

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	<b>:</b>	<b>CRIMINAL DIVISION</b>
	<b>:</b>	<b>CR-1164-2020</b>
<b>v.</b>	<b>:</b>	
	<b>:</b>	
<b>STACY F. HENRY,</b>	<b>:</b>	<b>Motion to Dismiss</b>
<b>Defendant</b>	<b>:</b>	

**OPINION**

This matter was before the Court on February 11, 2025, for a hearing and argument on Defendant’s Motion to Dismiss pursuant to Pa.R.Crim.P. Rule 600 purposes. Defendant filed his Motion to Dismiss on August 12, 2024. At the hearing on February 11, 2025, Attorney Lindsay Sweeley appeared on behalf of the Commonwealth, and Defendant proceeded pro se, with Attorney Tyler Calkins present as standby counsel. The Commonwealth presented Deputy Court Administrator, April McDonald (McDonald) and First Assistant District Attorney Martin Wade to provide testimony for the presentation of its case.

***I. Findings of Fact***

Based on the documents filed of record and the evidence presented at the hearing on the Motion, the Court makes the following findings of fact:

1. The Criminal Complaint was filed in this matter on September 9, 2020.
2. Defendant was arraigned on September 28, 2020, and placed on the pre-trial list for December 18, 2020.
3. An Administrative Order issued by the Honorable Nancy Butts, President Judge, suspended Rule 600 for trial purposes. In this matter, Rule 600 was delayed from the time of Defendant’s arrest on August 17, 2020, until May 2, 2021, and the time was not counted toward Defendant’s adjusted Rule 600 date (a period of 258 days from August 17, 2020 to May 2, 2021).

4. By Order dated May 3, 2021, at the pre-trial conference, Defendant indicated that he had an outstanding motion pending. Accordingly, the Court Ordered the matter be continued to the next trial term, with call of the list scheduled for August 6, 2021, and stated “[f]or Rule 600 purposes this time shall run against the defendant because it is due to the defendant’s outstanding motion.” (a delay of ninety-five (95) days from May 3, 2021 to August 6, 2021).
5. By Order dated July 23, 2021, by request of the Defense, the case was moved to the September 14, 2021 pre-trial list and continued to October 4, 2021. (a delay of fifty-nine (59) days from August 6, 2021, to October 4, 2021).
6. By Order dated September 14, 2021, Defendant requested the case be removed from the trial list and scheduled for a guilty plea. Defendant’s guilty plea was scheduled for October 15, 2021. (a delay of ten (10) days of from October 5, 2021, to October 15, 2021).
7. By Order dated October 15, 2021, Defendant was removed from the guilty plea list and placed on the trial list for the January of 2022 trial term with the first day of jury selection being January 10, 2022. The Order stated, “[f]or Rule 600 purposes, the time from today’s date to that date shall run against the Defendant because that is the next available first day of trial.” (Delay of eighty-six (86) days from October 16, 2021 to January 10, 2022).
8. The Office of the District Attorney provides the Office of the Court Administrator Rule 600 calculations. However, the Office of the District Attorney does not select which cases will be listed for jury selection nor in what order. The cases which are listed by the Office of the Court Administrator of Lycoming County are chosen based on a variety of factors, including run date and trial type. At the hearing on February 11, 2025, First Assistant District Attorney Martin Wade testified on behalf of the Commonwealth. During the period from January until October of 2022, Defendant’s case was listed for potential jury selection on four separate occasions.
9. Each of the four occurrences was included in the list of cases for jury selection provided by First Assistant District Attorney Martin Wade to Deputy Court Administrator April McDonald. (Commonwealth Exhibits #8-11). Each exhibit included Defendant in the list with his adjusted Rule 600 calculation. First Assistant District Attorney Wade testified that Defendant was never lower than No. 100 on the four lists provided to Court Administration. Accordingly, Defendant was not scheduled for jury selection due to numerous older cases with larger run dates needing to be scheduled first. The Commonwealth also presented Deputy Court Administrator April McDonald to testify. Deputy Court Administrator McDonald testified that the process for determining jury selection dates depends on the court calendar, the availability of courtrooms and judges, and jurors. McDonald further testified that it is not possible to schedule jury

selection on a daily or even weekly basis, thus, it is not possible to schedule every case on the trial list for each trial term. Moreover, Deputy Court Administrator McDonald stated that if a case does not get selected for one trial term it is continued until the next trial term explaining why Defendant was listed four times on the case list from the District Attorney's Office, but not selected.

