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NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
KRISTA EVELAND,	:	
	:	
Appellee	:	No. 591 WDA 2013

Appeal from the Order entered on March 5, 2013
in the Court of Common Pleas of Potter County,
Criminal Division, No. CP-53-MD-0000100-2011

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
EILEEN RIFKA SMITH,	:	
	:	
Appellee	:	No. 592 WDA 2013

Appeal from the Order entered on March 5, 2013
in the Court of Common Pleas of Potter County,
Criminal Division, No. CP-53-MD-0000100-2011

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
JEROME ROBERT SMITH,	:	
	:	
Appellee	:	No. 593 WDA 2013

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Appeal from the Order entered on March 5, 2013
in the Court of Common Pleas of Potter County,
Criminal Division, No. CP-52-MD-0000100-2011

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
JARRETT RAND SMITH,	:	
	:	
Appellee	:	No. 594 WDA 2013

Appeal from the Order entered on March 5, 2013
in the Court of Common Pleas of Potter County,
Criminal Division, No. CP-52-MD-0000100-2011

BEFORE: DONOHUE, OTT and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED JUNE 30, 2014

The Commonwealth of Pennsylvania appeals from the Orders¹ dismissing with prejudice the charges against Krista Eveland ("Eveland"), Eileen Rifka Smith ("Eileen"), Jerome Robert Smith ("Jerome"), and Jarrett Rand Smith ("Jarrett") (collectively "the Appellees") pursuant to

¹ The Orders were final and appealable orders as they dismissed all charges against the Appellees. **See Commonwealth v. Garcia**, 72 A.2d 681, 682 n.1 (Pa. Super. 2013); **see also** Pa.R.A.P. 341(e).

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Pennsylvania Rule of Criminal Procedure 600.² We vacate and remand for a hearing.

The trial court set forth the relevant underlying facts:

This case originated with a [C]riminal [C]omplaint filed on May 20, 2011[, against each of the Appellees]. According to the recitation of facts in the Affidavit of Probable Cause [for each Appellee], the Affiant (Cpl. Michael Murray of the Pennsylvania State Police) met with Potter County President Judge John Leete on June 18, 2009, in a meeting also attended by then District Attorney Dawn Fink and Coudersport Borough Police Sergeant James Collins, during which Judge Leete [told] them that he had been approached by a local attorney who advised [him] that two local attorneys ([Jarrett] and [Eileen]) had tried to purchase a baby. [The baby was the subject of a pending adoption case and was being sold by the birth Mother (Eveland) to the adopting parents, Jerome and Eileen, in exchange for money. Jarrett was facilitating the transaction. Criminal charges were filed against Eveland, Jarrett, Eileen, and Jerome.³] ...

Subsequently, a preliminary hearing [for the Appellees] was scheduled for September 22, 2011[,] before Magisterial District Judge Richard Beck[. At the hearing,] despite a delay of just over four months from the filing of the criminal complaint, the Commonwealth was not prepared to proceed due to uncertainty as to the legality of disclosure of information from sealed adoption files[, which issue] had not yet been resolved, and the

² Rule 600 was rescinded on October 1, 2012, effective July 1, 2013. **See** 42 Pa.B 6622 (Oct. 6, 2012). A new Rule 600 was promulgated on October 1, 2012, effective July 1, 2013. **See id.** As the events in this case occurred prior to July 1, 2013, we conclude that the case is governed by the former Rule 600.

³ The Commonwealth notes that a fifth person, Donna Marie Albright ("Albright"), was also charged for her involvement in the alleged transaction. **See** Brief for the Commonwealth at 8 n.5. However, Albright did not file a Rule 600 motion and is not a party to this appeal. **See id.**

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Commonwealth expressed at that time unfamiliarity with any restrictions on the accessing and/or release of such information.^[4] That hearing was rescheduled for November 21-22 of 2011[,] but was not held at that time either, due in part to the fact that the Commonwealth's [M]otion regarding disclosure of adoption file information had been filed on October 17, 2011[,⁵] but not yet dispensed with.

