

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-645-2020
v.	:	
	:	
ARNOLD OVERTON CAVANAUGH,	:	NOMINAL BAIL PURSUANT
Defendant	:	TO RULE 600

OPINION AND ORDER

Arnold Cavanaugh (Defendant) filed a Nominal Bail Motion on July 1, 2021. This Court held a hearing on the motion on July 23rd and July 26, 2021.

Background and Procedural History

Under docket number CR-645-2020, Defendant is charged with Count 1, Possession with Intent to Deliver, an ungraded felony; Count 2, Possession of a Controlled Substance, an ungraded misdemeanor; and Count 3, Possession of Drug Paraphernalia, also an ungraded misdemeanor. The charges arise out of an alleged course of events occurring on May 21, 2020. An arrest warrant was issued for Defendant on May 22, 2020, and he was arraigned on the charges on that same date. The criminal complaint against Defendant was filed on May 22nd. Defendant has been incarcerated continuously since May 22nd because he has been unable to post the bail set by Magisterial District Judge Christian Frey. As of the date of the nominal bail hearing that was held July 23, 2021, Defendant was incarcerated for 429 calendar days.

Discussion

Pennsylvania Rule of Criminal Procedure 600 provides that no Defendant shall be held in pretrial incarceration in excess of 180 days from the day on which the complaint is filed. Pa.R.Crim.P. 600(B). For purposes of paragraph (B), only periods of delay caused by the Defendant shall be excluded from the computation of the length of time of any pretrial

incarceration. Any other periods of time shall be included in the computation of pretrial incarceration. Pa.R.Crim.P. 600(C).

When a defendant or the defense has been instrumental in causing the delay, the period of delay will be excluded from the computation. The following time must be excluded from the computation:

- (1) The period of time between the filing of the written complaint and the defendant's arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence;
- (2) Any period of time for which the defendant expressly waives Rule 600;
- (3) Such period of delay at any state of the proceedings as results from either the unavailability of the defendant or the defendant's attorney or any continuance granted at the request of the defendant or the defendant's attorney.

For periods of delay that result from the filing and litigation of omnibus pretrial motions for relief or other motions, see *Commonwealth v. Hill* and *Commonwealth v. Cornell*, 448 Pa. 238, 736 A.2d 578 (1999) (the mere filing of a pretrial motion does not automatically render defendant unavailable; only unavailable if delay in commencement of trial is caused by filing pretrial motion).

Comment, Pa.R.Crim.P. 600. Although no Omnibus pretrial motions were filed by counsel in this case, Defense Counsel requested a continuance for the trial term served by the September 22, 2020 pretrial conferences and was continued to the next pretrial date of December 17, 2020, which moved the case to the January 2021 trial term. The case is currently awaiting trial and the jury is scheduled to be selected during the week of October 4, 2021.

Applying the relevant provisions of Rule 600, the Court finds that the time from one trial term to the other is excludable time. The Court calculates that time to be eighty-seven (87) days since the case was not available to be tried during that time. However, as a result of the pandemic, much of the time the Defendant has been incarcerated cannot be included for Rule 600 purposes pursuant to orders issued by both the Pennsylvania Supreme Court as well as

administrative orders by Lycoming County, during which time Rule 600 along with other rules of criminal procedure were suspended. The specific timeframes covered by those orders as a result of the COVID-19 pandemic applicable to this case are May 22, 2020 through June 28, 2020 and July 2, 2020 through May 13, 2021. Therefore, it would appear the only period of time that has run for Rule 600 nominal bail purposes is from June 28, 2020 to July 2, 2020, five (5) days, and May 13, 2021 through July 1, 2021, fifty (50) days, which is a total of fifty-five (55) days. Since the Defendant's incarceration has not exceeded 180 days, Defendant's motion must fail.

ORDER

AND NOW, this 1st day of October, 2021, based upon the foregoing Opinion, Defendant's Motion for Nominal Bail is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
Andrea Pulizzi, Esq.
Law Clerk (JH)