

**People v Elm Neurological Care, P.C.**

2006 NY Slip Op 30778(U)

July 17, 2006

Supreme Court, Westchester County

Docket Number: 05-0381

Judge: Richard A. Molea

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

FILED and ENTERED  
*July 17, 2006*  
WESTCHESTER  
COUNTY CLERK

-against-

ELM NEUROLOGICAL CARE, P.C., and  
COMPAS MEDICAL, P.C.,

Defendants.

-----X  
MOLEA, J.

DECISION AND ORDER

Indictment No. 05-038

FILED  
JUL 17 2006  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

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Upon consideration of the above-referenced defendants' motion brought pursuant to CPL 30.20 and CPL 30.30 seeking the dismissal of the instant indictment upon both due process and statutory speedy trial grounds, the Court has considered the following papers: notice of motion, affirmation and reply affirmation of counsel for the defendants, Arthur Morrison, Esq., and the affirmation in opposition and memorandum of law of Assistant District Attorney Steven A. Bender.

Under the instant indictment, the defendants herein are jointly charged with a single count of Enterprise Corruption in violation of Penal Law § 460.20(1)(a), and a single count of Money Laundering in the first degree in violation of Penal Law § 470.20(1)(b)(ii)(A), in addition to twenty other felony offenses derived from the defendants' alleged participation in a fraudulent medical mill operation whereby the participants received stolen proceeds from several insurance companies in a total amount which exceeded \$ 2,700,000.00.

On October 7, 2005, the instant indictment was filed under seal in the County Court of Westchester County, which issued a corporate summons upon each of the defendants on October 18, 2005 directing their appearance before the *Ex Parte* Part of the County Court of Westchester County on October 27, 2005. On December 6, 2005, the defendants were arraigned on the

instant indictment before the County Court of Westchester County (DiBella, J.) and counsel for the defendants entered pleas of not guilty to all counts charged therein on their behalf. Prior to the conclusion of these court proceedings, the People made an oral declaration on the record evincing their readiness to proceed to trial. Upon the consent of both the People and counsel for the defendants, this case was conferenced with the County Court, Westchester County (DiBella, J.) on January 10, 2006 and adjourned until March 17, 2006 in order to afford the defendants an opportunity to submit omnibus motions. Although the defendants elected not to file omnibus motions, the other charged co-defendants filed individual omnibus motions which were decided by the County Court, Westchester County (DiBella, J.) by Decision and Order dated March 28, 2006. On April 11, 2006, the County Court, Westchester County (DiBella, J.) filed a Trial Readiness Order, thereby transferring the defendants' cases to the Trial Assignment Part for appearance before this Court on April 20, 2006.

On April 18, 2006, counsel for the defendants submitted a written request to this Court, which was subsequently granted, seeking an adjournment of this case from April 20, 2006 to May 4, 2006 in the Trial Assignment Part. On May 4, 2006, this Court conducted a conference between all of the parties, including counsel for the defendants, in an effort to select and finalize a trial date for this case. This Court received input from the parties concerning the earliest possible date for their availability to commence the trial of this matter and was advised by the parties that the expected duration of the trial would be between ten (10) and twelve (12) weeks. Upon consideration of the representations of the parties concerning the anticipated duration of the trial of this matter, the Court proposed that trial commence on July 10, 2006, and further directed that the parties consider efforts to minimize the duration of the trial, specifically

proposing the entry of stipulations to the admission of evidence during the course of the trial.

The Court directed the parties to both ascertain their ability to commence trial on July 10, 2006 and to consider the entry of the stipulations which were discussed during the conference. Upon concluding this conference, the Court adjourned this matter upon the consent of all parties until May 18, 2006 for a further conference upon these outstanding issues. During the conference before the Court on May 18, 2006, both the prosecutors and defense counselors in attendance requested that the trial date for this case be adjourned from July 10, 2006 to a more distant date. The Court was advised by counsel for the defendants that he was scheduled to commence a trial in Queens County in July of 2006, and upon consideration of this conflict and several other scheduling conflicts represented by the parties, the Court adjourned the trial of this matter to September 5, 2006.

By notice of motion, the defendants move this Court to dismiss the instant indictment pursuant to CPL 30.20 and CPL 30.30, alleging that they have been denied both their constitutional due process right to a speedy trial pursuant to CPL 30.20 and their statutory right to speedy trial pursuant to CPL 30.30. The People oppose the defendants' motion in its entirety, arguing that same should be summarily denied by this Court.

