

People v Moore

2023 NY Slip Op 30472(U)

February 13, 2023

Supreme Court, Bronx County

Docket Number: Indictment No. 671/2020

Judge: Ralph Fabrizio

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**SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY, PART TRP**

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THE PEOPLE OF THE STATE OF NEW YORK

**Indictment No. 671/2020
Decision and Order**

-against-

TRAVIS MOORE,

Defendant.

-----X
FABRIZIO, J.

On February 10, 2022, defendant first moved to dismiss this case based on a claim that the People violated his statutory right to a “speedy trial” under CPL Article 30. The People never responded to that motion, although they were given multiple opportunities to do so. On May 2, 2022, Justice Tara Collins issued a written decision denying the motion. Justice Collins found that the People had caused no period of trial-readiness delay; in other words, at that point, the People had zero “chargeable days.” That of course is the law of this case.

This case was then transferred to this Court to join its “old case” inventory in what is called the “Trial Readiness Part.” On December 23, 2022, defendant filed this, his second motion to dismiss, pursuant to CPL §§ 30.30(1)(a); he also now alleges his “constitutional right” to a speedy trial has been violated. On January 9, 2023, this Court received an email from the assigned assistant district attorney asking for “an extension of a week or so” to file a response to this motion. This Court granted that application and extended the time for the People to file their response until January 18, 2023. The People did not file any response. When the case was called into the record on January 19, 2023, the ostensible decision date set in the defense notice of motion, this Court

indicated it would still accept the People's now untimely response, and adjourned the case to February 3, 2023, for its decision. The People once again never responded to the motion. On February 3, 2023, this Court precluded the response, on the record, and marked the motion submitted. This Court now grants defendant's motion, finding the People have exceeded their statutory time to state ready in this matter.

This is a decidedly serious case, and this Court does not make this decision lightly. On May 15, 2020, defendant and Kyeone Stone were arrested and charged as accomplices in the shooting death of victim Julian Oden. Criminal Court held a preliminary hearing and both defendant and Stone were held for grand jury action on the felony complaint charging them as accomplices to a homicide and other crimes. On October 2, 2020, a grand jury indicted defendant and Stone for both intentional murder and felony murder, as well as for first degree robbery and two counts of criminal possession of a loaded and operable firearm. Defense counsel filed pre-trial omnibus motions, including a motion to dismiss the indictment. Defendant argued the evidence before the grand jury was insufficient, inter alia, in that it failed to provide probable cause to support a finding that defendant shared Stone's intent to commit a murder.

In a decision dated May 4, 2021, Justice Steven Hornstein dismissed the intentional and felony murder charges as well as the robbery charges against this defendant. Justice Hornstein found the evidence established defendant was waiting in a cab when Stone left that cab and allegedly went up to the victim's apartment, stole the victim's property, and shot the victim, before returning to defendant in the waiting cab. Justice Hornstein did not dismiss the two Criminal Possession of a Weapon in the Second Degree charges, finding sufficient evidence based on the testimony that when

defendant was apprehended in the cab, he possessed a loaded and operable firearm. Thus, following that decision, the only charges against this defendant remaining in the indictment are two counts of a C violent felony, Criminal Possession of a Weapon in the Second Degree. He remained joined in that indictment with Stone, and Stone is still charged with two additional counts of murder and as well as a robbery charge.

The People have never appealed Justice Hornstein's now nearly two-year-old ruling. They did not seek leave to reargue the ruling. Justice Hornstein granted the People leave to re-present the murder and robbery charges to a second grand jury. It appears therefore that defendant was, and still is, "held" for grand jury action on those charges on a partially restored felony complaint. The People have never re-presented the dismissed charges to a second grand jury. They have also never filed a certificate of discovery compliance concerning the gun charges this defendant faces in this indictment.

This Court's decision to dismiss the gun charges in the indictment as to this defendant, understanding the seriousness of the charges, is not based on a procedural default for the People's failing to have adhered to court directives to provide a response to this motion on two occasions. The decision is based on the merits of the defense motion and this Court's own review of all court records.

In the May 2, 2022, decision denying defendant's first motion to dismiss these charges pursuant to CPL § 30.30, Justice Collins noted that Justice Hornstein did not set a deadline by which the People had to re-present the dismissed charges to a new grand jury. Justice Collins directed the People to re-present any and all charges to a grand jury within 45 days of May 4, 2022.

Defendant's main legal argument centers around the fact that the People have never stated ready for this case since May 4, 2022, because they have never filed a certificate of having complied with their CPL Article 245 discovery obligations ("C of C") and stated ready for trial. There is no fact dispute about the status of discovery in this matter; the People have not filed a C of C and have not stated ready on this indictment. And, for non-homicide charges, the People are required to file a C of C before they can ever state "ready" for trial for purposes of calculating trial readiness delay periods under CPL § 30.30.

