

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1675-2021  
vs. :  
DANIEL MILLER, : **Opinion and Order regarding**  
Defendant : **Defendant's Motion to Modify Bail**  
 : **Pursuant to Rule 600(B)(1)**

**OPINION AND ORDER**

Defendant filed this Motion to Modify Bail Pursuant to Rule 600 on June 27, 2022, alleging that he was arraigned and has been incarcerated at the Lycoming County Prison since December 2, 2021. Defendant waived his formal arraignment on January 20, 2022, and was placed on the trial list. Defendant alleges as a result of the Commonwealth's failure to exercise due diligence he has been incarcerated for over 180 days since the case was initiated and requests the Court release him on nominal bail pursuant to Pa.R.Crim.P. 600(B)(1).

The Court heard argument on July 22, 2022, at which time the Defendant participated via Polycom and was represented by Howard Gold, Esquire, and Matthew Welickovitch, Esquire, appeared on behalf of the Commonwealth. The Commonwealth conceded that the Defendant has been incarcerated for more than 180 days since the case was initiated, but strongly objected to the allegations that the Commonwealth failed to exercise due diligence, indicating that the Commonwealth had requested no continuances or caused any delays and, in fact, the matter is ready to be tried. Despite the Commonwealth's acknowledgment that the Defendant has been incarcerated in excess of 180 days prior to the commencement of his trial, the Commonwealth argued that bail is not appropriate for the Defendant.

Pa.R.Crim.P. 600(B)(1) states "[e]xcept in cases in which the defendant is not entitled to release on bail as provided by law, no defendant shall be held in pretrial incarceration in

excess of 180 days from the date on which the complaint is filed.” The remedy for a defendant who is held in pretrial incarceration beyond the time set forth in Pa.R.Crim.P. 600(B) is to file a written motion requesting that the defendant be released immediately on nominal bail subject to any nonmonetary conditions of bail imposed by the court as permitted by law. Pa.R.Crim.P. 600(D)(2).

The comment to Pa.R.Crim.P. 600 indicates “Defendants who would not be released on bail based on Article I, Section 14 of the Pennsylvania Constitution are not eligible for release under paragraph (D)(2) of this rule.” *See, e.g. Commonwealth v. Sloan* 907 A.2d 460, 467, n.10 (2006); *Commonwealth v. Jones*, 899 A.3d 353 (Pa. Super. 2006). Article I, Section 14 of the Pennsylvania Constitution provides, *inter alia*, that “[a]ll prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment *or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great.*” (emphasis added).

The Defendant in this case is charged with attempted murder, strangulation, aggravated assault against both the victim and a law enforcement officer, burglary, terroristic threats, recklessly endangering another person, simple assault, resisting arrest, and criminal trespass. At the time of his arrest, there was an active Protection from Abuse Order in effect against the Defendant in which the victim was a protected party. According to the Affidavit of Probable Cause, the victim broke through the back door, chased the victim upstairs, and threatened to kill everyone who tried to stop him with the kitchen knife and pizza cutter in his hand. Four children were in the residence at the time the Defendant allegedly entered, and fled the premises due to the altercation. The Defendant allegedly struck the first police

officer to arrive on the scene multiple times with a closed fist and attempted to disarm him of his taser. The victim was found to be unconscious and, although she had a pulse, her breathing sounded like she was wheezing and her neck and jaw were stiff. The victim was transported by ambulance to the Williamsport Hospital where she required life support treatment.

At the time of the incident, there was an active Protection from Abuse Order in place against the Defendant which evicted and excluded him from the residence where the incident took place and prohibited the Defendant from having any contact with the victim. Multiple other adults in the home at the time of the incident were unsuccessful in restraining the Defendant due to his threats and violent actions. The Defendant physically resisted as law enforcement officers attempted to handcuff him and allegedly struck one of the officers several times. The Defendant's blatant disregard for Court Orders previously in place to protect the victim, as well as his apparent apathy towards authority figures causes the Court great concern about the Defendant's willingness and/or ability to adhere to any exclusion zones or prohibitions on contact that would be implemented by the Bail Release Office for the protection of the victim and the community should he be granted nominal bail.

The Court finds, given the serious nature of the charges against the Defendant and the circumstances surrounding the incident, there is no condition or combination of conditions other than imprisonment that will reasonably assure the safety of the victim and the community. Accordingly, the provision of Article I, Section 14 of the Pennsylvania Constitution which indicates that prisoners for whom there are no conditions other than imprisonment which will reasonably assure the safety of the victim and the community are not bailable trumps the requirement that defendants who are held in pretrial incarceration for

more than 180 days from the date the complaint is filed be released on nominal bail. Though there is no dispute that the Defendant has been incarcerated more than 180 days since the complaint was filed and still has not been brought to trial, this Court finds that the presumption is great that the safety of the victim and the community cannot be reasonably assured by any combination of conditions imposed by the Bail Release Office should the Defendant be released on nominal bail.

**ORDER**

**AND NOW**, this 2<sup>nd</sup> day of August 2022, upon consideration of Defendant's Motion to Modify Bail Pursuant to Rule 600 and for the reasons set forth above, Defendant's motion is hereby **DENIED**.

By the Court,

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Ryan M. Tira, Judge

cc: DA (MW)  
Howard Gold, Esquire  
Gary Weber, Esquire  
Jennifer Linn, Esquire