(I.) MOTION TO DISMISS PURSUANT TO CPL 30.20

The defendants move the Court to dismiss the instant indictment pursuant to CPL 30.20, alleging that protracted period of post-accusatory delay has effectively denied them of their due process right to a speedy trial pursuant to the United States Constitution and the New York State Constitution. The People oppose the defendants' instant application, alleging that as the defendants have failed to suffer any prejudice as a result of the accrued period of post-accusatory delay, for which they have either been responsible or have consented to, the People cannot be found to have violated the defendants' due process right to a speedy trial pursuant to CPL 30.20.

In New York, the applicable standard governing the evaluation of constitutional speedy trial claims based upon the alleged post-accusatory delay to the prompt commencement of a criminal trial proceeding requires consideration of (1) the length of the delay, (2) the reason for the delay, (3) the degree of actual prejudice to the defendant, (4) the seriousness of the underlying offense, and (5) the duration of pretrial incarceration (*People v. Taranovich*, 37 NY2d 442, 445; *People v. Brown*, 262 AD2d 419; *People v. Farner*, 234 AD2d 561, 562; *People v. Quiroz*, 192 AD2d 730; *People v. LaRocca*, 172 AD2d 628; *People v. Rosado*, 166 AD2d 544; *People v. Bryant*, 65 AD2d 333, 336).

As the defendants were formally charged in this case pursuant to the filing of a sealed indictment on October 7, 2005 in the County Court of Westchester County, any alleged violation of the defendant's constitutional right to a speedy trial must be measured from that date until the filing of the instant motion with the Court on May 24, 2006, which comprises an alleged post-accusatory delay of two hundred and twenty-nine (229) lapsed days. With regard to the reasons

for the delays incurred, the People have alleged that a significant amount of the lapsed time was the result of adjournments requested by the defense or upon the consent of the parties, including the period between January 10, 2006 until March 17, 2006, as well as the period between April 18, 2006 and May 4, 2006. Significantly, there is no indication in the defendant's moving papers that the delay was "a deliberate attempt by the prosecution to hamper [the defendant] in the preparation of his defense" (*People v. Taranovich, supra*, at 446; *People v. Tomaino*, 248 AD2d 944, 945), nor that the delay was intentionally incurred by the prosecution in an effort to gain a tactical advantage (*People v. Jones*, 267 AD2d 250, *lv. denied* 94 NY2d 949).

With respect to the defendants' claim that they have suffered prejudice as a result of the post-accusatory delay occasioned in this case, they allege that "the delay has greatly hampered [their] trial preparation". In this regard, it is well-settled that conclusory claims such as these, made in the absence of any articulable factual support, have repeatedly been held to be mere "routine-like claims of prejudice" which are insufficient to warrant the dismissal of an indictment (*People v. Fuller*, 57 NY2d 152, 160; *People v. Brown*, 262 AD2d 419, 420; *People v. Lee*, 234 AD2d 140, 143; *People v. Quiroz, supra*, at 730).

With regard to the seriousness of the underlying offenses, the defendants stand charged under a twenty-two (22) count indictment with crimes which include Enterprise Corruption, Insurance Fraud in the first degree, Money Laundering in the first degree, and Grand Larceny in the second degree, stemming from allegations that the defendants' participated in a fraudulent medical mill operation whereby the participants received stolen proceeds from several insurance companies in a total amount which exceeded \$ 2,700,000.00. These charges are quite serious in nature, including class "B" felony offenses for which significant prison time may be imposed as a

sentence upon conviction.

Finally, with regard to the length of the defendants' incarceration, as the defendants are corporate entities, this consideration is not implicated here.

Accordingly, the severity of the underlying offenses and the lack of any demonstrable prejudice to the defendant, when considered in conjunction with the other attendant circumstances, leads this Court to find that the defendants have not been denied due process as a result of the accrued period of post-accusatory delay (*see, People v. Taranovich, supra*, at 445; *People v. Braxton*, 176 AD2d 811, *app. denied* 78 NY2d 1126; *People v. Romero*, 173 AD2d 654, *app. denied* 78 NY2d 1014; *People v. Rothman*, 118 AD2d 738, 739). In this regard, as the issues raised by the defendants in their motion papers were capable of being addressed on the submissions alone, an evidentiary hearing is not required (*see, CPL 210.45 [5][a]-[b]*; *cf. People v. Townsend*, 38 AD2d 569).

Based upon the foregoing, defendants' motion to dismiss the instant indictment due to the alleged violation of their due process right to a speedy trial pursuant to the United States Constitution and the New York State Constitution is summarily denied.

(II.) MOTION TO DISMISS PURSUANT TO CPL 30.30

The defendants further move the Court to dismiss the instant indictment upon statutory speedy trial grounds, alleging that the People have failed to afford them a speedy trial within the meaning of CPL 30.30(1)(a). In the alternative, the defendants seeks a pre-trial hearing to address the issues raised through the instant application. The People oppose the defendant's applications in their entirety, alleging that their announcement of readiness was timely made upon the application of excludable time within the meaning of CPL 30.30(4)(c).

