2025 PA Super 149

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
CATHERINE MULLEN	:	
Appellant	:	No. 1977 EDA 2023

Appeal from the Judgment of Sentence Entered June 29, 2023
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0005384-2022

BEFORE: OLSON, J., DUBOW, J., and SULLIVAN, J.

OPINION BY OLSON, J.: **FILED JULY 18, 2025**

Appellant, Catherine Mullen, appeals from the judgment of sentence entered on June 29, 2023, following her bench trial conviction for simple assault, 18 Pa.C.S.A. § 2701(a).[1] After careful consideration, we affirm.

The trial court briefly summarized this case as follows:

> On November 22, 2021, [Appellant] was arrested and charged with [the aforementioned crimes].
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> On March 18, 2022, the Commonwealth withdrew prosecution after the complainant failed to appear for [A]ppellant's preliminary hearing [on three separate scheduled court dates, in December, January, and March]. The Commonwealth then re-filed its criminal complaint on May 6, 2022, and, on June 30, 2022, [A]ppellant's case was held for court following a preliminary hearing in Philadelphia municipal court.
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> Over the course of the next year, [A]ppellant's case was continued for various reasons. On June 27, 2023, [A]ppellant filed a motion

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[1] Appellant was also charged with aggravated assault, recklessly endangering another person, and criminal conspiracy. 18 Pa.C.S.A. §§ 2702(a)(1), 2705, and 903(c), respectively. Following trial, the trial court found Appellant not guilty of these offenses.

> for dismissal pursuant to [Pa.R.Crim.P.] 600(A). On June 29, 2023, [the trial] court denied [A]ppellant's motion for dismissal following a brief hearing, and [A]ppellant's case immediately proceeded to a bench trial. The [trial] court found [A]ppellant guilty of simple assault and not guilty of the remaining charges. Appellant was sentenced to one year of reporting probation and forty (40) hours of community service.
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> This timely appeal followed.[2]

Trial Court Opinion, 1/3/2024, at 1 (unnecessary capitalization and internal quotations omitted).

On appeal, Appellant presents the following issue for our review:

> Did the lower court abuse its discretion when it denied [Appellant's] pre-trial motion to dismiss pursuant to Pa.R.Crim.P. 600(A), as the [Commonwealth] tried [A]ppellant beyond the run date, and the Commonwealth did not establish due diligence throughout the life of the case?

Appellant's Brief at 4.

Appellant argues that all the criminal charges against her should be dismissed since the Commonwealth failed to bring her to trial in accordance with Pa.R.Crim.P. 600(A). First, Appellant maintains that, in this case, the Commonwealth filed its original criminal complaint on November 23, 2021, but "was not ready to proceed with a preliminary hearing [on] three consecutive court dates – December 7, 2021[,] January 31, 2022[,] and March 18, 2022 – because the complainant failed to appear." ***Id.*** at 6 (record citation

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[2] After the express grant of extensions of time, Appellant filed a court-ordered concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) on November 8, 2023. On January 3, 2024, the trial court issued an opinion pursuant to Pa.R.A.P. 1925(a).

omitted). As a result, "the Commonwealth withdrew the prosecution" on March 18, 2022, but refiled the criminal complaint on May 6, 2022. ***Id.*** (record citations omitted). Accordingly, Appellant asserts that "the lower court correctly found that the complaint's November 22, 2021 initial filing date – as opposed to the May 6, 2022 refile date – controls for Rule 600 purposes." ***Id.*** at 25-26. Thereafter, on July 20, 2022, all charges were held for court. ***Id.*** at 7. The Commonwealth filed a bill of information on July 25, 2022. ***Id.*** Appellant failed to appear at the August 3, 2022 formal arraignment hearing and the trial court issued a bench warrant for her arrest, which it subsequently lifted on August 23, 2022. ***Id.*** At a scheduling conference held on December 13, 2022, Appellant complained that the Commonwealth had failed to turn over discovery, including the complainant's medical records and an FBI summary abstract. ***Id.*** at 8. Appellant maintains that the trial court "scheduled trial for February 28, 2023 and ordered that the Commonwealth [provide] any outstanding discovery on or before January 28, 2023." ***Id.*** On June 27, 2023, Appellant moved to dismiss all charges pursuant to Pa.R.Crim.P. 600, citing the prosecution's failure to bring her to trial within 365 days. ***Id.*** Appellant alleged that "[b]y February 28, 2023, the complainant's medical and criminal records remained outstanding" and that there was no evidence that the Commonwealth objected to the June 29, 2023 trial date, asked for an earlier trial date, or claimed that the records at issue did not qualify as mandatory discovery or that the files were lost or no longer in the Commonwealth's possession. ***Id.*** at 8-9.

