A.3d 1032, 1036 (2011)(Pennsylvania Supreme Court has a "long-standing policy that precludes hybrid representation); see also *Commonwealth v. Reid*, 537 Pa. 167, 642 A.2d 453, 462 (1994)("appellants in criminal cases possess no constitutional right to hybrid representation). The purpose behind court appointed counsel is to fully protect one's constitutional right to counsel. This right cannot and should not be compromised. The result of counsel being required to obtain Defendant's position to seek a continuance would be to eviscerate the role of counsel who has a duty to ethically and properly represent his or her client. Allowing a defendant to unilaterally decide whether a case is to be continued would create mass confusion for the courts and overburden the criminal justice system. Furthermore, allowing a defendant to unilaterally decide whether a case is to be continued would practically force an attorney to violate the Code of Professional Conduct.

In this case, Defendant could have represented himself but chose not to. He is bound by his attorneys' continuance requests. Having concluded such, however, this does not mean that Defendant may not be entitled to nominal bail relief in the future.

**ORDER**

**AND NOW**, this \_\_\_\_ day of April 2019, following a hearing and argument, Defendant's Motion for Rule 600/Motion for Nominal Bail is **DENIED**.

By The Court,

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Marc F. Lovecchio, Judge

cc: Jason Lepley, Esquire  
Nicole Ippolito, Esquire, ADA  
Gary Weber, Lycoming Reporter  
Work File