

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1479-2022
vs. :
LARRY CREIGHTON, :
Defendant :

OPINION AND ORDER

This matter came before the court on April 29, 2024 on the Motion to Dismiss Pursuant to Rule 600 filed on behalf of Defendant, Larry Creighton. For purposes of this issue:

Findings of Fact

1. On October 28, 2022, law enforcement officers filed a criminal complaint against Creighton charging him with various sexual offenses.
2. On April 17, 2023, the court granted a defense continuance request. The case was continued to June 5, 2023 for a pretrial conference.
3. On May 8, 2023, the court entered an order stating that the case would remain on the trial list. It would be listed as a 2-day trial and a date-certain was needed to secure professional witnesses for trial.
4. On August 30, 2023, the assistant public defender withdrew her appearance and current counsel, Matthew Diemer, entered his appearance.
5. On September 18, 2023, defense counsel requested a continuance. The court granted the continuance and rescheduled the case to the first day of jury selection, December 4, 2023. The court noted that time until December 4, 2023 would run against the defense for Rule 600 purposes.

6. On January 5, 2024, the court granted a defense continuance request and continued the case to February 26, 2024.
7. On February 20, 2024, the defense requested another continuance which was granted and the case was continued to March 25, 2024.
8. On March 18, 2024, the court entered an order scheduling this case for jury selection on March 25, 2024 and trial on April 4-5, 2024.
9. On March 21, 2024, counsel for Creighton filed the Motion to Dismiss Pursuant to Rule 600.
10. On March 22, 2023, the defense requested a continuance due to the outstanding motion and the case was continued to April 22, 2024.
11. On April 1, 2024, at the request of the defense, the case was continued to June 17, 2024.

Conclusions of Law

1. April 17, 2023 to May 8, 2023 (21 days) is excludable due to a defense continuance request.¹
2. September 18, 2023 to December 4, 2023 (77 days) is excludable due to a defense continuance request.
3. January 5, 2024 to February 26, 2024 (53 days) is excludable due to a defense continuance request.
4. February 26, 2024 to the filing of the motion on March 21, 2024 (24

¹ Although the continuance order rescheduled this case for a pretrial conference on June 5, 2023, a pretrial conference was held on May 8, 2023. Therefore, the court was conservative and only excluded the time from April 17, 2023 to May 8, 2023, rather than until June 5, 2023.

days) is excludable due to a defense continuance request.²

DISCUSSION

Rule 600 of the Pennsylvania Rules of Criminal Procedure sets forth the time limits for a rule-based right to a speedy trial under Pennsylvania law. Paragraph (A) provides that trial in a court case in which a written complaint is filed shall commence within 365 days from the date on which the complaint is filed. Pa. R. Crim. P. 600 (A)(2)(a). “When a defendant has not been brought to trial within the time limits set forth in paragraph (A), at time prior to 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).

For purposes of calculating the amount of time under paragraph (A), “periods of delay at any stage of the proceedings cause 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).

The court must ascertain the cause of the delay. Defense delay is referred to as excludable delay; other delay outside the control of the Commonwealth is referred to as “excusable” delay. *See Commonwealth v. Ramos*, 936 A.2d 1097, 1102 (Pa. Super. 2007); *Commonwealth v. Hunt*, 858 A.2d 1234, 1241 (Pa. Super. 2004). “Stated in the most general terms, when the Commonwealth cause the delay the Rule 600 clock continues to tick; when

² The continuance request was granted and the case was continued to March 25, 2024, but Creighton’s motion to dismiss was filed on March 21, 2024, which stopped the Rule 600 clock.

the defendant causes the delay, the clock stops.” *Commonwealth v. Barbour*, 189 A.3d 944, 958 (Pa. 2018). Furthermore, a defendant must have a valid Rule 600 claim at the time he files his motion to dismiss charges to be eligible for relief. *Commonwealth v. Jones*, 886 A.2d 689, 699 (Pa. Super. 2005), citing *Commonwealth v. Brown*, 875 A.2d 1128, 1134 (Pa. Super. 2005).

