

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-428-2014**
 :
 v. :
 :
 :
 SAMANTHA SALSMAN, : **RULE 600 DISMISSAL**
 Defendant :

OPINION AND ORDER

Samantha Salsman (Defendant) filed a Motion to Dismiss Pursuant to Rule 600 on October 9, 2019. A hearing on the Motion was held on October 24, 2019. A hearing for additional evidence was then held on December 6, 2019. At the hearings, the Commonwealth entered a copy of the preliminary hearing notice for February 28, 2014, a copy of the preliminary hearing notice for March 7, 2014, a copy of the notice of preliminary hearing results, a copy of the Magisterial District Judge (MDJ) criminal docket, a picture of the returned certified mail, and the summons for criminal case from February 28, 2014 as exhibits. The Commonwealth also had Rhonda Bodle (Bodle) from Records and Retention testify. Defendant testified on her own behalf. At the conclusion both sides presented argument on the only issue in contention, whether the delay from Defendant's preliminary hearing to Defendant being brought in on the bench warrant on June 28, 2019 was excludable delay. For the following reasons Defendant's Motion is denied.

Background and Testimony

Bodle identified Commonwealth's Exhibit #5 as an envelope in the original file from the MDJ in the above case. The letter was originally sent on February 2, 2014 to 112 Hepburn St., Milton, PA 17847. Certified service was then attempted twice more. Defendant alleges to have never seen or received any summons in 2014 and the store Defendant stole from is now closed. Defendant agrees that 112 Hepburn St., Milton PA 17847 is still her address and that

from that time until now she has received mail at that address. Commonwealth's Exhibits #1 and #2 are preliminary hearing notices with both the arresting officer's address listed and Defendant's correct address listed under "File Copy Recipient List." Commonwealth's Exhibit #1 lists Defendant's original preliminary hearing date, which was continued at the request of the Commonwealth and Commonwealth's Exhibit #2 has Defendant's preliminary hearing date, at which a hearing was held in Defendant's absence. Commonwealth's Exhibit #3 details the results of Defendant's preliminary hearing, which was held in her absence and held over her charges. Again under the "File to Copy Recipient List," Defendant's name is listed with her correct address and an Assistant District Attorney. Commonwealth's Exhibit #4 is the MDJ criminal docket and has Defendant's address correctly listed. *See* Commonwealth's Exhibit #4 at 2. The docket entry information details that Defendant's First Class Summons was issued on February 3, 2014 and was accepted on February 25, 2014. *Id.* at 3. Commonwealth's Exhibit #6 is a copy of the summons, which was addressed to Defendant at the correct address.

Discussion

"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." Pa. R. Crim. P. 600(A)(2)(a). At any time prior to trial a defendant "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). In computing the time for purposes of Rule 600, only "when the Commonwealth has failed to exercise due diligence" shall that time be included against the Commonwealth, "[a]ny other periods of delay shall be excluded from the computation." Pa. R. Crim. P. 600(C)(1). When determining whether a violation of Rule 600 occurred two

important functions must be weighed “the protection of the accused's speedy trial rights, and the protection of society. In determining whether an accused's right to a speedy trial has been violated, consideration must be given to society's right to effective prosecution of criminal cases, both to restrain those guilty of crime and to deter those contemplating it.”

Commonwealth v. Moore, 214 A.3d 244, 248 (Pa. Super. 2019). “Excludable time is classified as periods of delay caused by the defendant,” whereas “[e]xcusable delay occurs where the delay is caused by circumstances beyond the Commonwealth's control and despite its due diligence.” *Id.* at 248-49. Neither excludable or excusable time counts towards a defendant’s Motion to Dismiss Pursuant to Rule 600. *Id.* at 249.

“When performing the Rule 600 computation, the general rule is that, where a period of delay is caused by the defendant's willful failure to appear at a court proceeding of which he has notice, exclusion is warranted.” *Commonwealth v. Barbour*, 189 A.3d 944, 956 (Pa. 2018). This excusable delay includes a defendant’s failure to appear at a preliminary hearing. *See Commonwealth v. Armstrong*, 74 A.3d 228, 236 (Pa. Super. 2013). However, “[i]f the Commonwealth fails to prove proper notice, it must establish that it was unable to locate the defendant despite the exercise of due diligence.” *Commonwealth v. Evans*, 473 A.2d 606, 608 (Pa. Super. 1984). For service to be proper the Commonwealth must demonstrate either “a return receipt signed by the defendant; or [] the returned summons showing that the certified mail was not signed by the defendant and a notation on the transcript that the first class mailing of the summons was not returned to the issuing authority within 20 days after the mailing.” Pa. R. Crim. P. 511(B).

The Court finds the Commonwealth has satisfied its requirement to demonstrate that Defendant had proper notice of her preliminary hearing. The Commonwealth provided

evidence that “the returned summons showing that the certified mail was not signed by the defendant and a notation on the transcript that the first class mailing of the summons was not returned to the issuing authority within 20 days after the mailing.” Pa. R. Crim. P. 511(B)(2). This Court finds no distinction between the MDJ criminal docket indicating first class mail was accepted as opposed to not returned in twenty days. Additionally, this Court does accept Defendant’s contention that she will be prejudiced by being required to proceed. The Commonwealth still has the burden at trial and if anything the delay caused by Defendant prejudices its case not hers. “[S]ociety . . . should not pay the price when the one who committed crimes willfully evades the system. Such willfulness is eminently displayed when one knows that he has criminal charges pending, yet shirks the system and his responsibilities under the guise of ignorance. . . .” *Commonwealth v. Baird*, 919 A.2d 258, 263–64 (Pa. Super. 2009) (Joyce, J., concurring).

Defendant’s complaint was filed on January 3, 2014. Therefore her mechanical Rule 600 date was January 3, 2015. Defendant’s preliminary hearing was originally scheduled for February 28, 2014, but continued at the request of the Commonwealth, which is included in Defendant’s Rule 600 calculation. Defendant’s preliminary hearing was then scheduled for March 7, 2014, which was held in Defendant’s absence and a bench warrant was issued for her. For the reasons stated above, the time from March 7, 2014 until Defendant was brought in on her bench warrant, June 28, 2019, is all excludable time. Therefore, an additional 1,940 days shall be included in Defendant’s Rule 600 mechanical run date, making her adjusted Rule 600 date April 26, 2020.

Conclusion

The Commonwealth has demonstrated proper notice pursuant to Pa. R. Crim. P. 511(B)(2). Since notice was proper the Commonwealth need not demonstrate that it additionally exercised due diligence. Therefore, the time from Defendant's preliminary hearing on March 7, 2014 until her bench warrant was vacated on June 28, 2019 is excludable time, which does not contribute to her Rule 600 calculation. Adding this time to Defendant's mechanical Rule 600 date makes Defendant's adjusted Rule 600 date April 26, 2020.¹

ORDER

AND NOW, this 31st day of December, 2019, based upon the foregoing Opinion, Defendant's Motion to Dismiss Pursuant to Pa. R. Crim. P. 600 is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (JR)
Matthew Ziegler, Esq.

¹ This decision is not inconsistent with *Commonwealth v. Kelce*, CR 1956-2007 (Lyco. Cnty 2007) (Lovecchio, J.). In *Kelce*, the Commonwealth failed to provide evidence to demonstrate proper notice according to Pa. R. Crim. P. 511, which it has accomplished here. *See also Commonwealth v. Kelce*, 2019 WL 6840666 (Pa. Super. 2019) (non-precedential opinion affirming the lower court's determination).