Appellant maintains that she is entitled to speedy trial relief even if the "run date" is adjusted to reflect delays attributable to the defense. Appellant "agrees that 136 days of delay are attributable to the defense" as found by the trial court. ***Id.*** at 22. More specifically, because she requested various continuances before trial, Appellant concedes that "[t]he 46 days between January 31 and March 18, 2022[,]" the 14 days between June 1, 2022 and June 15, 2022, "the 20 days between the August 3[, 2022] formal arraignment and August 23, 2022 pretrial conference" and "the 56 day-delay that followed her August 23, 2022 continuance" were attributable to her. Appellant's Brief at 22-23. Using the original criminal complaint filed on November 23, 2021 as the trigger for the mechanical run date under Pa.R.Crim.P. 600, Appellant's view is that the mechanical run date would be November 23, 2022. According to Appellant, "[f]actoring in 136 days of defense-attributable delays, the adjusted run date [was] March 23, 2023."[3] ***Id.*** at 24. Appellant concludes that the Commonwealth ran afoul of Rule 600 because it did not call the case to trial until June 29, 2023 – more than three months beyond the adjusted run date and it failed to prove that it exercised due diligence. ***Id.***

On appeal, Appellant argues, in sum:

> A considerable delay occurred between the filing of the criminal complaint and trial, totaling 583 days. The [Commonwealth] possessed the complainant's FBI extract and medical records, negligently misplaced the latter, stood silent on February 28, 2023

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[3] By our calculation, 136 days added to the mechanical run date, as suggested by Appellant, yields an adjusted run date of April 8, 2023, not March 23, 2023. Such discrepancy, however, does not change our analysis.

> as the [trial] court rescheduled trial beyond the Rule 600 adjusted run date, presented no legally competent evidence at the Rule 600 hearing about its efforts to re-obtain [the complainant's] records or share them with the defense, and then insisted it exercised due diligence throughout the life of [Appellant's] case. The Commonwealth's lack of due diligence here offends every purpose that Rule 600 is intended to serve.
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> The Commonwealth's lack of diligence is exemplified by its unexplained failure to safeguard a complainant's medical records, its refusal to provide the defense with the complainant's criminal history documentation before the February 28, 2023 trial date, and its insufficient presentation of legally competent evidence at the Rule 600 hearing. During the one year and seven months this case lingered in the lower courts, the Commonwealth repeatedly failed to procure complainant's attendance at court dates and to satisfy discovery obligations, both hallmarks of the notorious backlogs plaguing Philadelphia courtrooms.
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> * * *
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> The prosecution also failed in its duty to exercise due diligence when it stood silent on February 28, 2023 as the [trial] court rescheduled trial beyond the Rule 600 deadline. Due diligence required that the Commonwealth at least inquire whether the court could accommodate an earlier trial date to ensure Rule 600 compliance.
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> The [trial] court erred in denying [Appellant's] Rule 600 dismissal motion. She is entitled to reversal and discharge.

Id. at 17-18.

We adhere to the following standards in assessing the challenges Appellant raises on appeal:

> Our standard of review in evaluating speedy trial issues is whether the trial court abused its discretion, and our scope of review is limited to the trial court's findings and the evidence on the record, viewed in the light most favorable to the prevailing party. 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 ... discretion is abused.

> [Our Supreme] Court has previously explained that Rule 600 was adopted in order to protect defendants' constitutional rights to a speedy trial under the Sixth Amendment of the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution, in response to the United States Supreme Court's decision in ***Barker v. Wingo***, 407 U.S. 514, (1972). [Our Supreme Court has] also recognized that Rule 600 has the dual purpose of both protecting a defendant's constitutional speedy trial rights and protecting society's right to effective prosecution in criminal cases. 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.
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> Turning to its text, Rule 600 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." Pa.R.Crim.P. 600(A)(2)(a).

Commonwealth v. Womack, 315 A.3d 1229, 1237 (Pa. 2024) (internal case citations and most quotations omitted). Our Supreme Court, however, recognized that Rule 600 did not explicitly address the way to treat Rule 600 computation in a scenario "where the Commonwealth files two different criminal complaints against a defendant arising out of the same criminal episode." ***Id.*** at 1232.