10. For the January 10, 2022, Jury Selection, Defendant was No. 239 on the list of adjusted Rule 600 dates emailed to the Deputy Court Administrator McDonald prior to the jury selection date for that trial term. (Commonwealth Exhibit #8).
11. At the hearing, First Assistant District Attorney Wade testified that the Commonwealth was prepared to proceed to trial in this matter in January, April, July, and August of 2022, the period from January 10, 2022 through October 28, 2022, though not any delay caused by Defendant, is not an attributable delay by the Commonwealth.
12. By Order dated September 16, 2022, from a pre-trial conference, the case proceeded on the trial list for October of 2022. Defendant's case was not called for jury selection in October of 2022.
13. By Order dated December 15, 2022, at the request of the Defendant to continue the pretrial conference scheduled for December 16, 2022, the case was continued until the first day of jury selection on April 10, 2023, due to ongoing plea negotiations. (a delay of one-hundred and fifteen (115) days).
14. At the hearing on the Motion to Dismiss, First Assistant District Attorney Wade testified that from April 11, 2023 until October 28, 2024, Defendant's case was continued several times. (delay of five-hundred and sixty-six (561) days from April 11, 2023, to October 28, 2024).
  - a. April 11, 2023 to July 21, 2023, a delay of one-hundred and one (101) days due to a continuance requested by the Defendant;
  - b. July 22, 2023, to October 27, 2023 a delay of ninety-seven (97) days due to a continuance requested by the Defendant;
  - c. October 28, 2023 to January 24, 2024, delay of eighty-eight (88) days due to a continuance requested by the Commonwealth;
  - d. January 25, 2024, to April 19, 2024, a delay of eighty-five (85) days due to a continuance request by the Defendant;
  - e. April 20, 2024, to July 19, 2024, a delay of ninety (90) days due to a continuance request from the Defendant;
  - f. July 20, 2024, to October 4, 2024, a delay of seventy-six (76) days due to the Defendant's failure to apply for a public defender;
  - g. October 5, 2024, to October 28, 2024, a delay of twenty-four (24) days as defendant requested to be moved back to the trial list.

15. Defendant filed his Barker Motion to Dismiss, including Rule 600 language on August 12, 2024<sup>1</sup>. The Court and the Commonwealth interpreted this filing as his Motion triggering constitutional and Rule 600 assertions that Defendant's right to a speedy trial were violated. By scheduling Order filed on August 21, 2024, a hearing on Defendant's Motion was scheduled for November 12, 2024. (delay of fourteen (14) days from October 29, 2024, November 12, 2024, because the time from August 12, 2024, until October 28, 2024, is included in paragraph 14).
16. At the hearing on November 12, 2024, the Commonwealth indicated that it was not prepared to present its case opposing Defendant's Motion to Dismiss as numerous witnesses were not subpoenaed. By Order dated December 3, 2024, a new hearing on the Motion to Dismiss was scheduled for February 11, 2025. The Order stated "[t]he time from November 12, 2024, shall run against the Commonwealth for Rule 600 Purposes." (delay of ninety-one (91) days from November 12, 2024 to February 11, 2025).

## ***II. Discussion***

### ***a. Motion to Dismiss Pursuant to Rule 600***

Defendant contends that the charges against him must be dismissed for the violation of his rights to a speedy trial pursuant to Rule 600. Pa.R.Crim.P. Rule 600(A)(2)(a) requires that "[t]rial 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." Additionally, under Pa.R.Crim.P. Rule 600(D)(1), a defendant "may file a written motion requesting that the charges be dismissed with prejudice on the ground that this rule has been violated" at any time prior to trial. Two important considerations are evaluated when determining whether a Rule 600 violation occurred. In determining whether Rule 600 has been violated, a court must consider the factors behind the purpose of Rule 600. "Rule 600 serves two equally important functions: (1) the protection of the accused's speedy trial rights, and (2) the protection of society."

