

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No's. CR-679-2019
vs. : CR-1583-2018
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JOEL KIESSLING, :
Defendant : Motion to Dismiss

OPINION AND ORDER

Before the Court is Defendant's Motion to Dismiss both Informations against him for alleged violations of his rights to a speedy trial under the Sixth Amendment to the United States Constitution.

Under Information No. 1583-2018, the defendant was charged by criminal complaint filed on October 9, 2018 with unlawful contact with a minor and numerous other offenses. He waived his preliminary hearing and his arraignment was scheduled for November 5, 2018. Through counsel, he waived his arraignment and was scheduled for a guilty plea on December 21, 2018. The December 21, 2018 guilty plea was continued at Defendant's request via his counsel to March 22, 2019. On March 22, 2019, at defense counsel's request, the case was removed from the guilty plea list and placed on the trial list with call of the list scheduled for August 13, 2019.

Under Case No. 679-2019, Defendant was charged by criminal complaint filed on April 22, 2019 with 35 separate counts of possession of child pornography. Defendant waived his preliminary hearing and his court arraignment was scheduled for June 3, 2019. Defendant, through counsel, waived his arraignment and the case was scheduled for a guilty plea on July 16, 2019. Upon motion of the defendant through his counsel, his guilty plea hearing was continued to September 13, 2019.

Upon request of the defendant through counsel, both cases were continued to an October 16, 2019 “disposition.” On October 16, 2019 upon motion of the defendant, through counsel, both cases were placed on the pretrial list with call of the list scheduled for January 14, 2020.

Pending the call of the list in January 2020, defense counsel filed a petition to withdraw as counsel. This petition was filed on November 13, 2019. By Order of Court dated December 2, 2019 following a hearing, the court granted counsel’s motion to withdraw and appointed Defendant’s present counsel to represent him.

On January 14, 2020, Defendant, through newly appointed counsel, was granted a continuance on both cases to the call of the list scheduled for March 27, 2020.

By Order of Court dated March 16, 2020, pursuant to the Supreme Court’s Order declaring a judicial emergency and the President Judge of Lycoming County’s Order also declaring a judicial emergency, all in response to the Coronavirus pandemic (COVID-19), the court continued the cases to the call of the list scheduled for May 29, 2020. By Order of Court dated May 15, 2020, again pursuant to the continuing judicial emergency, the cases were continued to the call of the list on August 7, 2020.

Pending the August 7, 2020 call of the list, defendant filed his motion to dismiss on May 18, 2020. The court held a hearing on this motion on June 25, 2020.

Defendant asserts in his motion that, among other things, his prior counsel did not discuss with him whether his cases would be continued, that he did not agree to any continuances, that he was never present in court for any continuances and that the continuances should not be attributed to him. (Motion to Dismiss, ¶¶ 7, 8, 9).

Beginning in May of 2019, Defendant filed and/or submitted numerous pro se motions/requests to the court. As early as May 14, 2019, however, an Order of Court advised Defendant that because counsel represented him, the court would not take any action on Defendant's pro se requests. Subsequently, Defendant received similar no action orders dated June 20, 2019, July 16, 2019, July 29, 2019, September 19, 2019, September 27, 2019, and November 21, 2019. He also received two separate Orders regarding requests for relief with respect to allegations against the Lycoming County Prison, both of which were denied because defendant failed to exhaust his administrative remedies.

Defendant argues that his constitutional rights to a speedy trial were violated. In determining whether Defendant's claim has merit, the court must address four factors as follows:

- (1) Whether the pretrial delay was uncommonly long;
- (2) Whether the government or the criminal defendant is more to blame for that delay;
- (3) Whether, in due course, the defendant asserted his right to a speedy trial; and
- (4) Whether the defendant suffered prejudice because of the delay.

Commonwealth v. DeBlase, 542 Pa. 22, 32, 665 A.2d 427, 432 (1995), citing *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 2193-94 (1984).