During this time period, the case was referred by the Potter County Court of Common Pleas to the Northumberland County Court of Common Pleas for disposition. A briefing schedule was set, and argument on the Commonwealth's [M]otion was set for April 2, 2012.

Trial Court Opinion, 7/19/13, at 1-3 (citations and footnotes omitted, footnotes added).

At the April 2, 2012 hearing, the trial court heard legal argument on various adoption law issues and Motions, but heard no testimony or evidence. Subsequently, prior to addressing the adoption law issues, the Appellees respectively filed Rule 600 Motions, seeking dismissal of the charges. On March 5, 2013, the trial court, without holding a hearing,

⁴ At the hearing, the Appellees initially moved to prohibit the Commonwealth from disclosing information from the adoption case unless it had produced a court order authorizing the disclosure. The Commonwealth responded that it was unfamiliar with the law and required a continuance of the preliminary hearing. The Appellees objected to the continuance, arguing that the Commonwealth had been given enough time to address the issue. The trial court granted the Commonwealth's continuance.

⁵ The Commonwealth had filed a Motion seeking an order granting it authority to disclose the adoption information at the preliminary hearing. The Appellees filed Responses to the Motion, along with various Counter-Motions.

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granted the Appellees' Rule 600 Motions and dismissed all of the charges against them.

The Commonwealth filed a timely Notice of Appeal. The trial court ordered the Commonwealth to file a Pennsylvania Rule of Appellate Procedure 1925(b) concise statement. The Commonwealth filed a timely Concise Statement, and the trial court issued an Opinion.

On appeal, the Commonwealth raises the following questions for our review:

- I. Whether the trial court's Orders must be reversed, the charges reinstated, and the cases remanded with instructions to conduct a Rule 600 evidentiary hearing given that the trial court failed to conduct such a hearing[,] in clear violation of the law, which in turn deprived the Commonwealth of an opportunity to develop a meaningful record on the issue and deprived the trial court of a valid basis upon which to dispose of the Rule 600 claims?
- II. In the alternative, whether the trial court's grant of Rule 600 relief constituted a reversible abuse of discretion given that: (A) the trial court relied upon a recitation of the facts that was incomplete, grossly inaccurate, and unsupported by the minimal record that exists; (B) the trial court patently misapplied Pa.R.Crim.P. 600; and (C) the trial court's misapplication of the governing law to its inaccurate and incomplete statement of the relevant facts resulted in a manifestly unreasonable judgment?

Brief for the Commonwealth at 6.

Our standard and scope of review is as follows:

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In evaluating Rule [600] issues, our standard of review of a trial court's decision is whether the trial court abused its discretion. Judicial discretion requires action in conformity with law, upon facts and circumstances judicially before the court, after [a] hearing and due consideration. An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill will, as shown by the evidence or the record, discretion is abused.

The proper scope of review ... is limited to the evidence on the record of the Rule [600] evidentiary hearing, and the findings of the [trial] court. An appellate court must view the facts in the light most favorable to the prevailing party.

Additionally, when considering the trial court's ruling, this Court is not permitted to ignore the dual purpose behind 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. 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.

So long as there has been no misconduct on the part of the Commonwealth in an effort to evade the fundamental speedy trial rights of an accused, Rule [600] must be construed in a manner consistent with society's right to punish and deter crime. In considering [these] matters ..., courts must carefully factor into the ultimate equation not only the prerogatives of the individual accused, but the collective right of the community to vigorous law enforcement as well.

Commonwealth v. Ramos, 936 A.2d 1097, 1100 (Pa. Super. 2007) (*en banc*) (citation omitted).