Recently, in ***Commonwealth v. Butts***, 2025 WL 882703 (Pa. Super. 2025),[4] this Court examined ***Womack***, in light of additional existing precedent, to determine whether the filing date of an initial complaint or the

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[4] We may cite and rely on non-precedential decisions filed after May 1, 2019, for their persuasive value. ***See*** Pa.R.A.P. 126(b).

date of a subsequently filed complaint controls for Rule 600 computation purposes:[5]

> Pursuant to Rule 600(A), the Commonwealth must bring the defendant to trial within 365 days of the date it filed the written complaint. ***See*** Pa.R.Crim.P. 600(A)(2)(a). Delay that is attributable to the court, or the defendant, or other delay that occurs despite the Commonwealth's exercise of due diligence, is excluded from the 365-day calculation. ***Id.*** at 600(C)(1)-(2).
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> The comment to Rule 600 states that where the Commonwealth has withdrawn a first complaint and then filed a second, the date of the second complaint is controlling when (1) the Commonwealth needed to refile the charges due to factors beyond its control, (2) the Commonwealth "has exercised due diligence," and (3) the refiling is not an attempt to circumvent the time limitation of Rule 600:
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> > In cases in which the Commonwealth files a criminal complaint, withdraws that complaint, and files a second complaint, the Commonwealth will be afforded the benefit of the date of the filing of the second complaint for purposes of calculating the time for trial when the withdrawal and re-filing of charges are necessitated by factors beyond its control, the Commonwealth has exercised due diligence, and the refiling is not an attempt to circumvent the time limitation of Rule 600.
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> ***Id.*** at comment (*citing* [***Commonwealth v.***] ***Meadius***, 870 A.2d 802 [(Pa. 2005)]).
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> The seminal case, from which this test is derived, is ***Meadius***. "Prior to ***Meadius***, Pennsylvania law held that the ... run date in cases involving two complaints began with the second complaint where there was no intent by the Commonwealth to evade the

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[5] As previously stated, the trial court began its Rule 600 computation with the date the Commonwealth filed the initial complaint against Appellant, November 23, 2021. As discussed below in detail, however, the trial court erred as a matter of law and should have begun its computation on May 6, 2022, the date the complaint was refiled.

speedy-trial rule." [***Commonwealth v.***] ***Peterson***, 19 A.3d [1131,] 1136 [(Pa. Super. 2011) (*en banc*)]. In deciding ***Meadius***, the Supreme Court "expanded its prior holdings" and held "that even where the Commonwealth does not intend to circumvent Rule 600, the Commonwealth must also demonstrate that it proceeded diligently in prosecuting the original case in order to receive the benefit of the run date commencing from the filing of the second complaint." ***Id.***

In ***Meadius***, the Commonwealth repeatedly requested continuances of the preliminary hearing on the first complaint. The delays "were all caused when [the Commonwealth's] prosecuting attorney or its witnesses were absent attending to personal matters or for unexplained reasons." ***Meadius***, 870 A.2d at 807. The district justice threatened to dismiss the case. To avoid this result, the Commonwealth withdrew the complaint and filed a second, identical complaint. The defendant sought dismissal of the second complaint under Rule 600. The Supreme Court held that because the Commonwealth had not diligently prosecuted the first complaint, refiling the charges in a second complaint did not recommence the Rule 600 period. ***Id.*** at 808.

Six years later, in ***Peterson***, this Court, sitting *en banc*, considered the reverse scenario, and held that if the Commonwealth diligently prosecutes the first complaint, the date of the filing of the second complaint restarts the Rule 600 period. In ***Peterson***, the Commonwealth witnesses had been unable to attend the preliminary hearing on three occasions, which caused delay "beyond the control of the Commonwealth." ***Peterson***, 19 A.3d at 1134, 1139. The district court dismissed the first complaint for lack of prosecution. The Commonwealth refiled the same charges, and the defendant moved for dismissal under Rule 600.

On appeal, we specifically considered whether the Commonwealth must act with due diligence in the period after the first complaint was dismissed, if the Commonwealth had been diligent in its prosecution of that complaint. ***Id.*** at 1139. We answered this question in the negative, noting "a Rule 600 analysis pertains to the Commonwealth's actions during a pending action and not after the court has dismissed a charge or charges." ***Id.*** We explained this result comports with intent of Rule 600:

> Where the Commonwealth exercises due diligence in prosecuting the original criminal complaint, the time period

