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Speedy Trial

SPEEDY TRIAL

N.Y. CONST. art. I, § 6:

No person shall be deprived of life, liberty or property without due process of law.

U.S. CONST. amend. VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy. . . trial.

SUPREME COURT, APPELLATE DIVISION

THIRD DEPARTMENT

People v. Beckett[1]
(decided May 18, 1995)

The People of the State of New York appealed from an order which granted defendant Edward Beckett's motion to dismiss the indictment which charged him with misdemeanor driving while intoxicated.[2] Defendant's motion was premised on the grounds that his statutory[3] and constitutional right[4] to a speedy trial was

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1. 627 N.Y.S.2d 97 (App. Div. 3d Dep't 1995).

2. *Id.* at 98.

3. *See* N.Y. CRIM. PROC. LAW § 30.30(1)(b) (McKinney 1992). Section 30.30(1)(b) provides in pertinent part:

> A motion . . . [to dismiss] . . . must be granted where the people are not ready for trial within . . . ninety days of the commencement of a criminal action wherein a defendant is accused of one or more offenses, at least one of which is a misdemeanor punishable by a sentence of imprisonment of more than three months and none of which is a felony . . . .

Id. Cf. N.Y. CRIM. PROC. LAW § 30.30(1)(c) (McKinney 1992). Section 30.30(1)(c) provides in pertinent part: "[A] motion . . . [to dismiss] . . . must be granted where the people are not ready for trial within . . . sixty days of the commencement of a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a misdemeanor . . . ." *Id. See also* N.Y. CRIM. PROC. LAW § 30.30(1)(a) (McKinney 1992). Section 30.30(1)(a)

abridged when "almost 600 days [had] elapsed between the commencement of [the] action . . . and the People's statement of readiness made at his arraignment on the indictment."[5] The Appellate Division, Third Department, reversed the order of the trial court and reinstated the indictment, holding that the defendant's statutory and constitutional rights were not abridged on the grounds that the post-readiness delay of over 17 months was not chargeable to the people.[6]

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provides in pertinent part: "[A] motion . . . [to dismiss] . . . must be granted where the people are not ready for trial within . . . six months of the commencement of a criminal action wherein a defendant is accused of one or more offenses, at least one of which is a felony . . . ." *Id. See generally* People v. Cortes, 80 N.Y.2d 201, 207, 604 N.E.2d 71, 75, 590 N.Y.S.2d 9, 13 (1992). The *Cortes* court stated that compliance with CPL § 30.30:

> is determined by figuring 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.

Id.

4. U.S. CONST. amend. VI. The Sixth Amendment provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy. . . trial." *Id.* The Sixth Amendment right to a speedy trial is made applicable to the states via the Fourteenth Amendment. Barker v. Wingo, 407 U.S. 514, 515 (1972) (citing Klopfer v. North Carolina, 386 U.S. 213, 222-223 (1967)). U.S. CONST. amend. XIV. The Fourteenth Amendment provides in pertinent part: "No state shall . . . deprive any person of life liberty, or property without due process of law." *Id. See also* N.Y. CRIM. PROC. LAW § 30.20 practice commentaries (McKinney 1992) ("A speedy trial is guaranteed by the U.S. Constitution's Sixth Amendment, applied to the states through the Due Process Clause of the XIV Amendment . . . as well as by certain aspects of due process under the New York Constitution . . . ."). The New York Constitution does not contain a speedy trial provision; however, article I, section 6, sets forth applicable guarantees of due process. Section 6 provides in pertinent part: "No person shall be deprived of life, liberty or property without due process of law." N.Y. CONST. art. I, § 6. *See generally* Doggett v. United States, 505 U.S. 647, 665 (1992) (stating that the Sixth Amendment right to a speedy trial is triggered by arrest, indictment, or other official accusation).

5. *Beckett,* 627 N.Y.S.2d at 99.

6. *Id.*

On April 13, 1991, the defendant was charged with two counts of misdemeanor driving while intoxicated and was arraigned on simplified traffic informations on April 26, 1991 in the Town Court of Copake, Columbia County.[7] Defendant's attorney withdrew his representation on February 27, 1992 with defendant's trial scheduled for March 10, 1992.[8] Consequently, the trial was adjourned to April 14, 1992 in order for the defendant to obtain new counsel.[9] On that day, the defendant was unrepresented and as a result, Town Justice Conway declined to proceed to trial.[10] Justice Conway resigned from the bench on or about April 28, 1992 and the "case was reassigned to Town Justice Meenagh who scheduled trial for June 23, 1992."[11] However, although jury selection began on that day, the panel was exhausted before a jury could be selected.[12] Although jury selection had already begun in the Town Court of Copake, the trial was then transferred to Town Court of Stuyvesant, Columbia County at the request of Justice Meenagh, and jury selection was rescheduled to start on October 27, 1992 before Town Justice Retz.[13] The trial was adjourned from the 27th of October until December 14, 1992, because the panel was again exhausted before a jury was selected.[14] Justice Retz resigned before the 14th of December, resulting in reassignment of the case to Town Justice Eckel, the successor of Justice Retz.[15] The People wrote to the Town Court of Stuyvesant on March 10, 1993 and also on June 2, 1993, both times repeating their readiness for trial.[16] The trial was set to proceed on June 22, 1993 by Stuyvesant Town Justice Hart, who received the case after it was again transferred.[17] The defendant moved to dismiss the indictment on