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<sup>1</sup> Defendant filed his "Barker Motion to Dismiss" on August 12, 2024, and included Rule 600 language. Another filing was made and labeled as a Motion to Dismiss September 23, 2024, however, the September 23, 2024, Motion reads as a Petition for Habeas Corpus, challenging, inter alia, the seizure of certain items, the arrest, and search incident to arrest. The issues raised in the September 23, 2024, Motion were previously litigated. On December 12, 2024, Defendant filed a supplemental Motion to Dismiss pursuant to Rule 600 specifically.

*Commonwealth v. Peterson*, 19 A.3d 1131, 1134-35 (Pa. Super. 2011), *aff'd*, 44 A.3d 655 (Pa. 2012). “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. However, the administrative mandate of Rule 600 was not designed to insulate the criminally accused from good faith prosecution delayed through no fault of the Commonwealth.” *Id.*

In computing the time for purposes of Rule 600, “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;” and, “[a]ny other periods of delay shall be excluded from the computation.” Pa.R.Crim.P. Rule 600 (C)(1). More specifically, “any periods of delay not caused by the Commonwealth or not resulting from the Commonwealth's lack of due diligence — are “exclud[able]” and are removed from the computation of the Rule 600 deadline. *Commonwealth v. Lear*, 325 A.3d 552, 560 (Pa. 2024). The Pennsylvania Supreme Court in *Lear*, stated that delays caused by Administrative Orders suspending Rule 600 in response to the COVID-19 pandemic are ‘judicial delays,’ and thus, excludable and must be excluded from the computation.

Our Superior Court has stated that the “due diligence” is fact-specific and it is evaluated on a case-by-case basis. *Commonwealth v. Peterson*, 19 A.3d 1131, 1134–35 (Pa. Super. Ct. 2011) (emphasis added), *aff'd*, 44 A.3d 655 (Pa. 2012). Additionally, due diligence on behalf of the Commonwealth “does not require perfect vigilance and punctilious care, but merely a showing that the Commonwealth has put forth a reasonable effort.” *Id.* (quoting *Commonwealth v. Selenski*, 606 Pa. 51, 994 A.2d 1083, 1089 (2010)). Regarding a reasonable effort, our Superior Court has stated the following:

Reasonable effort includes such actions as the Commonwealth listing the case for trial prior to the run date to ensure that [defendant] was brought to trial within the time prescribed by Rule [600]. [*Commonwealth v. Aaron*, 804 A.2d 39, 43-44 (Pa.Super.2002) ]. See also [*Commonwealth v. JHill*, *supra* [558 Pa. 238] at 264, 736 A.2d [578] at 592 [1999] (finding Commonwealth exercised due diligence when it initially scheduled trial well within time requirements of Rule [600] but trial was delayed by actions of defendant beyond Commonwealth's control). Further, this Court has held the Commonwealth exercised reasonable effort when within the run date the Commonwealth was ready to commence trial and was prevented from doing so by an administrative error which resulted in a trial date three days beyond the run date. [*Commonwealth v. JWroten*, *supra* [305 Pa.Super. 340, 451 A.2d 678] at 680-81 [1982] (holding inadvertent administrative error is not enough to defeat due diligence). See also [*Commonwealth v. Corbin*, 390 Pa.Super. 243, 568 A.2d 635 (1990) ] (holding inadvertent listing beyond run date due to overburdened docket, meager staff, and administrative breakdown at detention center, excused Commonwealth with respect to unavailability of its witness).

*Commonwealth v. Jones*, 886 A.2d 689, 701-2 (Pa. Super. 2005) appeal denied, 897 A.2d 452 (Pa. 2006).

“Excludable time” is comprised of delays caused by a defendant, such as unavailability of a defendant or his attorney or continuances granted at a defendant’s request. *Commonwealth v. Jones*, 886 A.2d 689, 702 (Pa. Super. 2005), *appeal denied*, 897 A.2d 452 (Pa. 2006). For purposes of Rule 600, “excusable delay” is not expressly defined, “but the legal construct takes into account delays which occur as a result of circumstances beyond the Commonwealth's control and despite its due diligence.” *Commonwealth v. Peterson*, 19 A.3d 1131, 1134–35 (Pa. Super. Ct. 2011) (emphasis added), *aff'd*, 44 A.3d 655 (Pa. 2012). Furthermore, “were a trial-ready prosecutor must wait several months due to a court calendar, the time should be treated as a ‘delay’ for which the Commonwealth is not accountable. *Commonwealth v. Mills*, 162 A.3d 323, 325 (Pa. 2017). A three-step analysis is required to determine whether to dismiss a case pursuant to Rule 600: (1) determine the mechanical run date, (2) account for any excludable and excusable time, and (3) add the excludable and excusable time to the mechanical run date to determine the final Rule 600

