

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-635-2021
	:
vs.	:
	: Opinion and Order re
JAMES JARUCE THOMAS,	: Defendant's Motion to Dismiss
Defendant	: Pursuant to Rule 600

OPINION AND ORDER

On April 20, 2021, Officer Christopher Salisbury of the Williamsport Bureau of Police filed a criminal complaint against James Jaruce Thomas ("Defendant"), charging him with one count of sexual assault pursuant to 18 Pa.C.S. §3124.1. The Defendant was arrested on that date and his bail was set at \$250,000. The Defendant has remained incarcerated since his arrest.

On January 19, 2023, Defendant filed a Motion to Dismiss with prejudice pursuant to Rule 600, Article 1 Section 9 of the Pennsylvania Constitution, and the Sixth and Fourteenth Amendments of the United States Constitution. A hearing was held on February 14, 2023. At the hearing, the Commonwealth presented two witnesses and multiple exhibits.

Martin Wade testified that he is the First Assistant District Attorney, and he calculates, adjusts and tracks Rule 600 for all the cases on the pretrial list. He compiles a chart and provides it to the Deputy Court Administrator (DCA), April McDonald, to assist her in scheduling criminal trials. He starts his calculations with the filing of the criminal complaint and counts forward 365 days. He keeps notes on different events that take place during the life of the case such as the preliminary hearing, pretrial conferences, and status conferences. He then excludes defense continuance requests, Commonwealth continuance requests that the defense indicates its concurrence, administrative orders regarding the

pandemic, and omnibus pretrial motions filed by a defendant. He also considers excusable delay where the Commonwealth was unable to select a jury because the case was not given a jury selection date by the DCA. Mr. Wade calculates the adjusted Rule 600 date for each case on the trial list and submits them to the DCA, who schedules the trials. Mr. Wade testified that he asks for criminal jury selections to be held instead of civil jury selections due to the backlog of cases, as well as requesting that additional judges be made available for jury selections and other proceedings be delayed due to the time-sensitive nature of criminal trials. Mr. Wade testified that in 2022, there were jury selections for one week every couple of months. However, in 2023, there are jury selections every month in an effort to reduce the backlog of cases. The Commonwealth introduced the jury selection charts for the period of January 9, 2023 through March 22, 2023. (Commonwealth Exhibits 4-10).

The criminal complaint was filed in this case on April 20, 2021. At that time, there was an administrative order in Lycoming County which suspended the statewide rules regarding speedy trials due to the pandemic. This resulted in excludable time from the filing of the criminal complaint through and including May 31, 2021.

Mr. Wade also testified that there would be excludable time due to extensions of time to file an omnibus pre-trial motion, the filing of a Motion for Writ of Habeas Corpus, and other continuance requests either at the Defendant's request or without objection by the defense. The Commonwealth argued that, at a minimum, the Defendant's Rule 600 date did not start running until January 10, 2022, which is the first time the Defendant could be called to trial.

After the December 2021 pretrial conferences, Mr. Wade prepared a spreadsheet of

adjusted Rule 600 dates for the 272 cases on the list of potential trials for the January/February 2022 trial term. At that time, Defendant's case was #231 of 272. At that time Mr. Wade calculated the Defendant's adjusted Rule 600 date to be October 14, 2022. See Commonwealth Exhibit 1.

In advance of the April 2022 jury selection, Mr. Wade's spreadsheet indicated that the Defendant's case was #263 of 307 cases and his adjusted Rule 600 date was January 5, 2023. Mr. Wade added the delay between January and April as excusable delay because, although the Commonwealth was ready for trial, Defendant's case was not given a jury selection date in January due to its position on the list. See Commonwealth Exhibit 2.

Following the December 2022 pretrials, Mr. Wade's spreadsheet indicated that the Defendant's case was #233 of 284 cases and his adjusted Rule 600 date was calculated to be November 16, 2023. Mr. Wade added the delay between April and December as excusable delay because, although the Commonwealth was ready for trial, Defendant's case was not given a jury selection date in prior trial terms due to its position on the list. See Commonwealth Exhibit 3.

Mr. Wade testified that the District Attorney's office does not decide which cases go on the jury selection charts, as it is the duty of the Deputy Court Administrator to create the jury selection chart based upon the spreadsheet he provides with adjusted Rule 600 dates. Mr. Wade testified that he reviewed all the selection charts for January and February 2023 jury selections and the Defendant was not listed as a primary or backup pick, nor was the Defendant listed on the March 2023 selection list due to his position on the list, due to the number of cases having earlier Rule 600 run dates.

