

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : **CP-41-CR-1820-2017**
 :
 :
 FLOYD STEADLEY, : **RULE 600 DISMISSAL**
 Defendant :

OPINION AND ORDER

Floyd Steadley (Defendant) filed a Motion for Dismissal Pursuant to Pa. R. Crim. P. § 600(D) on January 16, 2019. A hearing on the Motion was held on March 11, 2019. For the following reasons Defendant’s Motion is denied.

A criminal complaint was filed on April 18, 2017 charging Defendant with three counts of Delivery of a Controlled Substance,¹ three counts of Possession with the Intent to Deliver a Controlled Substance,² three counts of Criminal Use of a Communication Facility,³ three counts of Possession of a Controlled Substance,⁴ three counts of Possession of Drug Paraphernalia,⁵ and one count of Criminal Conspiracy.⁶ The charges arise from multiple controlled buys that occurred between October 19, 2016 and April 18, 2017.

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.

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(30).

³ 18 Pa. C.S. § 7512.

⁴ 35 P.S. § 780-113(a)(16).

⁵ 35 P.S. § 780-113(a)(32).

⁶ 18 Pa. C.S. § 903(a)(1).

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). “[T]ime attributable to the normal progression of a case simply is not ‘delay’ for purposes of Rule 600.” *Commonwealth v. Mills*, 162 A.3d 323, 325 (Pa. 2017). Additionally, “where a trial-ready prosecutor must wait several months due to a court calendar, the time should be treated as ‘delay’ for which the Commonwealth is not accountable.” *Id.*

Defendant was arrested and preliminarily arraigned on October 25, 2017. The Commonwealth conceded at the hearing held on March 11, 2019 that the one hundred ninety-one (191) days from the filing of the complaint to Defendant’s arrest was attributable to them for purposes of this Motion. Therefore, Defendant’s mechanical run date remained at April 18, 2018. Following Defendant’s preliminary arraignment his preliminary hearing was scheduled and held eight (8) days later. Defendant’s formal arraignment was then scheduled on November 20, 2017. Those twenty-six (26) days are considered normal progression of the case, which shall not be attributable to the Commonwealth. *See id.* At this point Defendant’s mechanical run date was May 14, 2018. On November 20, 2017, Defendant waived his preliminary hearing and his case was placed on the March 6, 2018 pretrial list, because “[n]o earlier date [was] available.” Order 11/20/17. As this is also normal progression of the case and any delay was not the fault of the Commonwealth those one hundred seven (107) days are also excludable, pushing Defendant’s mechanical run date back to August 29, 2018. Then on March 16, 2018, Defendant requested a continuance until the May 22, 2018, pretrial list. Those sixty-seven (67) days added to the mechanical date set it back to November 4, 2018.

The Commonwealth provided no testimony and there is no evidence of why the delay occurred between the May 22, 2018 and July 31, 2018 pretrial lists, so for the purposes of this Motion only it shall be considered against the Commonwealth, with the exception of twelve (12) days from July 13, 2018 to July 25, 2018 which Defendant conceded in his Motion. Defendant's mechanical run date at that point would have been November 16, 2018. The Commonwealth prior to the call of the list in July filed a Motion to Consolidate with a co-defendant Katherine Steadley, which was subsequently granted on August 6, 2018.

Deputy Court Administrator Eileen Dgien (Dgien) testified regarding the July, September, and January call of the lists at the hearing on March 11, 2019. Dgien testified that at the July call of the list the Commonwealth's witnesses were not available for that trial term. The time from that call of the list until the next call of the list, September 25, 2018, will therefore be considered against the Commonwealth. Dgien testified that at the time of the September call of the list: Two cases with a later Rule 600 date than Defendant were scheduled; It is unclear whether the now consolidated cases could have been tried during that time; and The Commonwealth had not asked for any continuances. This time shall not run against the Commonwealth because when "a trial-ready prosecutor must wait several months due to a court calendar, the time should be treated as 'delay' for which the Commonwealth is not accountable," and the Commonwealth's actions did not create the delay. *Mills*, 162 A.3d at 325. Therefore the period of time from September 25, 2018 to January 15, 2019, one hundred twelve (112) days, shall be excludable time. Defendant's mechanical run date at that time was March 8, 2019. Similarly, Dgien testified that no cases with a Rule 600 date later than Defendant's were called for trial at the January call of the list.⁷ At that call of the list, this

⁷ With the exception of a one day non-jury trial, but Defendant needs a full day jury trial.

Court also granted a continuance for both Defendant and co-defendant's cases over the objection of the Commonwealth and the Defendant till the March 12, 2019 call of the list. This time similarly would not be attributable to the Commonwealth. Therefore that time, fifty-six (56) days, would put Defendant's mechanical run date at May 3, 2019.

ORDER

AND NOW, this _____ day of March, 2019, based upon the foregoing Opinion, Defendant's Motion for Dismissal Pursuant to Pursuant to Pa. R. Crim. P. 600 is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (ND)
PD (MW)