A finding in a defendant's favor of any one of these four factors, standing alone, does not constitute a speedy trial violation. *DeBlase, id.* at 32. Rather, each of the four

factors are related and each must be weighed carefully in the court's evaluation of a criminal defendant's claim that his speedy trial rights were violated. *Id.*

Preliminarily, however, under the above-referenced standard, the court must first examine the threshold question of whether the delay itself is sufficient to trigger further inquiry; if so, the court then balances the length of delay with the reason for the delay, the defendant's timely assertion of his right to a speedy trial, and any resulting prejudice to the interest protected by the right to a speedy trial. *Commonwealth v. Miskovitch*, 64 A.3d 672, 679 (Pa. Super. 2013).

The court cannot conclude that the length of the delay in either case was uncommonly long sufficient to trigger further inquiry. The time between the filing of the complaint in case 1583-2018 until Defendant filed his motion to dismiss was 587 days or 19 months, 9 days. The time between the filing of the complaint in case 679-2019 until Defendant filed his motion to dismiss was 392 days or 12 months, 26 days. However, even if the delay was sufficient to trigger further inquiry, the reason for the delay weighs against Defendant.

The delay in this case was a result of three factors. First, Defendant's prior counsel requested the continuances. While Defendant argues that he was not aware of and did not consent to these continuances, the actions of counsel are imputed Defendant and he is bound thereby. *Commonwealth v. Wells*, 513 Pa. 463, 469, 521 A.2d 1388, 1391 (1987). Continuances are a matter of sound trial strategy within the reasonable purview of counsel. *Wells, Id.* at 1392. Trial counsel, at times, may be in a position to make strategic or tactical decisions for his client concerning the start of trial. *Wells* at 1391. There is no reason why

counsel cannot exercise his discretion, weigh the alternatives available and make an intentional informed choice for his client. *Wells* at 1391.

The second reason for the delay is also attributable to Defendant through his present counsel, who also requested continuances. She too, had the discretion to request continuances. Moreover, Defendant was aware of and assented to the continuance requests of current counsel.

The third reason for the continuance lies in the COVID-19 pandemic. The judicial emergency declared by the Pennsylvania Supreme Court as well as the Court of Common Pleas of Lycoming County and every other judicial district in the Commonwealth should not and will not reap a reward on a defendant by providing a basis for dismissal. Indeed, the delay was wholly justifiable in the interest of public health and safety and not at all caused by the prosecution. See for example, *DeBlase, Id.*

As to whether Defendant asserted his right to a speedy trial, Defendant did not file his motion until May 18, 2020. In approximately ten letters submitted to the court, Defendant never asserted any speedy trial claim. Defendant asserted many other claims related to *Brady* material, discovery, evidence, Rule 600 and vague constitutional claims but he never once referenced speedy trial claims. This factor too weighs in favor of the Commonwealth.

Finally, the court must consider prejudice. The court notes that Defendant's constant pro se motions clogged the machinery of justice despite the court advising Defendant on numerous occasions that he had no right to hybrid representation. This, along with defense counsel's continuances, belie Defendant's claim that he was unduly prejudiced

simply by the length of the delay that occurred in the case.

As for more specific claims of prejudice, Defendant argues that he has health issues that he is “probable at risk for COVID-19”, that his mother passed away in February and that certain items were requested by the police to be returned to his mother. He could not specify, however, how these issues caused him specific prejudice in connection with this case. Moreover, he could not attribute such issues to the Commonwealth.

The Commonwealth did not violate Defendant’s speedy trial rights in this case. The delay was not extraordinary and any delay was solely due to defense counsels’ requests and/or the COVID-19 pandemic. In weighing the relevant factors, all weigh against Defendant.

ORDER

AND NOW, this ____ day of August 2020 following a hearing and argument on Defendant’s Motion to Dismiss, said Motion to Dismiss is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

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Work File
CR-1583-18