

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

D32425  
W/kmb

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Argued - September 16, 2011

PETER B. SKELOS, J.P.  
THOMAS A. DICKERSON  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT, JJ.

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2010-00410

DECISION & ORDER

The People, etc., appellant,  
v Anthony Smith, respondent.

(Ind. No. 10224/07)

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Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Ann Bordley of counsel), for appellant.

Lynn W. L. Fahey, New York, N.Y. (William A. Loeb of counsel), for respondent.

Appeal by the People from an order of the Supreme Court, Kings County (Gary, J.), dated December 10, 2009, which, upon reargument, adhered to its determination in an order of the same court dated June 22, 2009, granting the defendant's motion pursuant to CPL 30.30 to dismiss the indictment on the ground that he was deprived of his statutory right to a speedy trial.

ORDERED that the order dated December 10, 2009, is reversed, on the law, upon reargument, the determination in the order dated June 22, 2009, granting the defendant's motion to dismiss the indictment is vacated, the defendant's motion pursuant to CPL 30.30 to dismiss the indictment is denied, the indictment is reinstated, and the matter is remitted to the Supreme Court, Kings County, for further proceedings on the indictment.

Pursuant to CPL 30.30(1)(a), the People must be ready for trial within six months of the commencement of a criminal action in which a felony is charged (*see People v Goss*, 87 NY2d 792, 796; *People v McKenna*, 76 NY2d 59, 62). Here, the People filed the indictment and a statement of readiness with the Supreme Court on November 16, 2007, within the six-month period. Contrary to the determination of the Supreme Court, the People should not have been charged with a 12-day period of post-readiness delay between November 16, 2007, and November 28, 2007, as

October 4, 2011

Page 1.

PEOPLE v SMITH, ANTHONY

the delay in obtaining records from the Criminal Court so that the defendant could be arraigned is properly attributable to the Criminal Court (*see People v Carter*, 91 NY2d 795, 799; *People v Goss*, 87 NY2d at 797-798). After this 12-day period is excluded, the total time chargeable to the People was 173 days. Since the amount of time chargeable to the People did not exceed 184 days, representing the six-month period applicable here, upon reargument, the defendant's motion to dismiss the indictment should have been denied.

SKELOS, J.P., DICKERSON, LEVENTHAL and LOTT, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court