

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 CP-41-CR-1200-2018
 v. :
 :
 JAMES CHOICE, :
 Defendant :
 RULE 600 RELEASE

OPINION AND ORDER

James Choice (Defendant) filed a Motion for Nominal Bail Pursuant to Rule 600 on July 19, 2019. A hearing on the Motion was held on August 2, 2019. At the hearing, both sides presented argument as to what each believed constituted excludable delay. For the following reasons Defendant’s Motion is denied.

Discussion

“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 180 days from the date on which the complaint is filed.” Pa. R. Crim. P. 600(B)(1). At any time when a defendant is incarcerated beyond the time set forth under Pa. R. Crim. P. 600(B), “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.” Pa. R. Crim. P. 600(D)(2). When evaluating a motion for release on nominal bail pursuant to Rule 600, “only periods of delay caused by the defendant shall be excluded from the computation. . . . Any other periods of delay shall be included in the computation.” Pa. R. Crim. P. 600(C)(2).

Defendant’s criminal complaint was filed on July 18, 2018 charging Defendant with one count of Possession of a Firearm,¹ six counts of Delivery or Possession with the Intent to

¹ 18 Pa. C.S. § 6105(a)(1).

Deliver a Controlled Substance,² three counts of Possession of a Controlled Substance,³ one count of Possession of a Small Amount of Marijuana,⁴ and one count of Possession of Drug Paraphernalia.⁵ Defendant then filed an Omnibus Motion on September 26, 2018. At that point Defendant had been incarcerated for a period of seventy-one (71) days, which is included in Defendant's calculation. The Motion was originally scheduled for November 5, 2018, but the Commonwealth requested a continuance until December 6, 2018 due to witness unavailability. That thirty-two (32) day delay was not caused by Defendant and therefore those days are included in the computation of Defendant's Rule 600 calculation for purposes of nominal bail. Defendant, at that point, had one hundred three (103) days of includable time. From December 6, 2018 until this Court rendered its Opinion and Order on December 19, 2018 is excludable time. *See Commonwealth v. Cook*, 865 A.2d 869, 875-76 (Pa. Super. 2004) (Period from filing of a Motion to Suppress until rendering of the court's decision is all excludable for purposes of Rule 600). Additionally, the amount of excludable time is extended until February 19, 2019 due to a continuance request by previous defense counsel on December 13, 2018. Previous defense counsel then filed a Motion to Withdraw as Counsel on March 20, 2019 that was granted on April 15, 2019, at which time present counsel was appointed. The period of time from February 19, 2019 to March 20, 2019, thirty (30) days, is included in Defendant's Rule 600 calculation giving Defendant one hundred thirty-three (133) days. The period of time from March 20, 2019 to April 15, 2019 is excludable from the calculation as it was caused by Defendant. *See Commonwealth v. Cook*, 676 A.2d 639, 646 (Pa. 1996). As the Commonwealth raised during the hearing on August 2, 2019, defense

² 35 P.S. § 780-113(a)(30).

³ 35 P.S. § 780-113(a)(16).

⁴ 35 P.S. § 780-113(a)(31)(i).

⁵ 35 P.S. § 780-113(a)(32).

counsel indicated at the April 29, 2019 Call of the List that the case had been continued to the July 9, 2019, pretrial list due to his recent entry into the case. This time also is excludable from Defendant's calculation as it was caused by defense counsel. *See Commonwealth v. Watson*, 140 A.3d 696, 699 (Pa. Super. 2016) (Defense counsel's requested continuance counted as excludable time even if the defendant did not agree). Defendant then filed a Motion for Dismissal Pursuant to Rule 600(A) on July 19, 2019. The ten (10) days from July 9, 2019 to July 19, 2019 is included in Defendant's computation giving him one hundred forty-four (144) days of includable time. On July 29, 2019, Judge Marc Lovecchio disposed of that Motion summarily, therefore the clock began to run again as the Commonwealth was no longer barred from bring Defendant to trial. Defendant renewed his Motion to Dismiss pursuant to Rule 600 on August 5, 2019. The time from July 29, 2019 to August 5, 2019 is included in Defendant's computation of time, giving him a total of one hundred fifty-one (151) days of includable time. Therefore, until Defendant's August 5, 2019 filing is disposed of Defendant's time for purpose of Rule 600(B) will stay at a total one hundred fifty-one (151) days of includable time.

ORDER

AND NOW, this 8th day of August, 2019, based upon the foregoing Opinion, Defendant's Motion for Nominal Bail Pursuant to Pa. R. Crim. P. 600 is hereby **DENIED**. Defendant currently has one hundred fifty-one (151) days of includable time towards his Rule 600(B) Motion, time is currently not accruing, and will continue to not accrue until the disposition of Defendant's Motion to Dismiss filed on August 5, 2019.

By the Court,

Nancy L. Butts, President Judge

cc: DA (JR)
W. Jeffrey Yates, Esq.