

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-176-2018
	:
vs.	:
	: Opinion and Order regarding
SAMUEL SALDIVAR, JR.,	: Defendant's Motion to Dismiss
Defendant	: For Violation of Rule 600

OPINION AND ORDER

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. Rule 600 (A) (2) (a); (D) (1). The Rule clarifies the Commonwealth's obligation to afford a defendant a speedy trial. *Commonwealth v. Morgan*, 484 Pa. 117, 398 A.2d 972, 974 (1979). The failure to meet this prompt trial requirement constitutes grounds for dismissal. Rule 600 (D) (1); *Commonwealth v. Mills*, 640 Pa. 118, 162 A.3d 323, 324 (2017).

While the start date for the prompt trial calculation is the date on which the criminal complaint is filed, 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. Rule 600 (C) (1); *Commonwealth v. McCarthy*, 180 A.3d 368, 375 (Pa. Super. 2018).

The Commonwealth has the burden of proving by a preponderance of the evidence on the record that it acted with due diligence and this duty to act extends to all stages of the criminal case. *Mills*, 162 A.3d at 326 (Wecht, J., concurring). The Commonwealth must do everything reasonable within its power to see that the case is tried in time. *Commonwealth v. Browne*, 526 Pa. 83, 584 A.2d 902, 905 (1990). "The test to be met

is whether the Commonwealth's efforts to bring the defendant to trial were reasonable and pursued with diligence." *Brown, Id.* at 905, 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 basis; it does not require perfect vigilance and punctilious care but merely is 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).

Before the court is Defendant's motion to dismiss pursuant to Rule 600. A hearing was held on September 17, 2019. The criminal complaint in this case was filed on January 16, 2018. The mechanical run date is calculated by adding 365 days to the date on which the criminal complaint was filed. *Ramos*, 936 A.2d at 1102. Therefore, the mechanical run date is January 16, 2019. The mechanical run date can be modified or extended by adding to the date any periods of time in which delay is caused by the defendant. The adjusted run date in this case is June 1, 2019. The time period from December 14, 2018 to April 29, 2019 was caused by the defendant requesting continuances.

Because Defendant's trial which has not yet taken place, will take place outside the adjusted run date, the court must determine pursuant to Rule 600 whether the delay occurred despite the Commonwealth's due diligence. Rule 600 (G); *Ramos*, 936 A.2d at 1102.

The question which the court must address is whether the delay from June 1, 2019 to the present was outside the control of the Commonwealth and not the result of the Commonwealth's lack of diligence. Any such period of delay results in an extension of the run date. *Ramos*, 936 A.2d at 1103.

Under the facts as established in this case, the court finds that the Commonwealth has met its burden of proving by a preponderance of the evidence that it acted with due diligence. In *Commonwealth v. Moore*, , the Superior Court noted that due diligence includes listing a case for trial prior to the run date, preparedness for trial within the run date and keeping adequate records to ensure compliance with Rule 600. *Moore*, 2019 PA Super 204, 2019 WL 2723872, *3 (July 1, 2019), citing *Ramos*, 936 A.2d at 1102.

Following Defendant's arraignment, this case was placed on the May 8, 2018 pretrial list. But for subsequent trial lists in which the defendant requested a continuance, the case stayed on the trial list. But for dates in which Commonwealth witnesses were not available, the Commonwealth continued to be prepared for trial within the run date. As well, the Commonwealth utilized a computer record keeping system to ensure compliance with Rule 600 by calculating both the mechanical Rule 600 dates and the adjusted Rule 600 dates.

During the trial terms, once the case was placed on the trial list and before the defense continuances, no cases that had later Rule 600 dates were tried ahead of the defendant's.

Following the continuance requests of the defendant, the case was placed on the April 29, 2019 call of the list. Jury selection was scheduled for April 29, April 30, May 1 and May 2. While the Commonwealth was available for the entire jury selection, defense

counsel was not available during the entire day on April 30 or on the afternoon on May 1.

The case was determined by both parties to be a two-day trial.

At the hearing in this matter, the Commonwealth painstakingly presented detailed evidence regarding each day of the trial term.

The trial term was from May 13, 2019 to June 14, 2019. From May 14 to May 17, Defendant's counsel was not available. On May 20, no judge was available to try any cases. On May 21, defense counsel was not available. On May 22, there was only one courtroom available and a case with an adjusted Rule 600 date approximately a year earlier than the defendant's case, was scheduled.

On May 23, there were many different cases scheduled although only one courtroom available. Six separate cases were attempted to be scheduled and all of them had Rule 600 adjusted dates earlier than the defendant's case. The one case in which a jury was actually picked had a Rule 600 date, March 8, 2019, which was months earlier than the defendant's. On May 24, 2019, defense counsel was not available.

From May 27, 2019 to May 31, 2019, two judges were on vacation, it was a "holiday week" and no trials were scheduled.

From June 3, 2019 to June 6, 2019, no trials were scheduled because there was "no time on the court schedule" for trials. On June 7, a trial was held in Courtroom No. 4. Its adjusted Rule 600 date was earlier than the defendant's case. Furthermore a Commonwealth witness was not available. Finally, the defendant's case could not have been tried only on that Friday because it was a two-day case.

Trials were held from June 10 through June 14 of 2009. All but one of the

cases had a Rule 600 date earlier than the defendant's. The one case was selected, however, as a backup because it was the only case that could have been held at that time. On all of the other days, there were shorter non-jury or jury trials.

The pick and go trial term went from June 17, 2019 to June 28, 2019. At the court's directive, certain felony cases were scheduled. There were five total felony cases that were all scheduled by the court. There were many misdemeanor back-up cases. Defendant's case could not be held during this week because it was not selected by the courts and it was not a misdemeanor.

The terms for trial both before Defendant requested his continuances, from October 2018 to November of 2018 did not involve the jury selection of any cases with later adjusted Rule 600 dates than the defendant's. One case may have had a later adjusted Rule 600 date but that was only a half-day trial.

Clearly, the Commonwealth exercised due diligence in attempting to bring Defendant's case to trial within the adjusted Rule 600 date. The case was placed on the trial list. The Commonwealth was ready to proceed if the case was called. The Commonwealth kept a record keeping system to ensure compliance with Rule 600 dates for all of its cases. The case was not selected for trial for various reasons not within the control of the Commonwealth. These reasons included, but were not limited to, counsel unavailability, courtroom unavailability, judge unavailability, time and duration unavailability, counsel unavailability for jury selection, and trying cases that, with perhaps a few exceptions, entirely consisted of cases which had earlier Rule 600 dates.

ORDER

AND NOW, this 8 day of September 2019, following a hearing, the court
DENIES Defendant's Motion to Dismiss for Violation of Rule 600.

By The Court,



Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (DA)
Andrea Pulizzi, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file