

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-183-2018
 :
 SHAQUILL MURRAY, : Opinion and Order re
 Defendant : Defendant's Motion For Dismissal Pursuant to
 : Rule 600

OPINION AND ORDER

This matter came before the court on March 15, 2019 for a hearing and argument on Defendant's Motion for Dismissal Pursuant to Rule 600, which was filed on February 15, 2019. At the hearing, the parties stipulated that the court could take judicial notice of the following facts:

1. The charges were filed on January 26, 2018.
2. The preliminary hearing was held on January 31, 2018, five days after Defendant's arrest.
3. Defendant's court arraignment was held on February 26, 2018, twenty-six days after the preliminary hearing. At that time, the case was placed on the May 22, 2018 call of the list.
4. On May 10, 2018, the Commonwealth requested a continuance, because it was awaiting lab results. This continuance was not opposed by Defendant. The Commonwealth's continuance request was granted, and the order noted excludable time against Defendant to July 31, 2018.

The Commonwealth then called as a witness the Lycoming County Deputy

Court Administrator, Eileen Dgien. Ms. Dgien testified that Defendant's case was on the July 31, 2018 call of the list. As Defendant was incarcerated, the list set forth both a 180-day Rule 600 nominal bail date of October 17, 2018 and a 365-day Rule 600 dismissal date of April 29, 2019. Although two cases with Rule 600 dismissal dates after Defendant's nominal bail date were called to trial, no cases with a later Rule 600 dismissal date were called to trial during that trial term. Defendant's case was also on the September 25, 2018 call of the list and the January 15, 2019 call of the list. No cases with later Rule 600 dismissal dates were called to trial during those trial terms. Defendant's case was on the March 12, 2019 call of the list. One case with a later Rule 600 dismissal date was scheduled for trial. That case was Basir Loyal's case, a one-half day nonjury trial.

Both parties rested.

The prosecutor argued that Rule 600 had not run, as there were 83 days of excludable time as a result of the continuance that was not opposed by Defendant. He also asserted that the Commonwealth was ready for every trial term as of July 31, 2018 and that Defendant's case was not reached because other cases with earlier Rule 600 dates were tried.

Defense counsel argued that the 83 days were not excludable because the Commonwealth requested the continuance, not Defendant. Defense counsel contended that he could contest Judge Butts' determination that excluded the time period from May 10, 2018 to July 31, 2018. He asserted the time should not be excludable as it was a result of the Commonwealth's lack of due diligence. The Commonwealth requested the continuance because, despite acquiring the controlled substances on January 26, 2018, the substances

were not sent to the lab for analysis until May 1, 2018. The Commonwealth's lack of due diligence is the only reason it was "awaiting lab results" which was the basis of the continuance request. Counsel was not prepared to offer an argument, however, to distinguish Superior Court cases that hold when a defendant or his counsel agrees to or concurs in a continuance requested by the Commonwealth, it results in excludable time for Rule 600 purposes.

"Trial in a court case in which a written complaint has been 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). "[P]eriods of delay 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." Pa. R. Crim. P. 600(C)(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." Pa. R. Crim. P. 600(D)(1).

When a judge grants a continuance, the judge must "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." Pa. R. Crim. P. 600(C)(3)(a)(ii). Any requests for review of the judge's determination must be raised in the defendant's motion to dismiss or the Commonwealth's answer to the motion. Pa. R. Crim. P. 600(D)(3).

It is undisputed that Defendant's attorney was not opposed to the Commonwealth's continuance request. When the defense indicates approval or acceptance of the continuance, the time associated with the continuance is excludable under Rule 600. *Commonwealth v. Hunt*, 858 A.2d 1234, 1241 (Pa. Super. 2004).

The court notes that it is not excluding the period of time between the filing of the complaint and May 1, 2018, the date the Commonwealth sent the alleged controlled substances to the lab for testing. That period would be included either as part of the normal progression of the case since the case was placed on the May 22, 2018 call of the list at the time of Defendant's arraignment, see *Commonwealth v. Mills*, 162 A.3d 323 (Pa. 2017) or because of the Commonwealth's lack of diligence in sending the controlled substances to the lab for testing. Once the Commonwealth sent the controlled substances to the lab for testing, however, the time period for completing the tests and issuing a report was out of the Commonwealth's control. Furthermore, defense counsel agreed to this delay. Defense counsel could have had a variety of rational or strategic reasons for agreeing to the continuance, which could range from a hope or belief that the testing would produce negative results for controlled substances, to defense counsel needing additional time to prepare for trial. Even if counsel lacked a valid reason for agreeing to the continuance, such a claim generally must be deferred until collateral review under the Post Conviction Relief Act (PCRA). *Commonwealth v. Holmes*, 79 A.3d 562, 576 (Pa. 2013).

The court is excluding the delay from May 10, 2018 (the date of the continuance request) to July 31, 2018 (the date of the call of the list for the next trial term).

The court calculated this time period to be 82 days.

The court will also exclude the period of time between the filing of Defendant's motion to dismiss and this decision. *Commonwealth v. Williams*, 736 A.2d 389, 392 (Pa. Super. 1999)(the period of time between a defendant's motion to dismiss and the trial court's decision in excludable time).

The time period between the filing of the complaint and Defendant's motion to dismiss is 385 days. When the 82 days related to the continuance is deducted, only 303 days have elapsed. Therefore, Defendant is not entitled to dismissal at this time.

ORDER

AND NOW, this ___ day of April 2019, the court DENIES Defendant's Motion to Dismiss Pursuant to Rule 600.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Gallogly, Esquire (ADA)
Jon Higgins, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work File