

**People v Martinez**

2019 NY Slip Op 33245(U)

November 1, 2019

City Court of Peekskill, Westchester County

Docket Number: CR-4606-18

Judge: Reginald J. Johnson

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CITY COURT: CITY OF PEEKSKILL  
COUNTY OF WESTCHESTER: STATE OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION & ORDER  
Dockets. CR-4606-18

NEFTALI MARTINEZ,  
Defendant.

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District Attorney  
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By: Livia Rodriquez, Asst. District Atty.

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Reginald J. Johnson, J.

I.

The defendant was charged by Misdemeanor Information dated December 17, 2018 with Assault in the Third Degree (PL §120.00[1]). On December 20, 2018, the defendant was arraigned with 18b assigned counsel Carly Lynch McGuire; thereafter, the Court issued a temporary order of protection and adjourned the case at defendant’s request to January 31, 2019. On January 31, Ms. Lynch McGuire was relieved as counsel and John R. Lewis, Esq. was assigned as defendant’s new counsel; the case was adjourned at defendant’s to March 18, 2019. On March 18, the defendant requested an adjournment to April 8, 2019. On April 8, the People offered the defendant a plea offer to Harassment in the Second Degree (PL §240.26[1]) with a 1-

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year conditional discharge, a 2-year permanent order of protection, and a fine and surcharge. Defendant requested an adjournment to April 29, 2019. On April 29, the defendant requested a jury trial and this matter was adjourned by the Court to August 12, 2019 for trial. On August 12, 2019, the People reduced the Misdemeanor Information charging Assault in the Third Degree to a violation charging Harassment in the Second Degree. The defendant was arraigned on the violation, and the People served a supporting deposition and announced readiness. The Court set this matter down for a bench trial<sup>1</sup> on September 17, 2019 at 2:00 p.m. On August 29, 2019, the defendant filed a motion seeking to dismiss the violation information on speedy trial grounds pursuant to CPL §30.30. The Court set the following motion schedule: People's opposition papers were due no later than September 16, 2019; the defendant's reply papers, if any, were due no later than September 23, 2019, and a decision and court appearance was scheduled for October 28, 2019, which was adjourned at defendant's request to November 4, 2019. After the opposition and reply papers were received by the Court, the motion was marked fully submitted on September 20, 2019.

## II.

The defendant argues, in the main, that the criminal case against him should be dismissed because the People announced ready more than 90 days after the expiration of the statutory excludable time periods permitted by CPL §30.30(4)(b)[see Lewis Reply Affirm at ¶2].<sup>2</sup> Specifically, the defendant argues that he did not consent to any further adjournments after April 29, 2019 and that therefore any statutory time that accrued after that date was properly

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<sup>1</sup> Since the People reduced the Misdemeanor Information to a Violation Information, the defendant was no longer entitled to a jury trial (see, CPL §340.40[1]).

<sup>2</sup> Defendant initially argued that the criminal case should be dismissed because the People declared readiness more than 30 days after the expiration of the statutory excludable time periods (see Lewis Affirmation at ¶14). However, defendant now concedes that the People had 90 days after the expiration of the statutory excludable time periods (see Lewis Reply Affirm at ¶¶3-5).

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chargeable to the People (see Lewis Affirmation at ¶5; Lewis Reply Affirm at ¶9). The People simply argue that the parties consented to the statutory time period after April 29, 2019 and that, therefore, the 90-day speedy trial time had not expired prior to the People's statement of readiness on August 12, 2019 (see Rodriquez Affirmation at ¶¶6-9, Rodriquez MOL at p. 7).

