

People v Griffin-Robinson

2019 NY Slip Op 34195(U)

December 12, 2019

County Court, Westchester County

Docket Number: 18-0660

Judge: Barry E. Warhit

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER
Indictment No.: 18-0660

SONJA GRIFFIN-ROBINSON,

Defendant.

-----X

WARHIT, J.

FILED

NOV 21 2019

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Sonja Griffin-Robinson ("Defendant") moves *pro se*¹ for dismissal of the within indictment on grounds of an alleged speedy trial violation. The People oppose Defendant's motion in its entirety. This Court read and considered the following in connection with the within motion:

Notice of Motion to Dismiss the Indictment, Affidavit in Support of Motion to Dismiss the Indictment of Sonja Griffin-Robinson and Memorandum of Law; Affirmation in Opposition of ADA Maria I. Wager, Memorandum of Law and Annexed Exhibits 1-4

Relevant Procedural Background

Defendant is charged under the within indictment burglary in the second degree (PL § 155.40[1]; grand larceny in the second degree (PL § 15.40[1] and grand larceny in the third degree (PL § 155.35[1]). These felony charges arose in relation to allegations that, at approximately 3:35 p.m. on April 8, 2019 in the Town of Harrison, Defendant

¹Although it would have been in this Court's sound discretion to reject Defendant's *pro se* motion on grounds that it is not obligated to entertain a motion which is not adopted by counsel, nonetheless, this Court elected to determine the within motion upon the merits despite counsel's decision not to adopt same (*cf.*, *Rodriguez*, 95 NY2d 497 [2000]).

unlawfully entered a residence and stole jewelry and designer handbags having an aggregate value in excess of \$50,000. Subsequent to a police investigation which included witness interviews, observation of surveillance videos and the execution of search warrants, Defendant was arrested on April 18, 2018. She appeared personally and by appointed counsel for arraignment before a justice of the Town Court of Harrison. The matter was then adjourned to April 24, 2018 which was the next date the Court would be in regular session.

On April 24, 2018, Defendant appeared personally and by retained counsel, Geoffrey Andrew Stewart, Esq. Relevant to the instant motion, counsel sought and adjournment until May 15, 2019 during which time Defendant agreed to waive "180.80 time" for all purposes (Affirmation in Opposition of ADA Maria I. Wager ("Affirmation in Opposition"), Exhibit 1, pp. 3-5).

On May 15, 2018, Defendant executed a waiver for the purpose of pursuing a negotiated plead deal through the Superior Court Information ("SCI") process (*Id.*, Exhibit 2, p. 3). In order to take advantage of this opportunity, and significant to the instant motion, in writing, Defendant waived her right to a speedy trial under Criminal Procedure Law §§ 30.30 and 180.80 (*Id.*, Exhibit 3). The matter was adjourned to August 21, 2018 (*Id.*, Exhibit 2, p. 4).

On August 21, 2018, Defendant's retained counsel submitted an "Affirmation of Actual Engagement" through which he sought an adjournment of Defendant's criminal proceeding until the week of October 1, 2018 due in part to his schedule and the fact that an SCI conference had been held on August 2, 2018 and the matter was scheduled before a judge of the Westchester County Court on September 19, 2018 for a possible

SCI plea (*Id.*, Exhibit 4). In his Affirmation, Defendant's counsel specifically referenced "Defendant's waiver of CPL 30.30 time continues in effect from today to the next court date" (*Id.*). The matter was adjourned for a control date in local court to October 30, 2018.

On October 30, 2018 Defendant declared she no longer wished to waive speedy trial. The matter was thereupon adjourned upon the People's request. The People concede, for purpose of calculating speedy trial, the time period from October 31, 2018 until Defendant was arraigned on January 2, 2019 and they answered ready for trial is chargeable to them (*see, Id.*, p. 3).

Defendant's counseled Omnibus Motion was filed on or about February 20, 2019. On March 14, 2019, the People submitted their Affirmation in Opposition. On March 19, 2019, Defendant's previously retained counsel was relieved and Samuel Coe, Esq. was assigned in his stead. On April 1, 2019, this Court issued its Decision and Order on Defendant's Omnibus Motion. The parties first appeared before the Trial Assignment Part ("TAP") on May 16, 2019.

On September 30, 2019 Defendant filed the instant motion through which she argues the within indictment must be dismissed as the People failed to answer ready within six months of the commencement of the criminal action.

Conclusions of Law

Defendant alleges her right to a speedy trial has been violated as the People failed to file the within indictment for more than six months despite the absence of any extraordinary circumstances (Defendant's Affidavit in Support of Motion to Dismiss

("Defendant's Affidavit"), ¶ 3).

