

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1879-2017
:
vs. :
:
: **Opinion and Order re Defendant's**
: **Motion to Dismiss Pursuant to Rule 600**
:
KHAYREE JACKSON, :
Defendant :

OPINION AND ORDER

This matter came before the court on Defendant's motion to dismiss pursuant to Rule 600.

The Commonwealth introduced six exhibits and argued that these exhibits and other information in the court file established sufficient excludable time that not more than 365 days have passed since the filing of the complaint. The first exhibit was the docket sheet for Defendant's case from the Magisterial District Judge (MDJ). The MDJ docket sheet showed that the criminal complaint was filed on September 21, 2017. The preliminary hearing was continued from October 2, 2017 to October 9, 2017, and from October 9, 2017 to October 16, 2017 at the request of the MDJ. The preliminary hearing was continued from October 16, 2017 to November 13, 2017 at the request of the Commonwealth. The preliminary hearing was held on November 13, 2017, and the charges were held for court.

On December 1, 2017, the Commonwealth filed a notice of joinder to join this case with the cases of Defendant's alleged co-defendants – Kadeen Crawford, Markel Richardson, and Daniel Shank.

Although Defendant did not file any pretrial motions, his co-defendants did. Commonwealth Exhibit 2 was a copy of the omnibus pretrial motion filed on December 28,

2017 by Kadeen Crawford. This motion was originally scheduled to be heard on March 13, 2018.

Co-Defendant Markel Richardson filed an omnibus pretrial motion on January 3, 2018, which was originally scheduled to be heard on March 21, 2018. (Commonwealth Exhibit 4).

Co-Defendant Daniel Shank filed a petition for writ of habeas corpus on January 3, 2018, which was originally scheduled to be heard on March 13, 2018. He also requested and received an extension to file an omnibus pretrial motion within 45 days after receipt of discovery. On April 20, 2018, Co-defendant Shank filed a motion to suppress. (Commonwealth Exhibit 5).

According to an Order entered on March 7, 2018, Defendant's counsel requested that this case be removed from the March pretrial to the May pretrial due to outstanding pretrial motions. As defense counsel had not filed any pretrial motions in Defendant's case, this request must have referred to the motions filed by the co-defendants.

The hearing on the co-defendants' motions was moved to April 26, 2017 so that all of the motions could be heard at the same time. The hearing was then continued from April 26, 2017 to August 9, 2017, at the request of Co-Defendant Shank's counsel due to a family emergency. The hearing could not be completed on August 9, 2017, so the remainder of the hearing was scheduled for October 12, 2017. (Commonwealth Exhibit 5).

On September 10, 2018, counsel for Co-Defendant Crawford requested a continuance from the September/October 2018 trial term due to the outstanding pretrial motions, which was granted and the case was scheduled for a December pretrial and call of

the list on January 15, 2019.

On December 12, 2018, a decision was entered denying the co-defendants' motions. (Commonwealth Exhibit 6).

On or about December 13, 2018, the Commonwealth requested a continuance from the trial term of January 28, 2018 – March 1, 2019, due to the unavailability of the assisting agent who was on medical leave. The continuance was granted and the cases were scheduled for February 19, 2019 pretrial list for the April 2019 trial term. The Honorable President Judge Nancy Butts wrote on the continuance form, "Time against C" which meant that the time would run against the Commonwealth for Rule 600 purposes.

On March 28, 2019, Defendant filed his first Rule 600 motion to dismiss. A hearing was scheduled for May 8, 2019. Defendant failed to appear for the hearing, and the court dismissed his motion without holding a hearing. On May 9, 2019, Defendant filed his second motion to dismiss.

DISCUSSION

Rule 600 states, in relevant part:

(A) Commencement of Trial; Time for Trial

* * *

(2) Trial shall commence within the following time periods.

(a) 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.

* * *

(C) Computation of Time

(1) For purposes of paragraph (A), periods of delay at any stage of the proceedings caused by the Commonwealth when the Commonwealth has failed to exercise due diligence shall be included in the computation of the time within which trial must commence. Any other periods of delay shall be excluded from the computation.

* * *

(3)(a) When a judge or issuing authority grants or denies a continuance:

(i) the issuing authority shall record the identity of the party requesting the continuance and the reasons for granting or denying the continuance; and

(ii) the judge shall record the identity of the party requesting the continuance and the reasons for granting or denying the continuance. The judge also shall record to which party the period of delay caused by the continuance shall be attributed, and whether the time will be included in or excluded from the computation of the time within which trial must commence in accordance with this rule.