### III.

The purpose of the CPL §30.30 (“the speedy trial statute”) is to ensure the prompt resolution of criminal charges by addressing prosecutorial readiness for trial (*People v. Anderson*, 66 N.Y.2d 529 [1985]), and is intended only to address delays occasioned by prosecutorial inaction (*People v. Bruno*, 300 A.D.2d 93 [1<sup>st</sup> Dept. 2002]). The People must declare readiness within the applicable statutory time periods for all but the unusual case (*People v. Berkowitz*, 50 N.Y.2d 333 [1980]). Any adjournment alleged to be on defendant's consent will be strictly construed against the People, which has the burden of making the record clear (*People v. Collins*, 82 N.Y.2d 177 [1993]); *People v. Jamison*, 87 N.Y.2d 1048 [1996]). For computational purposes, the speedy trial clock starts on the day the action is commenced and stops on the date the People announce its readiness for trial (CPL §1.20[17]; *People v. Osgood*, 52 N.Y.2d 37 [1980]; *People v. Cortes*, 80 N.Y.2d 201[1992]; *People v. Kendzia*, 64 N.Y.2d 331 [1985]).

In the case at bar, the People commenced this criminal action against the defendant by filing a Misdemeanor Information charging him with Assault in the Third Degree on December 20, 2018. Defendant was arraigned on December 20 and requested an adjournment to January 31, 2019, which computes to **42 days** chargeable to him. Defendant then requested an adjournment from February 1, 2019 to March 18, 2019, which computes to **45 days** chargeable to him. Defendant requested an adjournment from March 19, 2019 to April 8, 2019, which

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computes to **20 days** chargeable to him. Lastly, defendant requested an adjournment from April 9, 2019 to April 29, 2019, which computes to **20 days** chargeable to him . According to the Court's file, the Court scheduled this case for a jury trial at defendant's request and adjourned the matter from April 30, 2019 to August 12, 2019 for jury selection, which computes to **105 days** chargeable to the People. This time is chargeable to the People because the Court scheduled the jury selection date *sua sponte* and neither the defendant nor his counsel consented to the length of the delay (see, *People v. Meierdiercks*, 68 N.Y.2d 613 [1986]). On August 12, 2019, the People filed a Superseding Violation Information charging the defendant with Harassment in the Second Degree, a violation, and announced readiness on the record (see, *People v. Smith*, 82 N.Y.2d 676 [1993]). Since the reduction of the charge in this case was from a misdemeanor to a violation, and not a reduction from felony to a misdemeanor, the People were not subject to a shorter new speedy trial time, but rather the original 90-day speedy trial period for readiness on a misdemeanor charge was still applicable [see, *People v. Cooper*, 98 N.Y.2d 541, 543 [1997]; *People v. Galloway*, 190 Misc.2d 144 [App. Term 2d Dept 2001] (Court held that §30.30(5)(c) does not apply when a misdemeanor is reduced to a lesser charge); CPL §30.30(5)(c)].

Based on the Court's calculations, it appears that the People declared readiness **235 days** after the commencement of this case on December 20, 2018. The People were entitled to **130 days** of statutorily excludable time credited against the **235 days**. Some **105 days** (April 30, 2019-August 12, 2019) were left after the deduction of the **130 excludable days** (December 20, 2018-April 29, 2019) within which the People had 90 days to declare it readiness—that is, no later than July 29, 2019<sup>3</sup>. Since the People declared readiness on August 12, 2019 (approx. 14

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<sup>3</sup> Since the last day to announce readiness fell on a Sunday (July 28, 2019), the People were permitted to announce readiness on the next business day Monday (July 29, 2019), which it failed to do [see, *People v. Powell*, 179 Misc.2d 1047 (App. Term 2d Dept 1999); General Construction Law §25(a)(1)].

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days beyond the 90-day statutory period), the defendant's speedy trial rights under CPL 30.30(1)(b) were violated. Accordingly, the defendant's motion to dismiss the accusatory instrument in this action is granted.

Based on the foregoing, it is

Ordered that the defendant's motion to dismiss the accusatory instrument pursuant to CPL §30.30(1)(b) is granted.

This constitutes the decision and order of the Court.

Enter,

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Hon. Reginald J. Johnson  
Peekskill City Court

Dated: Peekskill, New York  
November 1, 2019

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