

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :

:

:

vs. :

No. CR-370-2016

:

PRINCESS KAREEMAH :

ALEXANDER-FRISBY :

Defendant :

:

Michael S. Greek, Esquire
Clinton Johnson, Esquire

Counsel for Commonwealth
Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - January 17, 2019

The Defendant, Princess Kareemah Alexander-Frisby (hereinafter Alexander-Frisby) has filed a "Petition for Dismissal Pursuant to Rule 600" seeking to have all charges filed against her dismissed with prejudice for failure of the Commonwealth to bring her case to trial as required by Pennsylvania Rule of Criminal Procedure Rule 600. For the reasons stated herein, this Court grants Petitioner's request.

FACTUAL AND PROCEDURAL BACKGROUND

On January 8, 2016, as the result of the filing of a written criminal complaint by Pennsylvania State Trooper Daniel J. Spath, Alexander-Frisby was charged with various vehicle code violations including two (2) counts of driving under the influence, along

with violations of the Controlled Substance, Drug, Device and Cosmetic Act, for an incident that is alleged to have occurred on December 16, 2015. On March 23, 2016, bail was set at \$5,000.00 unsecured for Alexander-Frisby. Since that time and at all times relevant hereto, she has been at liberty in this case. Also, on this same date of March 23, 2016, Alexander-Frisby waived her preliminary hearing. Her initial pre-trial conference and formal arraignment was then scheduled for April 28, 2016. According to the docket entries in this matter, a criminal information was filed on April 25, 2016. Shortly thereafter and after the scheduled pre-trial conference date, Attorney Clinton Johnson on May 9, 2016 entered his appearance for Alexander-Frisby.

The next docket entry noted in this case is the scheduling on another pre-trial conference for April 12, 2018. Presumably, as a result of a failure to resolve the case at this pre-trial conference, the matter was listed for trial on June 4, 2018. Thereafter, Defendant's trial date was continued by her several times and is presently scheduled for February 4, 2019.¹

On September 28, 2018, Alexander-Frisby filed the instant petition alleging that due to the delay in the Commonwealth bringing the Defendant to trial, her rights to a speedy trial were

¹ All of the time from June 4, 2018 until February 4, 2019, does not run against the Commonwealth since these were continuance requests by the Defendant. Regardless of these continuances, these time periods are of no consequence to the underlying resolution of this motion.

violated. A hearing and argument were held on November 27, 2018 where the parties agreed to the dates and events identified herein. This Court gave counsel fourteen (14) days to provide the Court with any legal support for their respective positions, but neither side lodged any briefs or legal memorandums.

LEGAL DISCUSSION

Pursuant to Pa.R.Crim.P. 600(A)(2)(a), "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." In determining whether the Commonwealth has complied with this rule, "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." Rule 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." Rule 600 (D).

Rule 600 (D) further states that, any time before trial, a defendant may move for dismissal of the case if Rule 600 has, at that time, been violated. However, even when the defendant has

not been tried within the aforesaid 365 days, and even when those days appear to be attributable to the Commonwealth, a Rule 600 motion shall be denied if the Commonwealth acted with due diligence in attempting to try the defendant timely and the circumstances occasioning the delay were beyond the Commonwealth's control. Thus, if the Commonwealth acted with due diligence and the delay in question was beyond the Commonwealth's control, the delay is excusable. *Commonwealth v. Claffey*, 80 A.3d 780, 786 (Pa. Super. 2013) (internal citations omitted).

Rule 600 requires the Court to consider whether the Commonwealth exercised due diligence, and whether the circumstances occasioning the delay of trial were "beyond the Commonwealth's control." If the Commonwealth exercised due diligence and the delay was beyond the Commonwealth's control, "the motion to dismiss shall be denied." *Id.* at 786. The Commonwealth, however, has the burden of demonstrating by a preponderance of the evidence that it exercised due diligence. As has been oft stated, "[d]ue 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." *Commonwealth v. Bradford*, 46 A.3d 693, 701-02 (Pa. 2012) (citations omitted).

"To determine whether dismissal is required under Rule 600, a court must first calculate the 'mechanical run date,' which is 365 days after the complaint was

filed. Rule 600(C) addresses situations where time can be excluded from the computation of the deadline. Pa.R.Crim.P. 600(C). Case law also provides that a court must account for any 'excludable delay.' Excludable time is delay that is attributable to the defendant or his counsel. Excusable delay is delay that occurs as a result of circumstances beyond the Commonwealth's control and despite its due diligence...

[T]he only occasion requiring dismissal is when the Commonwealth fails to commence trial within 365 days of the filing of the written complaint, taking into account all excludable time and excusable delay."

Commonwealth v. Colon, 87 A.3d 352, 358 (Pa. Super. 2014), citing *Commonwealth v. Goldman*, 70 A.3d 874, 879-880 (Pa. Super. 2013) (citations and internal quotations omitted).

Additionally, in determining whether the Commonwealth has exercised due diligence, the Court must inquire into whether the Commonwealth made a reasonable effort to bring the defendant to trial pursuant to the speedy trial rule. "Reasonable effort includes such actions as the Commonwealth listing the case for trial prior to the run date to ensure the defendant was brought to trial within the time prescribed by Rule 600." *Commonwealth v. Martz*, 926 A.2d 514, 518 (Pa. Super. 2007) (citation omitted).

In this case, as previously noted, the complaint was filed on January 8, 2016. Thus, the mechanical run date, 365 days henceforth, would be January 7, 2017.² It is undisputed that trial

² Calendar year 2016 was a leap year. Accordingly, February 29, 2016, was included to calculate this mechanical run date.

circumstance, shall result in the case being listed on the next criminal trial list."

CARB.R.Crim.P.570(D).

In this case and in the absence of any disposition as required by this rule, this matter otherwise languished at the District Attorney status conference stage. No effort was put forth by the Commonwealth to move that the case be listed for the next criminal trial list. Neither was there any explanation by the Commonwealth as to why. Thus, the Commonwealth did not exercise due diligence in getting this matter to trial before the mechanical run date of January 7, 2017. "Absent a demonstration of due diligence, establishing that the Commonwealth has done 'everything reasonable within its power to guarantee that [the] trial begins on time,' the Commonwealth's failure to bring the Defendant to trial before the expiration of the Rule 600 time period constitutes grounds for dismissal of the charges with prejudice." *Commonwealth v. Barbour*, 189 A.3d 944, 947 (2018), (initial citation omitted).

CONCLUSION

Based upon the foregoing, this Court enters the following Order:

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ORDER OF COURT

AND NOW, this 17th day of January, 2019, upon consideration of the "Petition for Dismissal Pursuant to Rule 600" filed by the Defendant, Princess Kareemah Alexander-Frisby, and after hearing and argument thereon, it is hereby **ORDERED and DECREED** that said Petition is **GRANTED**. The charges contained in the criminal complaint filed in this matter are **DISMISSED with prejudice**.

BY THE COURT:



Joseph J. Matika, J.

[FM-1-19]