adjusted run date. *Commonwealth v. Lear*, 325 A.3d 552, 560 (Pa. 2024). 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). “Once ‘excludable time’ is calculated, this time is added to the ‘mechanical run date’ to produce the ‘adjusted run date,’ which is the deadline for the Commonwealth to bring the defendant to trial under Rule 600.” *Commonwealth v. Lear*, 325 A.3d 552, 560 (Pa. 2024).

In the instant matter, Defendant’s criminal complaint was filed on September 9, 2020. At the time the charges were filed there was a local administrative order in place that suspended the rules of Criminal Procedure<sup>2</sup>. Defendant’s initial mechanical run date would have been September 9, 2021. Accounting for the Administrative Orders suspending the Rules of Criminal Procedure, the time is calculated to be 258 days from when the Complaint was filed to the time the Administrative Order was lifted in this case on May 3, 2021, making Defendant’s adjusted run date May 3, 2022. By the precedent set in *Lear, supra*, 325 A.3d 552, 560, this delay is excludable and goes to the Defendant’s adjusted run date. “This delay was necessitated by the COVID-19 pandemic and its concomitant emergency court closures and restrictive protocols, not anything the Commonwealth did or did not do.” *Id* at 563.

In calculating the excludable delays outlined in the findings of fact above, the Court concludes, the Defendant had an additional 852 days of excludable delay due to unavailability and/or continuance requests granted at his request that counted against his run date for purposes of Rule 600. Accordingly, the initial adjusted run date of May 3, 2022, became September 1, 2024. Defendant filed his Motion to Dismiss on August 12, 2024, and

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<sup>2</sup> See Commonwealth Exhibits #2 through #7, Administrative Orders from August 6, 2020, extending the 29<sup>th</sup> Judicial District emergency declaration through May 31, 2021, that suspended, inter alia, “Rules pertaining to the rule-based right of criminal defendant to a prompt trial.”

excludable time is accruing from the date of filing of the Motion to the present.

Pa.R.Crim.P.Rule 600(c)(2).

Additionally, Defendant had an outstanding discovery motions related to his contentions that the digital discovery provided was edited or not provided in full. The Commonwealth attempted to cure this issue on several occasions since the inception of the case. However, Defendant repeatedly contested the discovery provided to him. Accordingly, the Court scheduled a hearing for the parties to review the content of the digital discovery, and for the Defendant to raise his objections to the footage presented. This discovery issue was resolved on April 23, 2025. See Order Re: Discovery Review, 04/23/2025.

From this case's inception to the hearing on this Motion on February 11, 2025, the Commonwealth requested two continuances in this matter, one on October 28, 2023, and another on November 12, 2024. Both of which counted against the Commonwealth for Rule 600 purposes. The Court concludes this time to be 179 days of time included in the adjusted run date.

The Commonwealth has the burden of establishing that "due diligence" was exercised to bring this matter to trial in a timely manner. Based on the testimony provided at the hearing by First Assistant District Attorney Wade and Deputy Court Administrator, April McDonald, the Court concludes that the Commonwealth duly brought the Defendant to trial for four trial terms prior to the filing of this motion<sup>3</sup>. The period from January 2022 through October of 2022, Defendant was on the trial list for those four trial terms, and his Rule 600 adjusted date was provided to Court Administration to determine if his case would be called for the respective trial term. At no time during those four trial terms was Defendant's priority

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<sup>3</sup> When Defendant was placed on the trial list again, he was listed several more times between the filing of this Motion and its disposition.



rank less than No. 100 in comparison to the Rule 600 run dates for others awaiting trial nor was Defendant prepared to proceed to trial due to outstanding motions.

