

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CP-41-CR-0000582-2024
	:
vs.	:
	: <b>Opinion and Order re Defendant's</b>
MONIQUE GOINGS,	: <b>Motion to Dismiss Pursuant to</b>
Defendant	: <b>Rule 600</b>

**OPINION AND ORDER**

This matter came before the court on February 18, 2025 for a hearing and argument on the Motion to Dismiss Pursuant to Rule 600 filed on behalf of Defendant. The relevant facts follow.

On September 3, 2023, Trooper Josiah Reiner filed a criminal complaint against Defendant, charging her with Aggravated Harassment by Prisoner, a felony of the third degree, in violation of 18 Pa. C.S.A. §2703.1. A preliminary hearing was scheduled for September 29, 2023, but it was continued at the request of Tyler Calkins, Esquire, the assistant public defender who entered his appearance to represent Defendant. The preliminary hearing was rescheduled for December 1, 2023, but it was continued due to the unavailability of Trooper Reiner to December 8, 2023. On or about December 8, 2024, the defense requested and was granted a continuance; the preliminary hearing was rescheduled for February 9, 2024. On or about February 8, 2024, the defense again requested and was granted a continuance. The preliminary hearing was rescheduled for April 12, 2024. Due to Trooper Reiner's unavailability, the preliminary hearing was continued from April 12 to April 26, 2024. Although Defendant was not present, the preliminary hearing was held on April 26 and the charge was held for court.

Formal court arraignment was May 20, 2024, and the case was scheduled for a pre-

trial conference on June 10, 2024. Defense counsel requested a continuance, which the court granted. The case was scheduled for the trial term for which the first day of jury selection was August 12, 2024 and a pre-trial conference on July 22, 2024. The order indicated that the time from June 10, 2024 to August 12, 2024 would be excludable and attributable to Defendant for Rule 600 purposes.

At the July 22, 2024 pre-trial conference, defense counsel again requested a continuance. The case was continued to the first day of jury selection on September 9, 2024 and another pre-trial conference was scheduled for August 19, 2024.

On August 29, 2024, current defense counsel entered his appearance in this case.

On January 10, 2025, counsel filed a Motion to Dismiss Pursuant to Rule 600, in which he asserted that there were no continuances attributable to Defendant and that the charge must be dismissed. The court held a hearing and argument on the Motion on February 18, 2025. At the hearing, the prosecutor presented testimony from Erica Grimes, the clerk at Magisterial District Judge Kirsten Gardner's Office responsible for rescheduling the preliminary hearing, and he introduced numerous exhibits.

Ms. Grimes testified that she received an email from the Public Defender's office requesting a continuance of the first preliminary hearing because defense counsel was going to be seeking a competency evaluation of Defendant. The preliminary hearing scheduled for September 29, 2023 was continued to December 1, 2023. She testified that on October 18, 2023, Trooper Reiner's supervisor requested a continuance because Trooper Reiner was on leave and unavailable on December 1, 2023. The preliminary hearing was continued to December 8, 2023. Counsel's paralegal emailed Ms. Grimes requesting a 60-day continuance because they were awaiting a competency evaluation of Defendant by Dr. Scotilla. The

continuance was granted and the preliminary hearing was rescheduled for February 9, 2024. On February 8, 2024, the defense paralegal again requested a continuance via email. The email explained that Dr. Scotilla had just seen Defendant and more time was needed for Dr. Scotilla to prepare his report. The continuance was granted and the preliminary hearing was scheduled for April 12, 2024. Then Trooper Reiner requested a continuance due to a pre-planned event and the preliminary hearing was scheduled for and held on April 26, 2024.

The Commonwealth admitted its calculations of excludable time and a summary of its argument against the Motion as Commonwealth's Exhibit #1. Ms. Grimes identified a certified copy the MDJ docket and it was admitted as Commonwealth's Exhibit #2. The hearing notices for all of the preliminary hearings were collectively admitted as Commonwealth's Exhibit #3. The emails from Dylan Smith, defense counsel's paralegal, were admitted as Commonwealth's Exhibit #4.