In January 2020, as part of massive criminal justice reform legislation enacted as part of the prior years' budget bill, the legislature provided an exhaustive list of items labelled "automatic discovery." CPL § 245.20. The legislature directed the People to provide all "automatic discovery," in every case where a defendant is in custody, within "twenty calendar days" of that defendant's arraignment. CPL § 245.10(1)(i). Where the "automatic discovery" is "exceptionally voluminous," which in this Court's experience occurs in nearly every felony case, the legislature has agreed the People are afforded "an additional thirty calendar days" to provide "automatic discovery." CPL § 245.10(1). If the People need more time, they must move pursuant to CPL § 245.70(2) for a court-sanctioned extension of the discovery deadlines based upon a showing of "good cause." If the People fail to meet these deadlines, the legislature directed that the People can never "state ready" for trial, since they must file a valid "C of C" before doing so. CPL § 245.50(3).

To many, this legislation was a welcome change to New York's prior discovery statutes, under which the People were not required to turn over evidence such as grand

jury testimony, witness statements, video recordings, and other “proof” that was directly relevant to the actual evidence the jury would see and hear at trial, until the time the jury was selected. To others, the statute represents an impossible barrier erected without considering many important and perhaps unintended consequences, including preventing trials from proceeding in an expeditious manner while judges struggle to resolve endless litigation connected with the validity of a “C of C.” It is also now well-documented that in many cases, charges are dismissed because overworked and underfunded lawyers are unable to gather and review the mountain range of documentation required to meet statutory discovery obligations. As there is no legislative history to read concerning the purpose of the statute, and public statements from legislators, which would never be the subject of a court’s statutory analysis, are contradictory at best and critical of the judiciary at worst, no judge can confidently ascertain whether the legislature intended there to be dismissals en masse of serious cases due to lack of some discovery compliance under this statute. That result, however, is an unmistakable reality. See Hannah Meyers, [Destroyed by Discovery: How New York State’s Discovery Law Destabilizes the Criminal Justice System](https://www.manhattan-institute.org), January 19, 2023, www.manhattan-institute.org. The language in the statute only allows a court to extend the deadlines based on a party’s application and a finding of “good cause.” It does not seem likely the legislature would have considered years of discovery delays to be authorized by any court order.

Here, this Court is not faced with a situation involving a challenge to the validity of a “C of C,” since the People have never served and filed one. There is no record available to this Court about what, if any, discovery has been provided to this defendant.

As defendant was arraigned on this indictment in October 2020, in real time more than two years have passed since the People's time to provide discovery elapsed. The People still have not provided all "automatic discovery." That have never moved for an extension to do so. The question facing this Court is what, if any, time should be charged to the People since Justice Collins' May 2022 decision finding that no time was to be charged in this case as "trial readiness" delay.

The "best case scenario" for the People, and one that seems consistent with the prior 30.30 ruling, is that the speedy trial clock would begin to run for this defendant 45 days after May 4, 2022. That is the time the judge fixed as the last date for the People to re-present the murder and robbery charges, and either supersede this indictment and/or obtain a new indictment charging the homicide and robbery charges and expeditiously move to consolidate them for trial. That period expired on June 28, 2022.

The People, by not re-presenting murder charges, tacitly, if not finally and explicitly, have agreed that they have no intention to seek homicide and robbery charges against this defendant based on the available evidence; thus, defendant's pending indicted case is not a homicide case.¹ What this Court is left with is an indictment charging defendant with two counts of gun possession, and a co-defendant charged with murder. As noted, since the People have not yet filed their C of C, they have been unable to state ready for trial on this indictment – for co-defendant Stone, as

¹ It may well be that there is a pending felony complaint with the homicide and robbery charges that exists following Justice Hornstein's ruling. *Cf. People v. Eggleston*, 173 A.D.3d 1252, 1254 (3rd Dept. 2019). This decision does not dismiss felony homicide charges included in any felony complaint. The Criminal Procedure Law does not specify that homicide charges which are dismissed with leave to re-present must be presented within any particular time period. *See People v. Gonzalez*, 28 Misc. 3d 941, 944 (Sup. Ct. Bronx County 2010). However, the "30.30 clock" will run during the period it takes the People to obtain a new indictment. *See People v. Richardson*, 146 Misc. 2d 179, 181-82 (Sup. Ct. Bronx County 1989). Here, as noted, the People have never been able to state "ready" for trial because they have never filed a C of C.

well as for defendant himself. Of course, the People never have had to “state ready” for trial on a homicide matter for CPL § 30.30 purposes, prior to or after the 2020 discovery reform statutes, as homicides are exempt from dismissal on statutory trial readiness grounds. CPL § 30.30 (3)(a).

However, since Justice Collins’ decision, an additional, lengthy period of time has elapsed without the People providing a C of C for either defendant. As such, they have also not stated “ready” for trial on this defendant’s gun possession case. The period between June 28, 2022 and December 23, 2022 totals 178 days. As noted, the People did not respond to this motion, even after being given an extension of time to do so at their request, by January 19, 2023. Their response was precluded on February 3, 2023. The time between January 19, 2023, and February 3, 2023 totals 15 days.