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In its first claim, the Commonwealth contends that the trial court abused its discretion in dismissing the charges pursuant to Rule 600 without first holding an evidentiary hearing. Brief for the Commonwealth at 27, 33-34. The Commonwealth argues that it must be given the opportunity to develop the record to demonstrate that it exercised due diligence in attempting to bring the Appellees to trial; the Appellees were responsible for the delays; and the trial court caused delays outside the Commonwealth's control. *Id.* at 27-29, 33. The Commonwealth also claims that the trial court made its ruling based upon assumptions, and not evidence, that the delays were attributable to the Commonwealth and that the Commonwealth did not exercise due diligence. *Id.* at 29-30; *see also id.* at 31-33 (wherein the Commonwealth argues that a review of the docket does not clarify if certain delays should have been attributed to the Appellees or the Commonwealth, or whether the Commonwealth acted with due diligence). The Commonwealth asserts that this Court's review is based upon the evidence of record regarding the Rule 600 ruling and, without such a record, appellate review is impossible. *Id.* at 29; *see also id.* at 30-31 (wherein the Commonwealth asserts that the trial court erred in relying on ***Commonwealth v. McGett***, 622 A.2d 940 (Pa. Super. 1993), to issue its Rule 600 decision without holding a hearing).

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Rule 600 requires the Commonwealth to commence trial against an accused within 365 days after it files a criminal complaint. **Ramos**, 936 A.2d at 1101. “Certain periods are excludable from computation of the period for commencement of trial, including delay resulting from the unavailability of the defendant or his attorney, or any continuance granted at the request of the defendant and his attorney.” **Commonwealth v. Miskovitch**, 64 A.3d 672, 677 (Pa. Super. 2013) (citation omitted). Judicial delay may also extend the run date, provided that the court has “devoted a reasonable amount of its resources to the criminal docket and that it scheduled the criminal trial at the earliest possible date consistent with the court’s business.” **Commonwealth v. Trippett**, 932 A.2d 188, 197 (Pa. Super. 2007) (citation omitted). Even if trial did not commence within a year of the filing of the criminal complaint, an accused is not entitled to discharge if the Commonwealth exercised due diligence and the circumstances that caused the delay were beyond its control. **Ramos**, 936 A.2d at 1102. “Due diligence is a **fact-specific** concept that must be determined on a case-by-case basis. Due diligence does not require perfect vigilance and punctilious care, but rather a showing by the Commonwealth that a reasonable effort has been put forth.” **Id.** (citation and emphasis omitted, emphasis added). Furthermore, the former version of Rule 600 provided the following:

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For defendants on bail after the expiration of 365 days, at any time before trial, the defendant or the defendant's attorney may apply to the court for an order dismissing the charges with prejudice on the ground that this rule has been violated. A copy of such motion shall be served upon the attorney for the Commonwealth, **who shall also have the right to be heard thereon.**

If the court, **upon hearing,** shall determine that the Commonwealth exercised due diligence and that the circumstances occasioning the postponement were beyond the control of the Commonwealth, the motion to dismiss shall be denied and the case shall be listed for trial on a date certain.

Pa.R.Crim.P. 600(G) (emphasis added);⁶ **see also McGeth**, 622 A.2d at 945 (stating that "[t]he purpose of the hearing is to afford both parties an opportunity to present factual allegations regarding if and why the defendant

⁶ We note that the Commonwealth cites to Rule 600(D)(1), part of the new Rule 600, which was adopted October 1, 2012, and made effective July 1, 2013, to support its assertion that a hearing was required. Rule 600(D)(1) states the following:

(D) Remedies

(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. A copy of the motion shall be served on the attorney for the Commonwealth concurrently with filing. **The judge shall conduct a hearing on the motion.**

Pa.R.Crim.P. 600(D)(1) (emphasis added). However, as noted above, the trial court granted the Appellees' Rule 600 Motions before the effective date of the new rule.

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was denied his right to a speedy trial pursuant to the time periods of [the rule].”).