On cross-examination, Ms. Grimes testified that the criminal complaint was filed on September 3, 2023. She did not believe that Defendant was present when defense counsel requested the continuance of the first preliminary hearing in late September 2023; she believed that the continuance request was made before Defendant was transported. She indicated that her office was notified that Defendant was being represented by the Public Defender's (PD's) Office. She did not know if Defendant had filed an application for a public defender because the application is not always returned to the MDJ office; sometimes it is just submitted directly to the PD's Office. She noted that there was a clerical error on the MDJ docket in that the continuance was not requested by Defendant herself but rather by Dylan Smith, defense counsel's paralegal in the PD's office. The docket sheet should have reflected that it was a request from the attorney, but the reason was correctly noted as

pending competency evaluation. Although Ms. Grimes was not in the office on April 26 when the preliminary hearing was held because she was on maternity leave, she knows that Defendant was not present because a warrant was requested due to her failure to appear.

The Commonwealth also admitted the following additional exhibits, requests for judicial notice of court orders, and a stipulation: Commonwealth Exhibit #5, which was a copy of the court order from the June 10, 2024 pre-trial conference granting the defense continuance request and attributing excludable time from June 10 to August 12, 2024 to Defendant; Commonwealth Exhibit #6, which was a copy of the court order from the July 22, 2024 pre-trial conference, granting defense counsel's continuance request and extending the excludable time against Defendant to September 9, 2024; Judicial notice of the court order of December 11, 2023 directing a competency evaluation of Defendant;<sup>1</sup> Commonwealth Exhibit #7, which was an email that provided a copy of the police report and a rap sheet to defense counsel in discovery; Commonwealth Exhibit #8, an email from the Commonwealth to defense counsel that the DVD was available for pickup; Commonwealth Exhibit #9, the signed discovery receipt that counsel picked up the DVD; a stipulation that Dr. Scotilla's report regarding Defendant's competency was dated March 10, 2024; Judicial notice of the November 18, 2024 habeas corpus ad prosequendum writ to have Defendant transported for a potential jury selection and trial between December 2 and December 13, 2024;<sup>2</sup> and Commonwealth Exhibit #10, the habeas corpus ad prosequendum writ dated December 23, 2024 to transport Defendant for potential jury selection and trial between January 13, 2025

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<sup>1</sup>It was unclear if the prosecutor said the order was dated September 11 or December 11; however, the order was filed to CP-41-MD-467-2023 and was dated December 11, 2023

<sup>2</sup>There also was an habeas corpus ad prosequendum writ dated October 16, 2024 to have Defendant transported for a potential jury selection and trial between October 28 and November 7, 2024

and February 4, 2025.

Defense counsel argued that the motion to dismiss should be granted. He did not dispute the court orders or the docket. He argued, however, that what was missing was any communication with Defendant. There was no evidence that she requested a public defender, no evidence that her public defender ever communicated with her, and no evidence that she refused to be transported to the preliminary hearing on April 26. In response to the last argument, the prosecutor asked the court to take judicial notice of the sheriff's return filed on April 20 2024, which indicated that members of the Sheriff's Office went to SCI-Muncy to transport Defendant to her preliminary hearing and she refused transport. Defense counsel objected to the court taking judicial notice of this document and asserted that testimony was needed.

The prosecutor argued that the Commonwealth exercised due diligence as evidenced by its provision of discovery and the habeas corpus ad prosequendum orders to transport Defendant for potential trial. He argued that the charges should not be dismissed as the delay was attributable to the defense. He cited several cases in support of his argument, including: *Commonwealth v. Watson*<sup>3</sup> for the proposition that continuance requests made by defense counsel constitutes excludable time; *Commonwealth v. Booze*<sup>4</sup> and *Commonwealth v. Williams*<sup>5</sup> for the proposition that the Rule 600 clocked stopped when Defendant filed her motion to dismiss; and *Commonwealth v. Highland*<sup>6</sup> for the proposition that the time to decide Defendant's Rule 600 motion is also excludable.

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<sup>3</sup>140 A.3d 696 (Pa. Super. 2016).

<sup>4</sup>953 A.2d 1263 (Pa. Super. 2008).