7. *Id.* at 98.
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*

June 16, 1993, alleging that his right to a speedy trial was denied.[18] Justice Hart denied the defendant's motion, but the case did not proceed because the defendant did not appear on June 22, 1993.[19] In addition, on August 6, 1993 the defendant was notified that the People would present the charges to the grand jury.[20] Defendant was indicted on August 31, 1993 on two misdemeanor counts of driving while intoxicated.[21] During his arraignment on September 8, 1993, the People announced their readiness for trial.[22] The indictment was subsequently dismissed and the court found that "under [CPL] article 30 as well as under the broader language of the state and federal constitutions . . . defendant . . . did not have a speedy trial."[23]

On appeal to the appellate division, the defendant argued that the lower court's dismissal was correct and that the commencement of trial almost 600 days after "the People's statement of readiness made at his arraignment on the indictment,"[24] violated his statutory[25] and constitutional[26] right to a speedy trial.[27] The court first considered the defendant's statutory claim. The court distinguished the case at bar from *People v. England*,[28] where the New York Court of Appeals found that "the People's filing of a statement of readiness before the defendant was arraigned on the indictment was insufficient to stop the running of the speedy trial clock because the defendant could not have been brought to trial before she was arraigned on

18. *Id.*
19. *Id.*
20. *Id.* at 98-99.
21. *Id.* at 99.
22. *Id.*
23. *Id. See* N.Y. CRIM. PROC. LAW § 30.20(1) (McKinney 1992). Section 30.20(1) provides in pertinent part: "After a criminal action is commenced, the defendant is entitled to a speedy trial." *Id.*
24. *Beckett*, 627 N.Y.S.2d at 99.
25. *See* N.Y. CRIM. PROC. LAW § 30.30(1)(b) (McKinney 1992).
26. U.S. CONST. amends. VI, XIV; N.Y. CONST. art. I, § 6.
27. *Beckett*, 627 N.Y.S.2d at 99.
28. 84 N.Y.2d 1, 636 N.E.2d 1387, 613 N.Y.S.2d 854 (1994).

the indictment."[29] The *Beckett* court found "that the Town Courts were in position to try the misdemeanor charges against defendant until August 6, 1993 when the People served notice they would present the charges to the Grand Jury."[30] Thus, the court stated that the pertinent issue was "whether any of the postreadiness delay may be charged to [the People]."[31]

The defendant argued that the postreadiness delay running from December 15, 1991 to June 22, 1993 was chargeable to the People.[32] The *Beckett* court looked to *People v. Cortes*,[33] pointing out that the *Cortes* court found that "postreadiness delay may be chargeable to the People where the causes of the delay directly implicate the People's ability to proceed with trial."[34] In

29. *Beckett*, 627 N.Y.S.2d at 99 (citing *England*, 84 N.Y.2d at 4-5, 636 N.E.2d at 1389, 613 N.Y.S.2d at 856). In *England*, the defendant was arrested and charged with third-degree burglary on June 24, 1992 and the felony complaint was filed on that day. *England*, 84 N.Y.2d at 3, 636 N.E.2d at 1388, 613 N.Y.S.2d at 855. Thus, pursuant to CPL § 30.30(1)(a), "[t]he statutory period, 183 days in this case, commenced with the filing of the felony complaint on June 24, 1992, and expired on December 24, 1992." *Id.* at 4, 636 N.E.2d at 1389, 613 N.Y.S.2d at 856 (citation omitted). The defendant was scheduled to be arraigned on January 7, 1993. *Id.* The *England* court noted that the "[d]efendant could not have been brought to trial before arraignment, the process by which the court acquires jurisdiction over a defendant." *Id.* at 4-5, 636 N.E.2d at 1389, 613 N.Y.S.2d at 856. Thus, the court held that under these circumstances, "the People could not have validly declared readiness until January 7, 1993, at defendant's arraignment, entitling defendant to dismissal of the indictment." *Id.* at 5, 636 N.E.2d at 1390, 613 N.Y.S.2d at 857. In *England*, the long delay was not attributed to the defendant or court congestion, but to the People's laxity in securing an indictment. *Id.*

30. *Beckett*, 627 N.Y.S.2d at 99

31. *Id.*

32. *Id.*

33. 80 N.Y.2d 201, 604 N.E.2d 71, 590 N.Y.S.2d 9 (1992).