Pursuant to applicable law, a criminal action is deemed to commence upon the filing of an accusatory instrument against a defendant in a criminal court (see, CPL §§ 1.20[1] and [17]; *People v. Osgood*, 52 NY2d 37 [1980]). With respect to the instant felony charges, Defendant was arraigned on a felony complaint before the Harrison Town Court on April 18, 2018.

Where as here, Defendant is charged with at least one felony offense, the People must be ready to proceed to trial within six (6) months of having commenced the criminal action (CPL § 30.30[1](a)). The within criminal action commenced on October 18, 2018 but the People did not announce readiness until 259 days later on January 2, 2019. Consequently, the People bear the burden of demonstrating that, at a minimum, seventy six (76) days of elapsed time fall within legal exclusions to the speedy trial statute.

The day on which the criminal action was commenced is excluded (see, *People v. Stiles*, 70 NY2d 765 [1987]). So too, the five (5) day period between Defendant's arraignment on April 18, 2018 and her court appearance on April 24, 2018 is excluded as it was occasioned by the fact that this was the next date the Court was scheduled to be in regular session (see, *People v. Correa*, 161 AD2d 391 [1st Dept. 1990])("the unavailability of the court due to vacation or for its own convenience is not chargeable to the People in determining whether the action was ready to proceed to trial within six months since . . . 'speedy trial' really addresses prosecutorial, not court, readiness).

Additionally, the twenty-one (21) day period between April 24, 2019 and May 15, 2018 is also properly excluded from the speedy trial calculation as this adjournment was

granted upon Defendant's request (CPL § 30.30[4](b); see generally, *People v. Dion*, 93 NY2d 893 [1999])(excluding adjournments required based upon changes of counsel).

Further, the 98 day period which elapsed between May 15, 2018 and August 21, 2018 is also excluded from the speedy trial calculation. Defendant executed an SCI waiver on May 15, 2018. Through this waiver she explicitly consented to waive speedy trial (CPL § 30.30[4](b)). Thereafter, by "Affirmation of Actual Engagement", filed August 21, 2018, her retained counsel sought an adjournment which was granted until October 20, 2018 to accommodate on-going SCI negotiations (see, *Id.*; see also, *People v. Waldron*, 6 NY3d 463, 467 [2006])(where there is an explicit waiver of speedy trial rights in order to complete ongoing plea negotiations, such time is excludable).

On October 20, 2018, Defendant rescinded her speedy trial waiver. The time which elapsed between Defendant's declaration that she did not wish to continue to waive speedy trial through her arraignment on January 2, 2019 is chargeable to the People. This amounts to sixty-four (64) days.

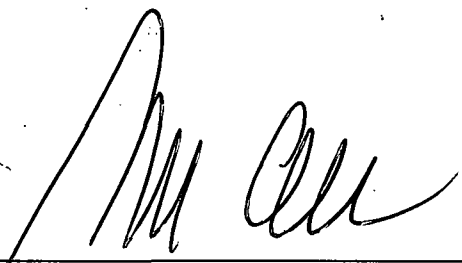
To establish readiness, the People are required to fulfill two elements. "First, there must be a communication of readiness by the People which appears on the trial court's record. [Second,] the prosecutor must make his statement of readiness when the People are in fact ready to proceed." (*People v. Kendzia*, 64 NY2d 331, 337 [1985]); see also, *People v. Hamilton*, 46 NY2d 932 [1979]). Here, there is no basis to conclude the People's pronouncement of readiness on January 2, 2019 is or was illusory and Defendant does not allege otherwise. Consequently, the time which has elapsed since January 2, 2019 is not chargeable to the People for purposes speedy trial calculation

(see, CPL § 30.30[4](a); and see, *People v. Brown*, 99 NY2d 488 [2003])(time for pre-trial motions is excludable even in a circumstance in which a defendant does not file motions; and see, *People v. Worley*, 66 NY2d 523 [1985]; see also, *People v. Kopciowski*, 68 NY2d 615 [1986](when adjournments occur at the request of a defendant, the period of delay is expressly waived in calculating the People's readiness).

Applying the law to this case, this court finds that, although the within indictment arose in excess of six months after the commencement of the criminal action against Defendant, only sixty-four (64) days are chargeable to the People. Accordingly, Defendant's motion for dismissal of the instant indictment, pursuant to CPL § 30.30[1], is denied in its entirety.

The foregoing constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
December 12, 2019



Honorable Barry E. Warhit
NYS Supreme Court, Westchester County

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