

People v Karim

2009 NY Slip Op 30601(U)

March 11, 2009

Supreme Court, Queens County

Docket Number: 416/07

Judge: Darrell L. Gavrin

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

Short Order form

SUPREME COURT - STATE OF NEW YORK
CRIMINAL TERM PART K - 21 QUEENS COUNTY
125-01 QUEENS BLVD., KEW GARDENS, NEW YORK 11415

P R E S E N T :

HON: DARRELL L. GAVRIN
Justice

_____	:	IND. NO: 416/2007
THE PEOPLE OF THE STATE OF NEW YORK	:	
	:	HEARING: To dismiss pursuant to
	:	CPL § 30.30
	:	
-against-	:	
	:	
TAWHIR KARIM	:	
	:	
Defendant	:	

On the papers submitted

BY: James Shalley, Esq.
For the motion

Hon. RICHARD A. BROWN, D.A.
BY: Paul Scotti, A.D.A.
Opposed

Upon the foregoing papers, the defendant's motion is granted in accordance with the accompanying memorandum.

DATE: March 11, 2009

J.S.C.

MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF QUEENS: CRIMINAL TERM: PART K-21

 THE PEOPLE OF THE STATE OF NEW YORK : BY: DARRELL L. GAVRIN, J.S.C.
 :
 : DATED: MARCH 11, 2009
 -against- :
 :
 TAWHIR KARIM : IND. NO. 416/07
 :
 Defendant :

On January 15, 2009, this court issued a short form order, *sua sponte*, vacating a prior order of December 19, 2008 and setting this matter down for a hearing on February 5, 2009.

Following a conference with the court, the defendant's counsel and the A.D.A. assigned to this matter each filed a supplemental affirmation concerning defendant's motion to dismiss this matter pursuant to CPL §30.30.

In the "pre-readiness" stage of the proceedings the defense maintains that one hundred fifty-five (**155**) days are chargeable to the People. For this same period of time, the People maintain that only eighty (**80**) days are chargeable.

In the "post-readiness" period the defense maintains that one hundred thirty-two (**132**) days are chargeable to the People, while the People maintain that only eighty-nine (**89**) days are chargeable for this period.

There are two adjournments in the "pre-readiness" stage of the proceedings with respect to this case which are in dispute, the resolution of which could prove

dispositive of the defendant's motion to dismiss pursuant to CPL §30.30. For that reason this court will focus, in the first instance, on those proceedings.

The first adjournment occurred on March 22, 2007; the case was adjourned to April 27, 2007. The minutes for the proceedings before the court are attached as exhibit 3 to the People's supplemental response.

The minutes from March 22, 2007, in part AP - N are as follows:

COURT OFFICER: Number six and 61, Tawhir Karim

MR. SINGH: Judge, it is a new case. I am passing up my notice of appearance on number 61, the newest of the cases. Judge, David Singh, 42-40 Bell Boulevard, Bayside, New York, on behalf of Mr. Karim.

THE COURT: Yes.

MS. MCCARRON: I understand this is to be a consent adjournment on this case for any day of the week.

MR. SINGH: Judge, I just need three weeks.

THE COURT: Well, as to docket 718 that case is from October. Is there Grand Jury action on that case?

MS. MCCARRON: No, this case has not as of yet been presented.

THE COURT: Let's put that matter on for Grand Jury action. The new matter you want to put that on for possible disposition?

MR. SINGH: Judge, I think we are trying to wrap up both cases if we can have the same date?

THE COURT: What is a good date?

MR. SINGH: How about, Judge, – Would April be too far, Judge, or May?

THE COURT: Let's put it on for April.

MR. SINGH: April 27th.

THE COURT: This is any date?

MS. MCCARRON: Yes.

THE COURT: April 27th.

MR. SINGH: Thank you.

THE COURT: And that is with a waiver until the 11th.

MR. SINGH: That is fine, Judge.

THE COURT: Any objection to extending the orders of protection.

MR. SINGH: No, Judge.

THE COURT: Okay, sir, I am extending the orders of protection, which means you are not to have any contact with nor are you to commit any crimes against the complaining witness. If you violate those orders, one a warrant could issue immediately for your arrest, and two, you could be charged with the crime of criminal contempt. You must wait in the courtroom for a copy of the orders of protection. Bail is continued.

The second adjournment occurred on April 27, 2007; the case was adjourned to May 21, 2007. The minutes for those proceedings are attached as exhibit 4 to the People's supplemental response.

The minutes from April 27, 2007 in part AP-N are as follows:

COURT OFFICER: Calendar number five on the AP-N calendar, Tawhir Karim.

DEFENSE ATTORNEY: Dave Singh, 42-40 Bell Boulevard.

THE COURT: Does your client have three cases?