The section of the CPL that this Court believes is the only one now applicable in a failure to file a “C of C” in this scenario is CPL § 30.30(4)(d). The People are entitled under this statute to have excluded from trial readiness calculations “a reasonable period of delay when the defendant is joined for trial with a co-defendant as to whom the time for trial pursuant to this section had not run and good cause is not shown for granting a severance.”

Defendant has never moved for a severance. As defendant and Stone are charged with acting in concert in possessing two firearms, there may be no grounds for a severance. That is beside the point. The statute allows a court to exclude the “period of delay” in this situation which the court determines to be reasonable.

It almost goes without saying that defendant Stone has not caused any delay. The People are not able to try him because of the absence of discovery compliance for

both defendants. Under CPL § 30.30(4)(d), the usual purpose for excluding delays “attributable to a codefendant [is] because those delays are not the result of prosecutorial unreadiness.” People v Wiggins, 31 NY3d 1, 12 (2018). Here, the main cause of delay is in bringing this whole case to trial, post-motion practice, is due to the People’s lack of discovery compliance. That failure is profound in this matter. According to the uncontradicted allegations in this motion, the People have not provided a single item of discovery since June of 2020, when the preliminary hearing was held.

Nonetheless, there is a Catch 22 that the legislature does not appear to have considered when it enacted the discovery reform statutes. When a defendant is charged with a homicide, there is “no time” pursuant to CPL § 30.30 when the People must bring those charges to trial, and so the failure to file a C of C is not a factor in a motion to dismiss that case on statutory trial readiness grounds. Thus, it may be that time can never have run by law for two defendants named in indictment where one defendant is charged with a homicide but the other defendant is not been charged with a homicide. However, this Court agrees with the ruling in People v Varuzzi, 179 Misc. 2d 716, 719 - 20 (Sup Ct, Queens County 1999) (Eng, J.), in which the court found no legislative intent that the CPL § 30.30(4)(d) exclusion should apply for an indefinite period for an entire class of non-homicide-charged defendants joined in an indictment with defendants charged with a homicide, where the People have not been ready for trial for extensive periods of time.

It has been more than a year since defense counsel filed the initial motion to dismiss this matter based on the People’s lack of discovery-compliance readiness. Justice Collins found the delay, prior to that time, was reasonable under all the

circumstances, including the fact that the People still indicated they contemplated re-presenting the homicide charges to a second grand jury. They have not done so, and another six months has passed since that period. The People have still never complied with their discovery obligations and filed a C of C. In this case, the discovery delay period since the arraignment is now more than twenty-six months. Even with the exclusion of time for pre-trial motion practice, the People have exceeded their statutory period to provide disclosure by more than a year and a half. Thus, even though the case against Stone is not subject to dismissal at any time under statutory trial readiness grounds, this Court finds that the case against defendant is subject to dismissal absent an exclusion for a “reasonable period of delay” involving the co-defendant’s case. As noted, a year has passed since defendant first complained about a violation of his right to a statutory speedy trial based on the People’s failure to file a C of C and state ready. This Court finds this additional period of delay to be unreasonable under CPL § 30.30(4)(d), and believes that to be consistent with the “automatic discovery” deadlines in Article 245.²

Based on the above analysis, this Court charges the People with 178 days of pre-readiness delay, representing the period between June 28, 2022, and December 23, 2022. This Court also charges the People with an additional 15-day period of pre-readiness delay for failing to respond to this motion after the January 19, 2023, extension deadline and prior to the February 3, 2023, decision date. See People v. Lora, 177 AD3d 518, 520 (1st Dept. 2019). This totals 193 days, which is in excess of the 184 days the People had to “state ready” for trial for this defendant. For this reason,

² This Court recognizes the People were entitled to have excluded from 30.30 calculations the period of time it took to have the prior 30.30 motion decided.

defendant's motion to dismiss is granted. The Court stays sealing of the file for 30 days to give the People an opportunity to appeal this ruling.

Because this Court grants the "30.30" motion, this Court is not ruling on defendant's alternative claim that the People have also violated his constitutional right to a speedy trial. However, this Court notes defendant has not been held in custody on this matter for almost the entire time it has been pending. Defendant was remanded to custody when arrested on a parole warrant. He was then sentenced to a period of incarceration for violating that parole. Counsel alleges that defendant may have still been serving that sentence in April 2021. On March 29, 2021, a judge granted defendant's application to have bail set on this matter; thus, he was not ordered remanded on this matter once the parole sentence ended. A judge lowered defendant's bail on June 2, 2021, after the murder charges had been dismissed. Defendant was released from custody when a bond was posted the following day. Defendant has been at liberty since that time. Thus, the time he spent incarcerated on this matter alone while awaiting trial was less than two months.

This constitutes the Decision and Order of the Court.

Dated: February 13, 2023

Hon. Ralph Fabrizio