<sup>5</sup>876 A.2d 1018 (Pa. Super. 2005).

<sup>6</sup>875 A.2d 1175 (Pa. Super. 2005).

## **DISCUSSION**

Rule 600(A)(2)(a) states: “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.” When computing the time for commencement of trial under Paragraph A, the only time that is included are periods of delay caused by the Commonwealth where the Commonwealth has failed to exercise due diligence. Any other periods of delay are excluded. Pa. R. Crim. P. 600(C)(1). In other words, periods of delay caused by Defendant or her attorney is excluded. Furthermore, to be entitled to relief, a defendant must have a valid Rule 600 claim at the time of the filing of the motion to dismiss. *Commonwealth v. Hunt*, 858 A.2d 1234, 1243 (Pa. Super. 2004) (en banc).

The criminal complaint was filed on September 3, 2023. Defendant filed her motion to Dismiss on January 10, 2025. Therefore, there were 495 calendar days between the filing of the complaint and the motion to dismiss.

The vast majority of the delay was attributable to the defense. Defense counsel requested continuances of the preliminary hearing so that Defendant’s competency could be evaluated. A defendant is unavailable for speedy trial rule purposes from the time a continuance is requested for a competency evaluation until the defendant’s competency is determined. Therefore, the following periods of delay are excludable due to the competency request and evaluation: September 29, 2023 to December 1, 2023 (63 days); December 8, 2023 to February 9, 2024 (62 days) and February 9, 2024 to April 12, 2024 (63 days). After the case was held for court, defense counsel requested continuance at the pretrial conferences held on June 10, 2024 and July 22, 2024. The June 10, 2024 order resulted in excludable time from June 10, 2024 through August 12, 2024 (63 days), which was the first day of jury

selection for the next trial term. The July 22, 2024 order resulted in additional excludable time to September 9, 2024. Although the order indicated July 22, the court is computing the time from August 12 to September 9 (28 days), because the court already excluded July 22 to August 12 as part of the excludable time from the June 10, 2024 order. Therefore, there were 279 days of excludable time. When this time is deducted from the 495 days between the filing of the complaint and the filing of the motion to dismiss, there are only 216 days of includable time. As 365 days have not elapsed, Defendant's motion to dismiss must be denied.

The court rejects counsel's arguments that the public defender was not properly in the case or not able to make continuance requests without Defendant's consent. Defendant is an inmate at SCI-Muncy who is indigent. She qualifies for the services of a public defender. In fact, if the assistant public defender's who requested the continuances in this matter were not properly in this case, then neither is current counsel as his appearance was also entered through the Public Defender's Office.<sup>7</sup> *See* Withdraw/Entry of Appearance entered August 29, 2024. If current counsel's appearance was not authorized then the motion to dismiss filed by him is a nullity.

Counsel's arguments that counsel cannot request a continuance without a defendant's assent are meritless as there is case law to the contrary. *See Commonwealth v. Williams*, 140 A.3d 696, 699 (Pa. Super. 2016)(continuances are a matter of sound trial strategy within the purview of counsel), citing *Commonwealth v. Wells*, 521 A.2d 1388, 1391-92 (Pa. 1987)(holding counsel has the authority to agree to continuance without the defendant's

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<sup>7</sup> Due to a staffing shortage that resulted when both Attorney Tyler Calkins and Attorney Howard Gold left the Public Defender's Office, private counsel contracted with the Public Defender's Office to represent some of

knowledge and consent).<sup>8</sup>

**ORDER**

**AND NOW**, this 6<sup>th</sup> day of March 2025, for the reasons stated in the foregoing Opinion, the court DENIES Defendant's Motion to Dismiss Pursuant to Rule 600.

By The Court,

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Nancy L. Butts, President Judge

cc: Eric Birth, Esquire (ADA)  
Donald Martino, Esquire (counsel for Defendant)  
Jerri Rook

NLB/laf

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their clients.

<sup>8</sup> To the extent Defendant would assert that the continuance requests were not designed to effectuate her interests, such a claim sounds in effectiveness of counsel which cannot be asserted at this time. *See Wells*, 512 A.2d at 1291.