

People v Jones

2017 NY Slip Op 33540(U)

November 2, 2017

County Court, Albany County

Docket Number: Indictment No. 2-8128

Judge: William A. Carter

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JB

FILE ORIGINAL

STATE OF NEW YORK
COUNTY OF ALBANY

COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION AND ORDER
MOTION TO DISMISS: CPL 30.30
Indictment No. 2-8128

DA 3-17

BRANDON JONES,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR THE PEOPLE:

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WILLIAM A. CARTER, J.

By indictment filed January 4, 2017, the defendant stands charged with two counts of burglary in the second degree, class C violent felonies (Penal Law §§ 140.25 [2], [1] [d]); three counts of robbery in the second degree, class C violent felonies (Penal Law § 160.10 [1]; and three counts of robbery in the second degree, class C violent felonies (Penal Law § 160.10 [2][b]). The defendant moves for an order dismissing the indictment upon the ground that he has

been denied his statutory right to a speedy trial (see CPL 30.30 [1][a]). The People have filed a written affirmation in opposition.

A felony indictment must be dismissed if the People have not properly declared their readiness for trial within six months of the commencement of the criminal action (see CPL 30.30 [1][a]). “Readiness” for trial “requires a communication of readiness on the record at a time when the People ‘are in fact ready to proceed’” (People v VanHoesen 12 AD3d 5, 6 [3 Dept 2004], lv denied 4 NY3d 804 [2005], quoting People v Kendzia, 64 NY2d 331, 337 [1985]). “Present readiness for trial is established when the People file a valid accusatory instrument, where the defendant has been produced for trial on that instrument and where the People have complied with all proceedings required to be decided before trial can commence” (People v VanHoesen, supra at 7, quoting People v McCummings, 203 AD2d 656, 657 [1994]).

Whether the People have timely declared trial readiness is “determined by computing the time elapsed between the filing of the first accusatory instrument and the People’s declaration of readiness, subtracting any periods of delay that are excludable under the terms of the statute and then adding to the result any post-readiness periods of delay that are actually attributable to the People and are ineligible for an exclusion” (People v Chrysler, 152 AD3d 825, 826 [3 Dept 2017], lv denied NY Sept 13, 2017], quoting People v Cortes, 80 NY2d 201, 208 [1992]).

This criminal action was commenced by the filing of a felony complaint on July 11, 2016. As the CPL 30.30-time period begins to run the day following the commencement of the action (see People v Stiles, 70 NY2d 765 [1987]; People v Gause, 286 AD2d 557, 558 [3 Dept 2001]), the People had six months from July 12, 2016 or until January 12, 2017 (185 days) in which to timely declare trial readiness. Here, the defendant was indicted on January 4, 2017, 177 days after the commencement of the action, and it is uncontested that the People declared trial

readiness by letter dated January 6, 2017 (6 days shy of 6 months) addressed to and filed with the appropriate Court Clerk (see People v Kendzia, 64 NY2d 331 [1985]).

Post-readiness delay is chargeable to the People when it “is attributable to their inaction and directly implicates their ability to proceed to trial” (People v Carter, 91 NY2d 795, 799 [1998]). Where, in response to a defendant’s CPL 210.30 motion (to inspect the Grand Jury minutes and dismiss the indictment), the People do not oppose the Court’s inspection of the minutes, “the People’s obligation to produce the Grand Jury minutes *within a reasonable time* begins to run from the date the defendant’s CPL 210.30 motion [] is filed” (People v Harris, 82 NY2d 409, 413 [1993] [emphasis added]). As is their practice, the People did not oppose the Court’s inspection of the Grand Jury minutes. The defendant filed his CPL 210.30 motion on February 27, 2017 and the People filed the Grand Jury minutes with the Court on March 17, 2017. Thus, the issue becomes whether the People’s 18-day delay in filing the Grand Jury minutes was unreasonable for post-readiness delay purposes. Generally, “whether a given period is reasonable will necessarily depend on the [People’s] ability to exert control over the stenographer” (People v Sutton, 199 AD2d 878 [3 Dept 1993]; see generally People v Del Valle, 234 AD2d 634 [3 Dept 1996] [People concede responsibility for 6 days of post-readiness delay occasioned by their failure to deliver the Grand Jury minutes to the Court after they were received by the stenographer]). Here, there is no need to order a hearing to develop the record as to when the People received the minutes from the stenographer (see People v Sutton, supra at 880), as the Court of Appeals has held 36 days to be a reasonable time period to produce Grand Jury minutes (see People v Harris, supra).¹ Thus, here, the People certainly maintained their obligation to produce the Grand Jury minutes within a reasonable time by filing the minutes with

¹ The defendant has misconstrued the holding in Harris as finding 36 days to be an unreasonable delay (see Def’s Memo at unenumerated page 2).

the Court within 18 days of the filing of the defendant's CPL 210.30 motion (see People v Roscoe, 210 AD2d 1003 [4 Dept 1994][following Harris, supra, and automatically excluding 36 days as a reasonable period for production of Grand Jury minutes]). Accordingly, no portion of the time is chargeable to the People as post-readiness delay.

Under the circumstances of this case, the Court finds no basis to charge the People with any period of post-readiness delay due to their late discovery responses or affirmation in opposition. First, the defendant fails to mention that the People engaged in voluntary discovery, and that he failed to timely serve his discovery demands and request for bill of particulars upon the People within 30 days of the date of the defendant's arraignment (see CPL 200.95 [3]; CPL 240.80 [1]). Thus, by his own inaction, the defendant frustrated his ability to timely move to compel discovery and/or discovery sanctions within the 45-day time frame for filing an omnibus motion (see CPL 255.20). It has been held that "only if this procedure is tried and fails does motion practice become available" (People v Vaccarielli, 120 Misc2d 1092, 1092 [Co Ct 1983]). Moreover, even after filing his late discovery demands, the defendant has never availed himself of the "good cause" extension to make a motion seeking to compel the People to respond to his discovery demands (see CPL 255.20 [3]). Lastly, the defendant has not met his burden of establishing that the People's delay in discovery and in filing their opposition to the defendant's omnibus motion led to any delay in the proceedings or impeded the trial's commencement (see People v England, 84 NY2d 1, 4 [1994]; People v McCummings, supra at 657; People v Austin, 115 AD3d 1063, 1064 [2014]). Accordingly, the defendant's motion seeking dismissal of the indictment on the ground that he has been denied his statutory right to a speedy trial is denied.

Motion denied.

Any motions not specifically granted herein are hereby denied.

This memorandum shall constitute the decision and order of the Court.

Dated: Albany, New York
November 2, 2017


WILLIAM A. CARTER, JCC


10/11/17