

People v Abdullah
2013 NY Slip Op 34231(U)
January 3, 2013
County Court, Broome County
Docket Number: 12-209
Judge: Joseph F. Cawley
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STATE OF NEW YORK
COUNTY COURT : : BROOME COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

DECISION AND ORDER
Indictment No. 12-209 **FILED**

RAMAL ABDULLAH,
Defendant.

JAN -4 2013

SUPREME/COUNTY COURT
CLERKS OFFICE

JOSEPH F. CAWLEY, J.

This *pro se* defendant presently stands charged with **Criminal Possession of a Controlled Substance in the Third Degree** (Count 1, date of incident 4/2/11), **Criminal Possession of a Controlled Substance in the Fifth Degree** (Count 2, date of incident 4/2/11), **Criminal Possession of a Weapon in the Second Degree** (Count 3, date of incident 10/31/11), **Criminal Possession of a Weapon in the Third Degree** (Count 4, date of incident 10/31/11), **Resisting Arrest** (Count 5, date of incident 10/31/11), **Reckless Driving** (Count 6, date of incident 10/31/11), and **Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree** (Counts 9 and 10, dates of incident 4/2/11 and 10/31/11 respectively).

Counts 7 and 8 (Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree on 12/30/10 and 3/7/11) were previously dismissed by Decision and Order of this Court dated November 8, 2012, based upon a violation of defendant's right to a speedy trial pursuant to CPL 30.30 as to those charges.

BACKGROUND

Defendant filed an Omnibus Motion on June 14, 2012, as well an amendment thereto dated June 18, 2012. Within the June 14, 2012 submission, defendant sought, *inter alia*, to "Dismiss The **Indictment** Pursuant To C.P.L. §210.20(1)(g)", claiming that he had been denied

his right to a speedy trial (Notice of Omnibus Motion, pg.1 at ¶ (5)) (*emphasis added*). His Affirmation in Support, again seeking to dismiss the **Indictment** “pursuant to CPL §210.20(1)(g) and 30.30(1)(a)” (Affirmation in Support pg.11 at ¶ (5)) (*emphasis added*) described in great detail the time line of prosecution between his arrest for Criminal Possession of a Controlled Substance in the Third Degree, Criminal Possession of a Controlled Substance in the Fifth Degree and Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree on April 2, 2011 until the People’s declaration of “Ready” on April 20, 2012, and his arraignment on the instant indictment on April 24, 2012. His motion ultimately sought to “Dismiss the **Indictment...**” based on the prosecution’s alleged failure to comply with their CPL 30.30(1)(a) obligations. (Affirmation in Support, pg.19 at ¶ 38) (*emphasis added*).

In response to the foregoing application, on July 2, 2012, the People forwarded the minutes of Grand Jury proceedings to the Court for its review, and thereafter (on July 20, 2012) filed an Affidavit in Opposition to Defendant’s Omnibus Motion. Contained therein, *inter alia*, was the People’s response and opposition to defendant’s speedy trial application.

Defendant thereafter filed another Notice of Motion dated September 4, 2012, wherein he sought to “Dismiss **Indictment** Pursuant To CPL 210.20(1)(g) and 30.20(1)(2)” (Notice of Motion dated September 4, 2012, pg. 1 at ¶ 1) (*emphasis added*). The accompanying Affidavit in support of his application sought to dismiss the “Indictment” (Affidavit in Support, pg.3 at ¶ 2), although at paragraph 4, he appears to limit the application to the “Constitutional Speedy Trial Violations of Counts (1) one and (2) two” (Criminal Possession of a Controlled Substance in the Third Degree and Fifth Degree, April 2, 2011 incident) (Affidavit in Support, pg. 3-4 at ¶ 4). His prayer for relief, however, again requests dismissal of the “Indictment” pursuant to CPL 210.20(1)(g) and 30.20(1)(2) (Affidavit in Support of Motion to Dismiss, dated September 4, 2012, at pg. 13). In support thereof, pursuant to the factors outlined in People v. Taranovich (37

N.Y.2d 442) defendant again recounted, in great detail, the time line of prosecution between his arrest on April 2, 2011 and the People's declaration of readiness in April 2012. The *factual* arguments, although framed in the context of *Taranovich*, were essentially identical to those contained within defendant's June 14, 2012 Omnibus Motion.

In response to the September 4, 2012 Notice of Motion (*supra*), this Court directed the District Attorney's Office to file any responding papers on or before September 21, 2012. Other than the People's original opposition to defendant's Omnibus Motion which included, *inter alia*, their opposition to his application to dismiss based upon a violation of speedy trial, no additional opposition papers were submitted.