(b) The determination of the judge or issuing authority is subject to review as provided in paragraph (D)(3).

(D) Remedies

(1) When a defendant has not been brought to trial within the time periods set forth in paragraph (A), at any time before trial, the defendant's attorney, or the defendant if unrepresented, may file a written motion requesting that the charges be dismissed with prejudice on the ground that this rule has been violated. A copy of the motion shall be served on the attorney for the Commonwealth concurrently with filing. The judge shall conduct a hearing on the motion.

* * *

(3) Any requests for review of the determination in paragraph (C)(3) shall be raised in a motion or answer filed pursuant to paragraph (D)(1) or paragraph (D)(2).

Pa. R. Crim. P. 600.

The criminal complaint was filed on September 21, 2017. Defendant filed his motion to dismiss on May 9, 2019. The time between the filing of the complaint and Defendant's motion is 596 days.

The parties agreed that the continuances of the preliminary hearing by the MDJ would be excludable time. Therefore, the time between October 2, 2017 and October 16, 2017 is 14 days of excludable time.

The Commonwealth contends that the time between October 16, 2017 and November 13, 2017 should also be considered excludable time as all the parties agreed to the

continuance so that a single preliminary hearing with added security could be held at the Lycoming County Courthouse. At this stage of the proceedings, the court cannot agree. The exhibit submitted by the Commonwealth indicates that the preliminary hearing was continued at the Commonwealth's request. There is no testimony or other evidence in the record to refute or explain that notation on the MDJ docket transcript. Therefore, the court cannot consider this as excludable time.

The Commonwealth contends that, when considering a motion to dismiss pursuant to Rule 600 (as opposed to a nominal bail motion), delay attributable to co-defendants' pretrial motions is excludable. Defendant asserts that such delay is not excludable with respect to his case, because the Commonwealth could have filed a motion to sever his case from that of his co-defendants.

Clearly, there was delay from December 28, 2017 when the pretrial motion was filed by Co-Defendant Crawford and the decision was issued on all of the outstanding pretrial motions on December 12, 2018. The time between December 28, 2017 and December 12, 2018 is 349 days.

In *Commonwealth v. Hill*, 736 A.2d 578, 592 (Pa. 1999), the Pennsylvania Supreme Court found that the trial court correctly denied a motion to dismiss, as the delay attributable to the co-defendant's numerous pretrial motions was beyond the Commonwealth's control.

In *Commonwealth v. Jackson*, 765 A.2d 389 (Pa. Super. 2000), the appellant argued that the Commonwealth did not act with due diligence because it opposed his request for severance when his run date was approaching and his co-defendant requested new

counsel. The Superior Court rejected the appellant's argument and found that the co-defendant's request for new counsel was beyond the Commonwealth's control. Specifically, the Superior Court stated, "Furthermore, it appears as if a majority of our Supreme Court in *Hill* implicitly rejected appellant's argument that the Commonwealth is required to move for severance when faced with a possible Rule 1100 violation." *Id.* at 395.

In light of *Hill* and *Jackson*, the court rejects Defendant's argument and finds that the 349 days between December 28, 2017 and December 12, 2018 are excludable.

The Commonwealth next contends that the time between December 13, 2018 and February 19, 2019 is excludable because the unavailability of one of its witnesses due to medical leave was beyond its control. The court questions whether it can even consider this argument. When Judge Butts granted the Commonwealth's continuance request, she noted that the time would run against the Commonwealth. There is a specific procedure in Rule 600 for a litigant to challenge a judge's determination of the party to whom the delay is attributable. A defendant must assert the issue in his Rule 600 motion and the Commonwealth must raise the issue in an answer to the motion. See Pa. R. Crim. P. 600(D)(3). Since the Commonwealth did not raise this issue by filing an answer to Defendant's motion, the court does not believe it can consider this argument. Regardless, there is sufficient excludable time that Defendant is not entitled to the relief requested.

The court finds that the time from March 28, 2019 to the present is excludable due to Defendant filing both his original motion to dismiss, which he failed to appear to litigate, and his current motion to dismiss.

When all of the excludable time listed above is deducted, at most, 292 days

have elapsed. Therefore, Defendant is not entitled to dismissal at this time.

ORDER

AND NOW, this ___ day of July 2019, the court DENIES Defendant's motion to dismiss pursuant to Rule 600.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Trisha Hoover Jasper, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file