

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-998-2021
v.	:	
	:	
DAVID SEWELL,	:	NOMINAL BAIL PURSUANT
Defendant	:	TO RULE 600

OPINION AND ORDER

David Sewell (Defendant) filed a Nominal Bail Motion on February 14, 2022. This Court held a hearing on the motion on March 7, 2022. For the following reasons Defendant’s motion is granted.

Background and Procedural History

Under docket number CR-998-2021, Defendant is charged with Count 1, Statutory Sexual Assault¹, a felony one; Count 2, Aggravated Indecent Assault², a felony two; Count 3, Indecent Assault³, a misdemeanor two; Count 4, Involuntary Deviate Sexual Intercourse⁴, a felony one; and count 5, Corruption of Minors⁵, a felony three. The charges arise out of an alleged course of events occurring on July 24, 2021 at the Econolodge in Loyalsock Township, Lycoming County. An arrest warrant was issued for Defendant and he was arraigned on the charges on that same date without bail being set by the Magisterial District Judge Gary Whiteman. At the time of his arrest Defendant was a lifetime registrant under SORNA as a result of his conviction by plea in 2010 to Involuntary Deviate Sexual Intercourse in Philadelphia County. Defendant waived his preliminary hearing on August 2, 2021 and his

¹ 18 Pa. C.S.A. § 3122.1(b).
² 18 Pa. C.S.A. § 3125 (a)(8).
³ 18 Pa. C.S.A. § 3126 (A)(8).
⁴ 18 Pa. C.S.A. § 3123 (A)(7).
⁵ 18 Pa. C.S.A. § 6301 (a)(1)(ii).

formal court arraignment on August 23, 2021. This Court granted the Defendant's request to set bail on August 24, 2021 at \$250,000.00 good bail. Defendant has been incarcerated continuously since July 24, 2021 because he has been unable to post the bail set by this Court. As of the date of the filing of the Rule 600 bail motion on February 14th, the Defendant has been incarcerated for 206 days.

Discussion

“Except 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.” Pa.R.Crim.P. 600(B)(1). At any time when a defendant is incarcerated beyond the time set forth under Pa.R.Crim.P. 600(B), “the defendant's attorney, or the defendant if unrepresented, may 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). When evaluating a motion for release on nominal bail pursuant to Rule 600, “only periods of delay caused by the defendant shall be excluded from the computation...Any other periods of delay shall be included in the computation.” Pa.R.Crim.P. 600(C)(2). Neither the Defendant nor the Commonwealth has caused any delay in the prosecution of this case. Therefore, Defendant has been held in excess of the 180 days as proscribed by law and is eligible for nominal bail.

However, since the Defendant is a lifetime registrant and charged with a similar sex offense, to allow the Defendant to be released without some additional accountability would not be appropriate. Rule 600(E) states that mandatory remedy of nominal release after 180 days of incarceration is not the same as unconditional release. Pa.R.Crim.P. 600 (E). Release may be conditioned on terms that not only give adequate assurance that the accused will appear for

trial, but also assures that victims, witnesses, and the community will be protected. Rule 600 (E) permits a trial court to impose non-monetary conditions, such as house arrest and electronic monitoring. *Commonwealth v. Sloan*, 907 A.2d 460 (Pa. 2006). Although the Defendant will be released without the posting of bail, he shall be placed onto the Intensive Supervised Bail with a specific exclusion zone for the maximum protection of the victim. The Defendant shall be precluded from any direct or indirect contact with the victim as well.

ORDER

AND NOW, this 16th day of March, 2022, based upon the foregoing Opinion, Defendant's Motion for Nominal Bail is hereby **GRANTED**. Defendant will be released without the posting of bail pursuant to Rule 600(E) and he shall be placed onto the Intensive Supervised Bail program with a specific exclusion zone for the maximum protection of the victim. The Defendant shall also be precluded from any direct or indirect contact with the victim.

By the Court,

Nancy L. Butts, President Judge

cc: DA
Tyler Calkins, Esq.
Harry Rogers, SB Coordinator