Furthermore, Attorney Wade testified at the hearing that for the July of 2022 trial term Defendant's adjusted run date was June 23, 2023. Attorney Wade further testified that for the October of 2022 trial term the Commonwealth did not adjust the run date from June 23, 2023, in an effort to push the case to trial. Attorney Wade stated that for each trial term the Commonwealth was prepared to present its case against the defendant. Thus, the Court concludes that the Commonwealth did exercise due diligence. Accordingly, the Court concludes that the Defendant was brought to trial, but due to circumstances beyond the Commonwealth's control and despite reasonable efforts, the Defendant did not receive a trial.

***b. Barker Motion to Dismiss***

Defendant asserts a constitutional right to a speedy trial under the Sixth Amendment of the United States Constitution and under Article I, Section 9 of the Pennsylvania Constitution, and avers that this right was violated. Defendant appropriately identified the standard for determining whether a defendant's right to a speedy trial has been violated in his Motion as applied by our courts. In his motion, Defendant asserts that his constitutional rights have been violated because of the significant delay in bringing this matter to trial. Defendant further asserts that the delay is significant enough to trigger further inquiry, and it is uncommonly long. Defendant alleged that the delay is the fault of the Commonwealth. Defendant asserted prejudice in this matter because the witnesses are likely to be negatively impacted by the passing of time. Defendant concluded his constitutional argument in his motion by merging the claim with his Rule 600 claim.

The balancing test first articulated in *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), is used to determine whether an accused's constitutional rights to a

speedy trial have been violated. Under the *Barker* test, a court first examines “the threshold question of whether ‘the delay itself is sufficient to trigger further inquiry.’” *Commonwealth v. Miskovitch*, 64 A.3d 672, 679 (Pa. Super. 2013). “If the delay is sufficient to trigger further inquiry,” *id*, then the “length of the delay with the reason for the delay, the defendant’s timely assertion of his right to a speedy trial, and any prejudice to the interests protected thereof are balanced.” *Id*.

Here, the four-and-a-half-year delay in this case is significant to trigger further inquiry under the *Barker* test, and Defendant asserted his pre-trial right to a speedy trial at multiple periods throughout the pre-trial delay. Though Article I, Section 9 does not set forth a deadline for prompt trial, a court is justified in analyzing a significant delay, such as here. Thus, the length of the delay, the reason for the delay, and the extent of the prejudice endured by Defendant remain to be evaluated.

The delay in this matter is long enough to presume prejudice, however, the extent of actual prejudice must be weighed against the reason behind the delay. In this matter, a significant portion of the delay was due to the requests for continuances on behalf of the Defendant due to outstanding motions and a significant stretch of continuances filed between April of 2022 and October of 2024. There is no further evidence of prejudice nor was there any prejudice asserted at the hearing on the Motion. Defendant carries the burden of proving prejudice. See *Commonwealth v. DeBlase*, 542 Pa. 22, 665 A.2d 427, 437 (1995)(“prejudice from a lengthy pretrial delay will not be presumed; rather, the defendant must demonstrate that he has suffered prejudice in fact”). Taking these factors into consideration, the Court finds that Defendant’s constitutional right to a speedy trial have not been violated.

### ***III. Conclusion***

Based on the testimony presented at the hearing and the documents filed of record, the Court finds that the Commonwealth exercised due diligence and has not violated the time restraint under Rule 600. Thus, the Court concludes that Rule 600 was not violated, and Defendant is not entitled to dismissal of the charges in this matter. The primary reason for the delay was the COVID-19 pandemic, the difficulties that it imposed on the Court's ability to conduct jury selections and trials, the bottleneck of criminal trials that the pandemic restrictions created, and most importantly, the Defendant's requests for continuances and filing of motions.

Regarding Defendant's Constitutional claim, he was unable to prove prejudice in fact nor was he able to prove that the Commonwealth was at fault for the delay. Furthermore, the record does not indicate that the Commonwealth caused the delay, as it was prepared to move forward with trial on numerous occasions.

Accordingly, the Court enters the following Order:

#### **ORDER**

**AND NOW**, this **23rd** day of **May, 2025**, based on the testimony provided at the hearing, the documents filed of record, and for the reasons set forth above, Defendant's Motion to Dismiss is **DENIED**.

By the Court,

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Ryan M. Tira, Judge

RMT/asw  
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