“Any delay caused by the need to reschedule a trial because of a continuance attributable to the defense constitutes excludable time....” *Commonwealth v. Aaron*, 804 A.2d 39, 43 (Pa. Super. 2002). Counsel can request continuances on behalf of Defendant, and Defendant is bound by the actions of his counsel. See *Commonwealth v. Wells*, 513 Pa. 463, 521 A.2d 1388, 1391 (1987)(“trial counsel may, at times, be in a position to make strategic or tactical decisions for his client concerning the start of trial. While such decisions may implicate the requirements of Rule 1100, we see no reason why counsel cannot exercise his discretion, weigh the alternatives available, and make an intentional informed choice for his client. The actions of counsel in this regard are imputed to the defendant who is bound thereby.”); *Commonwealth v. Walley*, 396 A.2d 1280, 1283 (Pa. Super. 1978)(“We have inferentially held that counsel may request continuances that postpone trial commencement...without the specific signed consent of his client. ...Continuances are a matter of trial strategy within the reasonable purview of counsel. To hold that counsel cannot unilaterally request continuances that delay the start of trial past the Rule 1100 limit would severely hamper his ability to effectuate trial strategy.”).

There were multiple defense continuances in this case, which resulted in at least 175

days of excludable time.³

[A] Rule 600 analysis entails the following three steps:

First, Rule 600(A) provides the mechanical run date. Second, we determine whether any excludable time exists pursuant to Rule 600(C). We add the amount of excludable time, if any, to the mechanical run date to arrive at an adjusted run date.

If the trial takes place after the adjusted run date, we apply the due diligence analysis set forth in Rule 600([D]). As we have explained, Rule 600[] encompasses a wide variety of circumstances under which a period of delay was outside the control of the Commonwealth and not the result of the Commonwealth's lack of diligence. Any such period of delay results in an extension of the run date. Addition of any Rule 600[] extensions to the adjusted run date produces the final Rule 600 run date. If the Commonwealth does not bring the defendant to trial on or before the final run date, the trial court must dismiss the charges.

Commonwealth v. Faison, 297 A.3d 810, 822 (Pa. Super. 2023), quoting *Commonwealth v. Carl*, 276 A.3d 743, 749 (Pa. Super. 2022) (citation omitted), *appeal denied*, 337 MAL 2022, 292 A.3d 839 (Pa. Feb. 15, 2023).

The complaint was filed on October 28, 2022. Therefore, the mechanical run date was October 28, 2023.

There were at least 175 days of excludable time prior to the filing of the motion in this case. Adding 175 days to October 28, 2023 results in an adjusted run date of April 20, 2024. Creighton's motion was filed on March 21, 2024, approximately one month prior to the adjusted run date. Therefore, Creighton is not entitled to dismissal.

The court notes that due to continuance requests made subsequent to the filing of Creighton's motion, the run date would be further adjusted by another 88 days for the continuances covering March 21, 2024 through June 17, 2024. Therefore, the earliest adjusted run date for this case would be July 17, 2024.

³ 21 + 77+53+24=175. See Conclusions of Law, *infra*.

Accordingly, the following Order is entered.

ORDER

AND NOW, this 30th day of April 2024, the court DENIES the Motion to Dismiss Pursuant to Rule 600 filed on behalf of Defendant, Larry Creighton. Due to the unavailability of defense counsel for the May jury selection dates due to four criminal cases in Bradford County, this case shall remain continued until June 17, 2024 as set forth in the Order dated April 1, 2024.

By The Court,

Nancy L. Butts, President Judge

cc: Matthew Welickovitch, Esquire (ADA)
Matthew Diemer, Esquire
April McDonald, Deputy Court Administrator
Gary Weber, Esquire
Jerri Rook