

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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C/cb

_____AD3d_____

Argued - March 20, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
JOSEPH COVELLO
WILLIAM E. McCARTHY, JJ.

2006-02779

DECISION & ORDER

The People, etc., appellant,
v James Clayton, respondent.

(Ind. No. 1907-05)

Thomas J. Spota, District Attorney, Riverhead, N.Y. (Grazia DiVincenzo of counsel),
for appellant.

Russo & Gajdos, LLP, Patchogue, N.Y. (Michael A. Gajdos of counsel), for
respondent.

Appeal by the People from an order of the County Court, Suffolk County (Braslow,
J.), dated January 30, 2006, which granted the defendant's motion to dismiss the indictment pursuant
to CPL 30.30(1)(a).

ORDERED that the order is affirmed.

On February 8, 2005, the defendant was arraigned on a felony complaint that had been
filed against him the previous day. At the arraignment, the court dismissed the felony complaint as
insufficient and jurisdictionally defective.

More than six months later, an indictment was filed against the defendant which
contained the same charges as those underlying the felony complaint. The defendant moved to
dismiss the indictment pursuant to CPL 30.30(1)(a), and the County Court, which found that the
defendant had been deprived of his right to a speedy trial, granted the motion and dismissed the
indictment.

April 24, 2007

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The six-month period within which the People were required to be ready for trial is to be measured from the date of filing of the felony complaint, and not from the date of filing of the indictment, even when, as here, the complaint was dismissed (*see People v Osgood*, 52 NY2d 37, 41-45; *People v Lomax*, 50 NY2d 351, 355-356). Since the record shows that the People were chargeable with more than six months of delay after the filing of the felony complaint, the County Court correctly granted the motion and dismissed the indictment (*see* CPL 30.30[1][a]).

MILLER, J.P., RITTER, COVELLO and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court