> between the dismissal of the first complaint and the re-filing of the second complaint is irrelevant for purposes of Rule 600 and the Commonwealth is only required to [refile] within the applicable statute of limitations. Such a holding is consistent with the purpose of Rule 600. As noted by our Supreme Court in ***Commonwealth v. Johnson***, 409 A.2d 308 (Pa. 1979), the purpose of our speedy trial procedural rule is "concerned with limiting the period of anxiety and concern accompanying public accusation." ***Johnson***, *supra* at 310 (internal quotations omitted). Since [the defendant] was not charged in the intervening period or incarcerated on that case, he was free from such concerns. ***Id.*** at 311.
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> In sum, when a trial court is faced with multiple identical criminal complaints, it must first determine whether the Commonwealth intended to evade Rule 600's timeliness requirements by withdrawing or having *nolle prossed* the charges. If the prosecution attempted to circumvent Rule 600, then the mechanical run date starts from the filing of the initial complaint, and the time between the dismissal of one complaint and the re-filing of the second complaint is counted against the Commonwealth. However, where the prosecution has not attempted to end run around the rule, and a competent authority properly dismissed the case, the court must next decide if the Commonwealth was duly diligent in its prosecution of the matter. Where the prosecution was diligent, the inquiry ends and the appropriate run date for purposes of Rule 600 begins when the Commonwealth files the subsequent complaint.

Id. at 1141; ***accord Commonwealth v. Dixon***, 140 A.3d 718, 726 (Pa. Super. 2016) (finding that because the Commonwealth "acted with due diligence while the original assault charges were pending ... any purported lack of diligence on the part of the Commonwealth during the time when the charges were withdrawn but before they were [refiled], is irrelevant for Rule 600 purposes").

Recently, in another two-complaint case, ***Womack***, the Supreme Court applied the "***Meadius*** test" that is now included in the official comment to Rule 600. ***See Womack***, 315 A.3d at 1239. The Court explained that "the due diligence inquiry" the ***Meadius*** test requires "relates to whether the Commonwealth's basis for filing the second complaint was precipitated by its lack of diligence in prosecuting the first complaint." ***Id.*** at 1240.

In ***Womack***, the District Attorney filed a first complaint, and while that was pending, the Attorney General conducted a grand jury investigation and filed a second complaint. The Attorney General's prosecution ultimately charged 28 offenses, "some of which overlapped in both date and substance with some of the charges filed in the first case." ***Womack***, 315 A.3d at 1252 (Wecht, J., concurring). The first complaint was dismissed pursuant to Rule 600, and the case proceeded only on the second complaint.

The Supreme Court applied the ***Meadius*** test and found the denial of the Rule 600 motion was proper. It held that under the "unique facts" of the case, because the second complaint was not filed due to a lack of diligence in prosecuting the first complaint, but due to the desire to gather additional evidence, the relevant period for the due diligence analysis was the time between the filing of the two complaints. ***Id.*** at 1240. The Court stated,

> Where the Commonwealth files two different criminal complaints against a defendant, the Commonwealth receives the benefit of the filing date of the second complaint for Rule 600 purposes where it demonstrates that it acted with due diligence between the period in which the complaints were filed. The Commonwealth must also establish that the filing of the second complaint was necessitated by factors beyond its control and that its actions were not an attempt to circumvent or manipulate the speedy trial requirements.

Id. at 1241 (emphasis added).

Importantly, in ***Womack***, the first complaint was still pending when the Commonwealth filed the second complaint; it had neither been withdrawn nor dismissed. Moreover, the second complaint was a "different" complaint – not a mere duplicate of the first. These circumstances required analysis of whether the filing the second complaint was necessitated by the Commonwealth's failure to exercise due diligence after filing the first complaint – including the period between filing the first and second complaints. Again, the Court emphasized that this period only became relevant "under the unique facts of th[e] case." ***Id.*** at 1240.

Thus, ***Womack*** did not overturn ***Peterson***. Rather, ***Womack***, ***Peterson***, and ***Meadius*** all require that the due diligence inquiry begin with whether the filing of a second complaint was necessitated by the Commonwealth's failure to diligently

> prosecute the first complaint. The Commonwealth's actions after the withdrawal or dismissal of the first complaint only become relevant for Rule 600 purposes if the Commonwealth was forced to file a second complaint because it failed to exercise due diligence in prosecuting the first complaint.
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> Determining whether the Commonwealth exercised due diligence is a fact-specific inquiry, which "does not require perfect vigilance and punctilious care, but merely a showing the Commonwealth has put forth a reasonable effort." Pa.R.Crim.P. 600 at comment (quoting ***Commonwealth v. Selenski***, 994 A.2d 1083, 1089 (Pa. 2010)).

Butts, 2025 WL 882703, at *4–7 (footnotes and original brackets omitted).