In granting the Appellees’ Rule 600 Motions, the trial court pointed out that the Criminal Complaints were filed on May 20, 2011, and the mechanical run date was May 21, 2012.⁷ **See** Trial Court Opinion, 7/19/13, at 1, 3. The trial court further pointed out that there was a delay in the scheduling of the preliminary hearing for each of the Appellees due to the issue of the legality of the disclosure of information from sealed adoption files. **See id.** at 2, 4. The trial court noted that the Commonwealth’s outstanding Motion on this issue had not been decided at the time of the dismissal of the charges. **Id.** at 3. The trial court additionally determined that at the September 22, 2011 hearing, the Commonwealth conceded that the time was running against them based upon their request for a continuance to determine the legality of disclosing information from the adoption files. **Id.** at 5. The trial court also found that the Commonwealth did not act with due diligence in bringing the Appellees to trial. **Id.** at 4-5. The trial court stated that the Commonwealth “should have already been aware at the time of filing of the Complaints that there were issues

⁷ The trial court states the mechanical run date was May 19, 2012. **See** Trial Court Opinion, 7/19/13, at 3. However, this date falls on a Saturday. Thus, the mechanical run date should be May 21, 2012, the following Monday.

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surrounding their disclosure of confidential information from adoption files for the purposes of prosecution.” **Id.** at 4 (footnote omitted). The trial court stated that the fact that the Commonwealth had an outstanding Motion did not absolve its responsibility of listing the case for trial or taking other steps, including rescheduling a preliminary hearing. **Id.**

Here, the trial court reasoned that the Commonwealth’s failure to bring the Appellees to trial in a timely manner was indefensible and that there was no need for a hearing on the Motions. However, the Commonwealth was not given an opportunity to develop a record as to the delays by the trial court in deciding various Motions, any excludable time,⁸ or its due diligence in bringing the Appellees’ cases to trial. **See Ramos**, 936 A.2d at 1102 (stating that the determination of whether the Commonwealth exercised due diligence is a question of fact rather than one of law). Thus, we conclude that the trial court erred in dismissing the charges against the Appellees under Rule 600 without holding a hearing to develop the record. **See Commonwealth v. Swartz**, 579 A.2d 978, 980-

⁸ The trial court noted that while there were various defense motions filed in this case, none of these motions were of a nature to render the Appellees unavailable for trial, “nor was there a delay in commencement of trial by the filing of any of these motions.” Trial Court Opinion, 7/19/13, at 3-4 n.3. On appeal, the Commonwealth raises claims regarding the delay caused by the Motions and argue that these delays should be counted against the Appellees in determining the adjusted run date. Brief for the Commonwealth at 31-32. The record, with regard to these motions, may be developed further at the evidentiary hearing on remand.

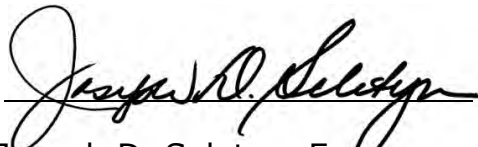
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81 (Pa. Super. 1990) (concluding that the failure to hold a hearing on the appellant's speedy trial issue required the case to be remanded for a hearing); **see also Commonwealth v. Robbins**, 900 A.2d 413, 415 (Pa. Super. 2006) (stating that our scope of review on appeal is "limited to the evidence on the record of the Rule 600 evidentiary hearing and the findings of the trial court.") (citation omitted).⁹ Accordingly, we vacate the trial court's Orders and remand for an evidentiary hearing on the Appellees' Motions to dismiss pursuant to Rule 600.

Furthermore, based upon our disposition of the Commonwealth's first claim, we need not address its second claim on appeal.

Orders vacated. Cases remanded for proceedings consistent with this Memorandum. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/30/2014

⁹ We note that the reasoning in **McGeth**, where this Court held that a hearing on the Rule 600 motion was unnecessary, is inapplicable to the facts of this case. In **McGeth**, the Rule 600 motion was denied based upon the absence of factual allegations that necessitated a hearing to determine the merits of the Rule 600 motion. **McGeth**, 622 A.2d at 945. Contrarily, as noted above, the Rule 600 Motions were granted and there are disputes regarding excluded time and the Commonwealth's due diligence. Thus, a hearing is required in this case.