

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1017-2018
vs. :
NIARE BROWN, : **Opinion and Order regarding**
Defendant : **Defendant's Motion to Dismiss**
 : **For Violation of Rule 600**

OPINION AND ORDER

Defendant is scheduled for a non-jury trial on September 27, 2019. He was charged with, among other offenses, burglary, criminal trespass and resisting arrest.

Before the court is Defendant's motion to dismiss pursuant to Rule 600 of the Pennsylvania Rules of Criminal Procedure. Defendant filed his motion on August 12, 2019 and a hearing was held on August 28, 2019. Defendant argues that, in violation of Rule 600, he has not been brought to trial within 365 days and that the charges against him must be dismissed.

Rule 600 of the Pennsylvania Rules of Criminal Procedure governs a defendant's right to a speedy trial. When a defendant has not been to trial within 365 days from the date on which the complaint was filed, the charges must be dismissed. Pa. R. Crim. P. 600(A)(2)(a), (D)(1). While the start date for the prompt trial calculation is the date on which the criminal complaint is filed, Pa. R. Crim. P. 600 (A)(2)(a), delay that is not attributable to the Commonwealth when the Commonwealth has exercised due diligence must be excluded from the computation of the 365 days. Pa. R. Crim. P. 600 (C)(1); *Commonwealth v. McCarthy*, 180 A.3d 368, 375 (Pa. Super. 2018).

"The test to be met is whether the Commonwealth's efforts to bring the defendant to trial were reasonable and pursued with diligence." *Commonwealth v. Browne*,

526 Pa. 83, 584 A.2d 902, 905 (1990), citing *Commonwealth v. Koonce*, 511 Pa. 452, 515 A.2d 543 (1986). “Due diligence is fact specific, to be determined on a case-by-case; it does not require perfect vigilance and punctilious care but merely a showing that the Commonwealth has put forth a reasonable effort.” *Commonwealth v. Burno*, 638 Pa. 264, 154 A.3d 764, 794 (2017). 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, the speedy trial rule must be construed in a manner consistent with society’s right to punish and deter crime. *Commonwealth v. Ramos*, 936 A.2d 1097, 1100 (Pa. Super. 2007).

The criminal complaint in this matter was filed on June 11, 2018. The mechanical run date was thus June 11, 2019. Defendant’s arraignment was held on June 23, 2018. He pled not guilty and the case was placed on the September 11, 2018 pretrial list with call of the list scheduled for September 25, 2018. The case has remained on the trial list since September of 2018. There is no excludable time. The mechanical Rule 600 date is the same as the adjusted Rule 600 date.

Prior to Defendant’s adjusted Rule 600 date, the call of the list for the May/June 2019 trial term was held on April 29, 2019. Cases were called, including the defendant’s, and jury selection was held that day and the following three days. On April 29, 2009, following the original call, Defendant’s case was not listed for jury selection; it was a backup.

Consistent with the court’s practice during jury selection, cases are listed to be called but once they begin to resolve, the backup cases are selected for jury selection and trial. The Deputy Court Administrator could not recall whether Defendant’s case was selected from the backup list on April 30. Generally, numerous cases are scheduled for jury

selection over the period and many of them resolve via a plea or a dismissal. It is the practice of the court at the end of the original call of the list to advise counsel that any case on the backup list is subject to being called. As other cases began to resolve, Defendant's case was chosen from the back up list for jury selection on May 1, 2019. A trial date was given of May 16, 2019.

Defense counsel, however, was ill on the date of jury selection. Accordingly, the case was placed "back" on the back up trial list. Because May 1 was the third of four days of jury selection, there was only one day left for jury selection with respect to cases to be tried during that trial term.

On May 2, six cases were scheduled for jury selection before two different judges. Five of those cases were disposed of via guilty pleas. One case that was picked, *Commonwealth v. Ruley*, 449-2018, had an adjusted Rule 600 date of March 8, 2019. The remaining five that ended up being pleas also had earlier adjusted Rule 600 dates than Defendant.

Because of the unavailability of judges, a courtroom or a jury selection date, Defendant's case was not reached and it was placed on the next call of the list on August 13, 2019.

Despite the fact that the case was called within its adjusted Rule 600 date, Defendant contends that the Commonwealth did not act with due diligence in attempting to try the defendant in a timely manner. More specifically, Defendant claims that the Commonwealth should have called his case on May 2. Defendant argues that if the case had been called on May 2, it would have been tried and Defendant's Rule 600 rights would have been protected.

As indicated, however, due diligence does not demand perfection; it requires that the Commonwealth put forth a reasonable effort. It is fact specific to be determined on a case-by-case basis.

In this case, the circumstances occasioning the delay were entirely beyond the Commonwealth's control. The Commonwealth was continually prepared to try the case. The case continued on the trial list. It was called for jury selection and trial within its adjusted Rule 600 date. On the date that the case was set for jury selection, defense counsel was not available because he was ill.

While Defendant is correct that he did not request a continuance, there is no evidence in the record that defense counsel notified the court or the Commonwealth that given his illness, he would be available the next day for jury selection. While Defendant is also correct that the Commonwealth did not contact the Deputy Court Administrator to request that the case be listed for jury selection the following day, there were six cases already scheduled to be picked and only two judges available. All of those cases had adjusted Rule 600 dates earlier than Defendant. All of those cases had counsel ready and willing to participate in jury selection. It would be entirely unreasonable given the process of how cases are listed and called in Lycoming County for the Commonwealth to change and essentially disrupt the entire jury selection process the next day.

Defendant incorrectly argues that the Commonwealth was required to do "everything in their power" to ensure that Defendant's Rule 600 rights were protected. The court has no hesitancy in concluding that the Commonwealth acted with due diligence in attempting to protect Defendant's Rule 600 rights.

ORDER

AND NOW, this ____ day of September 2019, following a hearing and argument, Defendant's motion to dismiss pursuant to Rule 600 is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Jerry Grill, Esquire (ADA)
Jeffrey Rowe, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file