Here, the trial court determined:

> At [A]ppellant's Rule 600 hearing, the Commonwealth presented the testimony of Tracee Washington, a victim/witness coordinator for the Philadelphia District Attorney's Office – Municipal Court Unit. Ms. Washington testified that she contacts victims and witnesses for the District Attorney's Office to alert them of upcoming court dates either by phone or mail. Ms. Washington stated it is the standard practice to track her interactions with victims and witnesses in a contact log. Regarding [A]ppellant's case, Ms. Washington recalled that she spoke with the complainant, Jimmy Battle, several times in January, March, and May of 2022 and also mailed a subpoena to him. This testimony was corroborated by entries in Ms. Washington's contact log [which was entered into evidence at the Rule 600 hearing as Commonwealth Exhibit C-1].

Trial Court Opinion, 1/3/2024, at 2, *citing* N.T., 6/29/2023, at 16-30; Commonwealth's Exhibit C-1.

The trial court, however, did not specifically engage in a due diligence inquiry, pursuant to ***Womack***, ***Peterson***, ***Meadius***, and ***Butts***, to determine whether the filing of a second complaint was necessitated by the Commonwealth's failure to diligently prosecute the first complaint. It is likely

that this misstep in the trial court's legal analysis caused it to conclude, erroneously, that the filing date of the first complaint controlled its Rule 600 computation. We note further that the trial court credited the testimony of Tracee Washington, as corroborated by her contact logs,[6] and found that she diligently attempted to procure the victim/complainant to attend the preliminary hearing on three separate occasions to no avail. In a nearly identical scenario as presented in ***Peterson***, here, despite the Commonwealth's diligent efforts to ensure attendance, the complaining witness failed to appear for the preliminary hearing on three occasions, which caused delay beyond the control of the Commonwealth. There is simply no evidence of record to suggest that the Commonwealth's actions of withdrawing the first complaint and refiling the identical complaint later constituted an attempt to circumvent or manipulate the speedy trial requirements. As such, we conclude that the trial court erred as a matter of law and abused its discretion by beginning its Rule 600 computation with the date of the initial complaint; instead, we conclude that the date of the second filed complaint, May 6, 2022, should be deemed controlling for Rule 600 purposes.

Next, in making Rule 600 computations, we are mindful that:

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[6] We reviewed the contact log, introduced by the Commonwealth as Exhibit C-1 at the Rule 600 hearing, which was filed and made part of the supplemental certified record on appeal with this Court on November 14, 2024.

> As the text of Rule 600(A) makes clear, the mechanical run date comes 365 days after the date the complaint is filed. We then calculate an adjusted run date pursuant to Rule 600(C). Rule 600(C) expressly provides that certain time periods are to be excluded from the calculation of the Rule 600 run date. Our Courts have referred to the time periods specified in Rule 600(C) as excludable time.
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> Pursuant to Rule 600(A) and (C), we calculate the mechanical and adjusted run dates as follows:
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> > The mechanical run date is the date by which the trial must commence under Rule 600. It is calculated by adding 365 days (the time for commencing trial under Rule 600) to the date on which the criminal complaint is filed. […T]he mechanical run date can be modified or extended by adding to the date any periods of time in which delay is caused by the defendant. Once the mechanical run date is modified accordingly, it then becomes an adjusted run date.
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> If the defendant's trial commences prior to the adjusted run date, we need go no further.

Commonwealth v. Ramos, 936 A.2d 1097, 1101–1102 (Pa. Super. 2007) (internal citations, quotations, original brackets, and footnote omitted).

Using the second criminal complaint for our Rule 600 calculation in assessing Appellant's speedy trial claim, the record confirms that Appellant was brought to trial in a timely manner. In this case, we add 365 days to the date of the filing of the second complaint, May 6, 2022, to arrive at a mechanical run date of May 6, 2023. Further, Appellant concedes that the 14 days between June 1, 2022 and June 15, 2022, the 20 days between the August 3, 2022 formal arraignment and August 23, 2022 pretrial conference, and the 56 day-delay that followed her August 23, 2022 continuance were

attributable to her and, therefore, excludable time.[7] ***See supra***. Thus, we extend the mechanical run date by adding periods of time in which delay is caused by the defendant, in this case, 90 days of excludable time, to arrive at an adjusted run date of August 4, 2023. Because this case went to trial on June 29, 2023, before the adjusted run date, there was no Rule 600 violation. As such, we need not consider Appellant's additional argument that the Commonwealth failed to exercise due diligence regarding its discovery obligations.

Judgment of sentence affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 7/18/2025

[7] While Appellant also concedes that "[t]he 46 days between January 31 and March 18, 2022 counts against the defense, because [she] requested a continuance[,]" this continuance occurred before the second complaint was filed and we have already considered that time period in our analysis.