

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : **CP-41-CR-541-2021**
 :
 :
 GABRIEL STRANO, : **RULE 600 DISMISSAL**
 Defendant :

OPINION AND ORDER

Gabriel Strano (Defendant) filed a Motion to Dismiss Pursuant to Rule 600 on July 15, 2022. A hearing on the Motion was held on August 1, 2022. At the hearing, Deputy Court Administrator April McDonald (McDonald) and First Assistant District Attorney Martin Wade (Wade) testified on behalf of the Commonwealth. For the following reasons, Defendant’s Motion is denied. However, the defendant’s oral motion for release on Rule 600B bail is, without objection from the Commonwealth, granted and a separate order has been issued.

Discussion

Defendant contends that the charges against him must be dismissed for the violation of his rights to a speedy trial pursuant to Rule 600. “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. 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 and “[a]ny other periods of delay shall be excluded from the computation.” Pa. R. Crim. P. 600(C)(1). When determining whether a violation of Rule 600 occurred, two important functions must be weighed: “the

protection of the accused's speedy trial rights, and the protection of society. In determining whether an accused's right to a speedy trial has been violated, consideration must be given to society's right to effective prosecution of criminal cases, both to restrain those guilty of crime and to deter those contemplating it.” *Commonwealth v. Moore*, 214 A.3d 244, 248 (Pa. Super. 2019). “Excludable time is classified as periods of delay caused by the defendant,” whereas “[e]xcusable delay occurs where the delay is caused by circumstances beyond the Commonwealth's control and despite its due diligence.” *Id.* at 249. Neither excludable nor excusable time counts towards a defendant’s Motion to Dismiss pursuant to Rule 600. *Id.* “[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.*

The Court will first determine any excludable time. Defendant’s criminal complaint was filed on March 31, 2021 charging Defendant with Aggravated Assault¹ and related crimes. The mechanical run date is the date by which the trial must commence by adding 365 days to the date the complaint was filed. *Commonwealth v. Ramos*, 936 A.2d 1097, 1102 (Pa. Super. 2007). Therefore, Defendant’s initial mechanical run date was March 31, 2022. Defendant’s preliminary hearing was initially scheduled for April 8, 2021 but was continued by MDJ Biichle until April 22, 2022. Defendant’s mechanical run date therefore is adjusted fifteen (15) days to April 15, 2022 as the delay can be properly attributed to the MDJ Court at no fault of the Commonwealth. At the time the charges were filed there was still a local administrative order suspending the rules of Criminal Procedure. *See* Administrative Order of

¹ 18 Pa. C.S. § 2702(a)(3).

Lycoming County dated March 11, 2021. That time is calculated to be 44 days from March 31, 2021 until May 13, 2021. Therefore adding 59 days to his run date or his Rule 600 date is May 14, 2022.

The Commonwealth now has the burden to demonstrate “due diligence” to determine what amount of time, if any, can be determined to be excusable delay. The First Assistant District Attorney Martin Wade (Wade) testified on behalf of the Commonwealth at the hearing on this motion. He described the process of computing Rule 600 dates for the Court Administrator’s office, but it is Court Administration that chooses the cases that are brought to trial. N.T. 8/1/2022, at 6. Wade also testified that there could be a time when the DA’s Office ask a case to be advanced ahead of those listed for jury selection on a given trial term, but he was unable to cite one during the trial terms the Defendant’s case was listed. Id. He stated that a case from the Attorney General’s office was brought to trial before cases which had an older rule 600 date and that their office had nothing to do with that selection. Id. at 9. Wade’s position is that if a case is ready to go and is not reached during a trial term, the time between jury selections is excusable time and therefore does not factor into the overall rule 600 date. Commonwealth’s Exhibits #1-9 are lists sent by email of the case rule 600 calculation provided by Wade. The Commonwealth’s exhibits establish that the Defendant’s case number is on the overall trial list at each time for jury selection.

April McDonald (McDonald), Deputy Court Administrator for Lycoming County, also testified at the hearing on this motion. She testified that she does not calculate rule 600 dates and that the Commonwealth provides them to her. Id. at 18. She receives emails from the Commonwealth and schedules the jury selections for trials based on the charts provided by the Commonwealth. Id. She further testified that she “just goes down through rule 600

starting at one and puts them on the jury selection chart for that week”. Id. at 19. She further testified that the availability of both the Commonwealth witnesses and defense counsel is a factor in listing the cases for jury selection. This information regarding availability is provided to the court administrators office from both parties. While defense counsel did not provide any unavailability for this particular case, the Commonwealth had a few individual dates but not extended periods of time which would have precluded the case from going to trial in a given term. Id. at 20. She also described the jury selection process. “As a result of the pandemic, we've limited the courtrooms that we select in because we are attempting to use the largest courtrooms for COVID restrictions.” Id. at 20. During a given trial term, only two courtrooms actually participate in the selection and while there were three judges available to select juries, other court matters had to be held despite the need to select juries for a given trial term. Id. at 22. McDonald stated that the jury selection process moved more quickly pre-COVID because not only did we have more judges but we were selecting more juries in a given day. Id. at 24. She also indicated that she does not foresee Court Administration lifting the COVID restrictions for selection. Id.

Commonwealth’s Exhibits #1-9 are lists sent by email of the case Rule 600 calculation provided by Wade. The Commonwealth’s exhibits establish that the Defendant’s case number is on the overall trial list. The Courts held trials several times during calendar years 2021-2022. A District Attorney’s office trial with a Rule 600 date later than Defendant’s case was never held. Additionally, Defendant’s Rule 600 date was later than other cases that were proceeding to jury selection. Regardless of whether the Rule 600 dates of all the cases were completely accurate, there was a system in place established between the Commonwealth and Court Administration to list the cases and bring the cases to trial based

on Rule 600. The Commonwealth did not request that Defendant's case be continued, and the determination of what cases were selected was based on Rule 600. Therefore, since the delay in bringing the Defendant's case is due to the number of days available for trial and the number of cases ahead of his which are scheduled for trial outside of the Commonwealth's control, and the Commonwealth has been ready for trial, any delay is not attributable to the Commonwealth and Defendant's rights under Pa. R. Crim. P. 600(A)(2)(a) have not been violated, and the case will not be dismissed.

ORDER

AND NOW, this 4th day of October, 2022, based upon the foregoing Opinion, Defendant's Motion for Dismissal Pursuant to Pursuant to Pa. R. Crim. P. 600 A(2) is hereby **DISMISSED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (TB)
Christian Lovecchio, Esq.
April McDonald, Dep. Ct. Administrator