MR. SINGH: Yes Judge. We're going to put it on consent for 5/21.

THE COURT: Does he have two cases on today?

MR. SINGH: No Judge.

THE COURT: What happened to the other case?

MR. SINGH: It's on for the twenty-first Judge.

ADA: In part Ap-6.

MR. SINGH: Judge, forthwith the AP-N case to AP-6 for that date, for the twenty-first, or are we going to keep this case in AP-N?

ADA: We're going to adjourn it to AP-6 for 5/21 please.

THE COURT: 5/21, AP-6. Any objection to extending the order of protection?

MR. SINGH: No Judge.

THE COURT: Okay sir, I'm extending the order of protection, which means you're not to have any contact with, nor are you to commit any crimes against the complaining witness. If you violate that order,

one, a warrant will issue immediately for your arrest, and two, you can be charged with the crime of criminal contempt. You must wait in the courtroom for a copy of the order of protection. Bail is continued.

* * * * *

COURT OFFICER: AP-N calendar, number two, Karim Tawhir.

THE COURT: Okay, sir, you did have two cases in AP-N. Is there Grand Jury action on this matter?

ADA: No Your Honor, this matter's not been presented as of yet. I understand that the attorney wanted to work out a plea to cover all the cases. In any event, I would ask for the same date, 5/21 in part AP-6.

THE COURT: Okay. Mr. Karim, I'm extending the order of protection, which means, you're not to have any contact with, nor are you to commit any crimes against the complaining witness. If you violate that order, one, a warrant could issue immediately for your arrest, and two, you could be charged with the crime of criminal contempt. You must wait in the courtroom for a copy of the order of protection. Bail is continued.

“Pre-readiness” delays are those which occur prior to the People’s initial statement of readiness. The People are charged for the entire period of “pre-readiness delay unless there is a specific exclusion of time under CPL §30.30 (4) that prevents the prosecution from being able to assert their readiness. See, e.g. People v. Cortes, 80 NY2d 201, 213 (1992); People v. Correa, 77 NY2d 930, 931 (1991); cf. People v. v. Worley, 66 NY2d 523, 527-28 (1985); People v. Brothers, 50 NY2d 413, 417-18 (1980) (delay caused by court congestion prior to statement of readiness is chargeable to the People).

“Where, as here, a defendant moves to dismiss an indictment on the grounds specified in CPL §30.30 and makes a *prima facie* showing that the People exceeded the six-month trial readiness deadline, the burden falls on the People to demonstrate that the delay greater than six months should be excluded. (See People v. Santos, 68 NY2d, 859, 861; People v. Kendzia, 64 NY2d 331, 337).” People v. Suarez, 259 AD2d 640, 687, NYS2d 650 (1999).

Moreover, delays which occur prior to the filing of a certificate of readiness or statement of readiness on the record coupled with the filing of the indictment are “... not excludable under CPL §30.30 (4) (b) in the absence of a clear expression of consent (See People v. Liotta, 79 NY2d 841 [1992]).” People v. Nunez, 47 AD3d 545, 851 NYS2d 128, (2008).

In Nunez, the court found that defense counsel’s statement of “fine” in response to a suggested court date did not amount to a consent to an adjournment for speedy trial purposes. *Id.* at 546, (citing People v. Smith, 82 NY2d 676 [1993]).

On March 22, 2007, the court called the calendar for the instant action and another matter which constituted a new arrest. A reading of these minutes makes it clear that the new matter was being adjourned “on consent”, but this case was adjourned for grand jury action. Counsel Singh’s request for the same date for both cases in no way constituted an express consent “or waiver” for CPL §30.30 purposes in the instant case. It was simply a matter of convenience. *Id.* Accordingly, the People are charged with this adjournment for a total of thirty-six (36) days.

On the first call of the calendar in APN on April 27, 2007, the defendant’s newer cases were called and adjourned on consent by counsel for appearance in AP-6

on May 21,2007. However, the instant case was called later and separately, and was adjourned for Grand Jury action to part AP-6 for the same date, May 21, 2007. Accordingly, the People are charged with this adjournment for a total of twenty-four (**24**) days.

Therefore, taking the eighty (**80**) days the People concede they must be charged and adding to it the sixty (**60**) days this court finds must also be charged, results in a finding of pre-readiness delay of one hundred forty (**140**) days.

The People maintain they can only be charged with eighty-nine (**89**) days in the post-readiness context. Accepting such a claim for purposes of this motion the court finds two hundred and twenty-nine (**229**) days chargeable to the People.

This amount being in excess of the six month statutory period allowed, defendant's motion is granted.

Accordingly, pursuant to CPL §§30.30 (1) (a) and 210.20 (1)(g), Indictment Number 416/2007 is dismissed.

Date: March 11, 2009

J.S.C.