Mr. Wade admitted on cross-examination that the Defendant's Rule 600 date has been expanded by approximately one year. He explained that the Commonwealth was ready for trial and made efforts to schedule this case for trial but it was not given a jury selection date so the time was excusable.

April McDonald testified that she has been the DCA since August of 2021. As DCA, she manages handles the criminal and civil case management. She determines the jury selection dates, and schedules trials in criminal cases. When she receives the Rule 600 lists from Mr. Wade she puts cases on the jury selection chart according to how many judges are picking juries for that particular term. Ms. McDonald indicated whichever cases have the earliest Rule 600 dates are listed on the selection charts but that she must take into account the availability of counsel, the affiant, the victim, and witnesses. Ms. McDonald confirmed that in 2023 instead of having jury selection every couple months, jury selection is scheduled approximately every other week in order to relieve the backlog and get more cases tried. Additionally, Mr. Wade has requested additional time for jury selection and criminal trials, and that criminal trials be given precedence over civil trials.

Following the close of the evidence, defense counsel argued that the charges should be dismissed. He stated that the way the District Attorney's office calculates the adjusted Rule 600 date is an affront to the rule, especially in light of the fact that the Defendant's case had been on the trial list for 11 months with no continuance requests. Defense counsel argued that, if the Commonwealth is permitted to keep using its excusable delay theory, this case and other cases like it will continue to be pushed back into perpetuity.

The Commonwealth argued that the motion should be dismissed because Mr. Wade

based his calculations of excludable time and excusable time based on appellate case law.

The Commonwealth further argued that the cases ahead of the Defendant on the Rule 600 list had their cases commenced after the Covid 19 suspensions ended, and therefore those cases did not have excusable time. The Commonwealth argued it has exercised due diligence in bringing this case to trial, and its calculations are supported by case law.

DISCUSSION

“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). “For purposes of paragraph (A), periods of delay at any stage of the proceedings caused by the Commonwealth when the Commonwealth has failed to exercise due diligence shall be included in the computation of the time within which trial must commence. Any other periods of delay shall be excluded from the computation.”

Pa.R.Crim.P. 600(C)(1). “When a defendant has not been brought to trial within the time periods set forth in paragraph (A), at any time before trial, the defendant's attorney, or the defendant if unrepresented, 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).

The Commonwealth bears the burden of proving by a preponderance of the evidence that it exercised due diligence. *Commonwealth v. Plowden*, 157 A.3d 933, 941 (Pa. Super. 2017)(en banc), *appeal denied*, 170 A.3d 574 (Pa. 2017). Due diligence is fact-specific, to be determined case-by-case; it does not require perfect vigilance and punctilious care, but merely a showing the Commonwealth has put forth a reasonable effort. *Id.* Reasonable effort

includes such actions as the Commonwealth listing the case for trial prior to the run date to ensure that the defendant is brought to trial within the time presented by Rule 600 and having a system of tracking the Rule 600 deadline for its cases. *See Commonwealth v. Jones*, 886 A.2d 689, 700 (Pa. Super. 2005); *Commonwealth v. Hunt*, 858 A.3d 1234, 1242 (Pa. Super. 2004)(en banc), *appeal denied*, 875 A.2d 1073 (Pa. 2005). “The matters of availability and due diligence must be judged by what was done by the authorities rather than by what was not done.” *Jones*, 886 A.2d at 701.

Excludable time is delay that is attributable to the defendant or his or her attorney, and “excusable delay” is delay that occurs as a result of circumstances beyond the Commonwealth’s control and despite its due diligence. *See id.* at 700; *Commonwealth v. Ramos*, 936 A.2d 1097, 1102 (Pa. Super. 2007). Excusable time includes time attributable to judicial delay as a result of a crowded docket, provided the Commonwealth has exercised due diligence. *See Commonwealth v. Harth*, 252 A.3d 600 (Pa. 2021). Time during the COVID-19 pandemic when the statewide prompt trial rules were suspended is excludable time. *Commonwealth v. Carl*, 276 A.3d 743 (Pa. Super. 2022).