By letter dated September 13, 2012, defendant requested that the People provide him copies of the stenographic minutes from his appearances in Binghamton City Court on August 31 and September 28, 2011. The People complied with this request via transmittal letter with attachments on September 17, 2012.

Defendant filed an additional Affidavit in Support to dismiss the Indictment pursuant to CPL 210.20(1)(g) and 30.20 on or about September 7, 2012. Thereafter, on or about September 14, 2012, defendant submitted another application for a bail reduction, along with a proposed amendment to his original Omnibus motion, seeking dismissal or reduction of counts charging Criminal Possession of a Weapon in the Third and Fourth Degrees (Counts 3 and 4).

In a letter and Affirmation dated October 9, 2012, defendant again sought to amend the aforementioned Omnibus Motion.

By Decision and Order dated November 8, 2012, Counts 7 (Aggravated Unlicensed Operation of a Motor Vehicle in the Second Degree (12/30/10) and 8 (Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree (3/7/11) were dismissed by this Court, based

upon its finding of a violation of defendant's right to a speedy trial as to those charges. Defendant's applications to dismiss the balance of the indictment based upon a violation of his right to a speedy trial were duly considered by the Court and denied.

Eleven days later, on November 19, 2012, defendant filed yet another Notice of Motion seeking to dismiss the "Indictment" pursuant to "CPL 210.20(1)(g), 30.30 (1)(a) and 30.20(1)(2)". He argues that this latest motion to dismiss the "Indictment" is different from his prior applications, in that it deals with statutory pre- and post-readiness delays regarding Counts 1- 4 of the indictment. He goes on to argue that *this* motion to dismiss the "Indictment" deals solely with the Constitutional speedy trial violations pertaining to Counts 3 and 4.

COUNTS 1, 2, 3 and 4

Defendant attempts to argue, yet again, the existence of "pre-readiness" delays. He again sets forth a detailed time line of the instant prosecution from his arrest on April 2, 2011 through the People's declaration of readiness in April 2012.

Notwithstanding defendant's attempts to distinguish this application from the prior applications, upon the Court's review, it is apparent that the substance of the present arguments were previously made, considered, and determined by this Court by issuance of a Decision and Order dated November 8, 2012. The instant application does not constitute a valid application to renew or reargue, nor would such an application have been granted if duly made, as there has been no showing which would warrant such relief. The Court's previous decision and order pertaining to pre-readiness delay stands.

With respect to post-readiness delays, defendant attaches great significance to the People's failure to submit answering papers to his September 7, 2012 motion. He argues that the failure to do so requires the court to consider this as post-readiness delay attributable to the People.

As mentioned above, the People timely provided the Court with a copy of the grand jury minutes for review in connection with defendant's original Omnibus Motion (*see People v. McKenna*, 76 N.Y.2d 59). The People's responding papers to defendant's *initial* Omnibus Motion opposed his application for dismissal upon speedy trial grounds, and were timely filed. Upon the filing of his September 4, 2012 motion, the People were given an opportunity to respond, should they choose to do so, by September 21, 2012. They did not, nor were they required to, being entitled to rely upon their previous submissions if they so chose. The motions were decided by this Court based upon papers that had been submitted to that point.

The People's failure to submit responding papers to the September 4, 2012 motion did not in any way impact upon or impair the People's ability to be ready for trial, such as might arguably constitute a post-readiness delay attributable to the People (*People v. Miller*, 298 A.D.2d 409; *People v. Cortes*, 80 N.Y.2d 201). Defendant's application was determined upon the papers which had been submitted.

For the reasons set forth above, as well as those contained in the Court's prior Decision and Order dated November 8, 2012, defendant's application to dismiss Counts 1, 2, 3 and 4 based upon the People's pre- and/or post-readiness delays is denied.

COUNTS 3 and 4


Defendant's present application to dismiss Counts 3 and 4 based upon a violation of CPL 30.20(1)(2) is likewise denied. Although he now argues that the factors of *Taranovich* require that Counts 3 and 4 be dismissed, this Court disagrees. As previously stated, the Court's Decision and Order dated November 8, 2012 addressed the applicable factors as it relates to *all* counts of the Indictment, in light of *Taranovich*. No new factors beyond the analysis conducted

by the Court have been submitted which compel an alternate result. For the reasons set forth therein, defendant's application to dismiss Counts 3 and 4 is denied.

This constitutes the Decision and Order of the Court.

It is So Ordered.

DATED: January 3, 2013
Binghamton, NY


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Broome County Court Judge

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