It is well-settled that CPL 30.30(1)(a) mandates that the People declare their present readiness to proceed to trial on a felony charge within six months of the date of the commencement of that criminal action (*People v. Chavis*, 91 NY2d 500, 504). The failure of the People to timely declare their readiness to proceed to trial, within the meaning of CPL 30.30(1)(a), will result in the dismissal of the subject criminal charge(s) unless the People can show that a sufficient period of time is excludable pursuant to CPL 30.30(4)(a)-(j) (*see, People v. Berkowitz*, 50 NY2d 333, 349; *see also, People v. Dean*, 45 NY2d 651, 659).

Initially, the Court finds that the instant criminal action commenced on October 7, 2005 upon the filing of the instant indictment under seal in the County Court of Westchester County (*People v. Sinistaj*, 67 NY2d 236, 239; *People v. Lomax*, 50 NY2d 351). As the speedy trial time period is calculated in terms of calendar months, as opposed to a fixed number of days, the applicable period within which the People were required to declare trial readiness, extending between October 7, 2005 and April 7, 2006, comprised 184 days (*People v. Cortes*, 80 NY2d 201). Here, the Court's records reflect that the People declared their readiness to proceed to trial

following the defendant's arraignment under the instant indictment on December 6, 2005, comprising a total of sixty (60) days between the date of commencement and the date of declared readiness. However, the defendant claims that the People's assertion of readiness to proceed to trial was illusory due to their purported statements of unreadiness made throughout the pendency of this case subsequent to December 6, 2005.

Were this Court to assume for the purposes of considering the defendants' argument that the People's declaration of readiness on December 6, 2005 was illusory, the total number of lapsed days between the commencement of this criminal proceeding on October 7, 2005 and the filing of the instant application on May 28, 2006 constitutes a total of two hundred and thirty-three (233) days. As the People were required to declare readiness in this case within one hundred and eighty-four (184) days of the date of commencement, acceptance of the defendant's argument concerning the illusory nature of the People's declaration of readiness, would require that the People identify at least forty-nine (49) days of excludable time in order to avoid dismissal of the instant indictment. In this regard, the Court finds that consideration of the defendant's present claim does not require consideration of the merits of the defendant's argument concerning the legitimacy of the People's declaration of readiness on December 6, 2005, as the record of this matter maintained by the Court reflects that a total of ninety-one (91) lapsed days are properly excludable pursuant to CPL 30.30(4)(a)-(j), thereby enabling the Court to resolve the instant application upon that basis alone.<sup>1</sup> Specifically, the Court finds that the

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<sup>1</sup>Upon considering the contradictory arguments of the parties, the Court notes that neither the defense, nor the prosecution, have supported their respective positions with proof beyond their unsupported allegations, having neglected to provide the Court with stenographic transcripts of pertinent court proceedings, court records, affidavits, or other forms of proof.

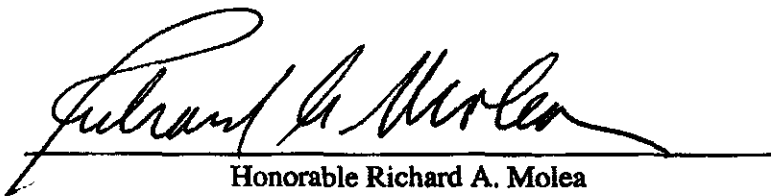
period between January 10, 2006 and March 28, 2006, comprising a total of seventy-seven (77) days, was the subject of an adjournment granted upon the defendants' request for the submission of pre-trial omnibus motions and the period during which such motions were under consideration by the court and is excludable on that basis (*see*, CPL 30.30[4][a]; *People v. Edwards*, 215 AD2d 498). Furthermore, the Court finds that the period between April 20, 2006 and May 4, 2006, comprising a total of fourteen (14) days, was the subject of an adjournment granted upon the defendants' request and is excludable on that basis (*see*, CPL 30.30[4][b]).

Accordingly, as there are ninety-one (91) excludable days which are to be subtracted from the two-hundred and thirty-three (233) total days which have lapsed between the commencement of the instant criminal action on October 7, 2005 and the filing of the instant application on May 28, 2006, there are a maximum of merely one-hundred and forty-two (142) days which could be considered chargeable to the People within the meaning of CPL 30.30.

Based upon the foregoing, the defendants' instant motion seeking dismissal of the instant indictment due to the alleged violation of his statutory right to a speedy trial within the meaning of CPL 30.30 is summarily denied (*see*, CPL 210.45[5]; *see also*, *People v. Lomax, supra*, at 357-358).

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York  
July 17, 2006

  
Honorable Richard A. Molea  
Acting Justice of the Supreme Court

TO:

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