The criminal complaint was filed on April 20, 2021. Adding 365 days to April 20, 2021 yields a mechanical run date of April 20, 2022. From April 20, 2021, through May 31, 2021, however, the statewide prompt trial rules (e.g., Rule 600) were suspended in Lycoming County.¹ Therefore, the 41 days between April 20, 2021, and May 31, 2021 are excludable

¹ The administrative orders covering the judicial emergency due to the pandemic were dated August 6, 2020; September 17, 2020; December 4, 2020; January 27, 2021; March 11, 2021; and May 11, 2021. Paragraph 2b of these orders stated: “The following **statewide rules are suspended**:...b. Rules pertaining to the rule-based right of criminal defendants to a prompt trial.

time. *Commonwealth v. Carl*, 276 A.3d 743 (Pa. Super. 2022). Additionally, there were several delays attributable to the Defendant, including multiple stipulations to extend the time for filing an omnibus pretrial motion, the continuances requested while a decision on the Defendant's Habeas Motion was pending, and several requests to continue the matter until the next trial term, made at the request of the Defendant without objection from the Commonwealth. After a pretrial conference on December 13, 2021, an Order was entered which indicated that the matter shall remain on the trial list. Therefore, the Court finds the time from the date the complaint was filed until the first day of jury selection in January 2022 was excludable.

With regard to the time between January 10, 2022, (the first day the Defendant's case could have been called to trial) and the filing of the Motion to Dismiss (January 19, 2023), the Commonwealth bears the burden of proving that it exercised due diligence to bring the case to trial within the time limit prescribed by Rule 600. The Commonwealth can show due diligence if cases are properly ordered for submission to the Court for selection. A properly ordered list would make adjustments for one case being delayed by the defense while another is not delayed. For example, a case will have its Rule 600 date extended if the Defendant requests a continuance. This could result in that case "falling behind" another case that was filed after it but where no continuances were requested by the defense. Using this example, the defense could attack the Commonwealth's due diligence by pointing to specific cases that were improperly moved ahead of the Defendant's case and selected for trial despite the Defendant being ready and all necessary participants being available for trial.

In this case, there are several defendants that moved ahead of the Defendant from

one list to another, and this gives the Court pause to consider why. However, the Defendant's counsel has not raised any specific case wherein another defendant was moved ahead of the Defendant from one list to another and actually selected for trial ahead of the Defendant, and therefore the Commonwealth was not afforded the opportunity to reply with an explanation, if any, showing due diligence. Without this, the Court would be speculating as to whether there was a proper or improper reason for other defendants moving ahead of the Defendant in this case. Due to the lack of a clear example of a Rule 600 violation in the ordering of the list by the District Attorney's Office, the Court denies this aspect of the motion.²

Assuming the Commonwealth has properly ordered its Rule 600 list and the Defendant's case is not selected for trial, the Rule 600 date would be adjusted if the reason it was not selected was because the Defendant, his counsel, and all necessary witnesses were not ready or available on the jury selection or trial date or cases with an earlier Rule 600 date were selected. The Rule 600 date would not be adjusted if the Defendant's case was not selected because the Commonwealth was not ready or available on the jury selection or trial date. If the Commonwealth properly ordered the list but a case with a later Rule 600 date was selected for trial over the Defendant's case when the Defendant was ready and available, the Defendant could again challenge the Commonwealth's due diligence. Again, however, rather than presenting a specific case that was lower on the District Attorney's Rule 600 list than the Defendant's case but was selected for trial when Defendant was ready and available, the Defendant merely argues that letting the Commonwealth and Court Administration "get

² It should be noted that the Court is not making a ruling on whether the order in the list with adjusted Rule 600 dates, from which the jury selection list is comprised, is proper but simply finding that the Defendant has failed

away with” how they are calculating Rule 600 allows cases to drag on endlessly. As there was no testimony regarding specific jury selection or trial lists regarding a lower case being selected over the Defendant’s despite all necessary participants being available, the Court would again be speculating on whether or not the Commonwealth failed to exercise due diligence.

The Court did hear testimony that during each of the jury selections in 2022 and 2023, the Commonwealth was ready for trial, but the DCA did not give this case a jury selection date due to the crowded criminal trial list and multiple cases with earlier Rule 600 dates. This Court finds, therefore, the time from January 10, 2022 (the first time the Defendant could be called to trial) until January 13, 2023, (the date of the filing the Motion to Dismiss based on Rule 600), is excusable delay. As the adjusted Rule 600 date had not expired by the date the Motion to Dismiss was filed, and the Defendant failed to provide specific examples of a Rule 600 violation or the Commonwealth’s failure to exercise due diligence in bringing this case to trial, the court will enter the following Order:

ORDER

AND NOW, this 14th day of June, 2023, the Defendant’s Motion to Dismiss With Prejudice Pursuant to Rule 600 is **DENIED**.

to raise a specific example of an alleged violation.

By The Court,

Ryan M. Tira, Judge

cc: Taylor Beucler, Esquire (ADA)
Howard Gold, Esquire (APD)
Jennifer Linn, Esquire
Gary Weber