34. Beckett, 627 N.Y.S.2d at 99 (citing *Cortes*, 80 N.Y.2d at 210, 604 N.E.2d at 77, 590 N.Y.S.2d at 15). In *Cortes*, the defendant was arraigned on June 18, 1987, on a felony complaint charging him with first degree criminal sale of a controlled substance and several other related offenses. *Cortes*, 80 N.Y.2d at 205, 604 N.E.2d at 74, 590 N.Y.S.2d at 12. On September 14, 1989, the defendant successfully moved to have the indictment dismissed on the grounds that he had been denied the right to a speedy trial. *Id.* at 207, 604 N.E.2d at 75, 590 N.Y.S.2d at 13. Upon review, the New York Court of

Cortes, the New York Court of Appeals held that (1) the postreadiness delay resulting from the failure of the County Law article 18-B Panel to promptly supply an attorney to represent [the] defendant, was not chargeable to the People;[35] (2) the period of delay resulting from the dismissal of the original indictments on a ground that was subsequently proven erroneous to the date new indictments were filed was chargeable to the people;[36] (3) the period of delay between the filing of the felony complaint and the defendant's arraignment on the second indictment was chargeable to the people;[37]and (4) "the dismissal of an indictment and the filing of a new one represents such a substantial break in the proceeding that a new communication of

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Appeals affirmed the lower court decision, holding that the indictments were properly dismissed since the People failed to comply with the statutory requirements. *Id.* at 205, 604 N.E.2d at 74, 590 N.Y.S.2d at 12.

35. *Cortes,* 80 N.Y.2d at 210, 604 N.E.2d at 77, 590 N.Y.S.2d at 15. The court noted that despite the judiciary's "intimat[e] involve[ment] in both the design and the operation of the 18-B Panel," the People had declared themselves ready [within the statutory three month time period], "thereby signifying that they had done everything they could up to that point to move the case to trial." *Id.* at 209-10, 604 N.E.2d at 76-77, 590 N.Y.S.2d at 14-15. The cause of the delay - - the defendant's lack of representation - - "did not affect the People's ability to present their own case and, consequently, did not affect their 'readiness' as that term is used in CPL 30.30 analysis." *Id.* at 210, 604 N.E.2d at 77, 590 N.Y.S.2d at 15.

36. *Id.* at 211, 604 N.E.2d at 77, 590 N.Y.S.2d at 15. The court reasoned that "unlike the post readiness delays attributable to Cortes' lack of representation, this 90 day period of delay did implicate the People's CPL 30.30 obligations, since the absence of a valid indictment during this period was a circumstance that directly impaired their ability to proceed to trial." *Id.*

37. *Id.* at 213, 604 N.E.2d at 79, 590 N.Y.S.2d at 17. The People did not contest the entire 84 day pre-arraignment delay. *Id.* at 213, 604 N.E.2d at 78, 590 N.Y.S.2d at 16. The People only disputed their accountability for the 62 day time period between the filing of the first indictment and the defendant's arraignment on the second indictment. *Id.* at 213, 604 N.E.2d at 78-79, 590 N.Y.S.2d at 16-17. The court relied on the recent decision in People v. Correa, 81 N.Y.2d 930, 575 N.E.2d 42, 569 N.Y.S.2d 601 (1991), where, as pointed out by the *Cortes* court, the New York Court of Appeals stated that "[d]elays between indictment and arraignment, like other court congestion, do not prevent the People from being ready for trial." *Id.* at 213, 604 N.E.2d at 78, 590 N.Y.S.2d at 16 (citation omitted).

readiness is needed" by the prosecution.[38] After reviewing the record, the *Beckett* court found that "the delays . . . were not attributable to the People but rather to an unusual confluence of events over which the People had no control and which had no bearing on their ability to proceed to trial."[39] The court noted that "during the period in question, five different Town Justices were assigned to this matter and on two separate occasions the People demonstrated their readiness for trial by participating in the jury selection process."[40] Thus, the court concluded that due to the exceptional circumstances involved in the case, none of the delays following the People's statement of readiness was chargeable to the People.[41] Therefore, the delay did not violate the defendant's statutory right to a speedy trial.

The court then considered the defendant's constitutional right to a speedy trial. The court relied on *People v. Taranovich*[42] which stated that although the right to a speedy trial is guaranteed by both the Sixth and Fourteenth Amendments of the Federal Constitution, "there is no specific temporal duration after which a defendant automatically becomes entitled to release for denial

38. *Cortes*, 80 N.Y.2d at 214, 604 N.E.2d at 79, 590 N.Y.S.2d at 17. The court found that "[w]ithout a new declaration of readiness, the trial court and the defense would be left to speculate about the People's state of preparedness on the new indictment." *Id.* at 214-15, 604 N.E.2d at 79, 590 N.Y.S.2d at 17.

39. *Beckett*, 627 N.Y.S.2d at 99.

40. *Id.*

41. *Id.*

42. 37 N.Y.2d 442, 335 N.E.2d 303, 373 N.Y.S.2d 79 (1975). In *Taranovich*, the defendant was arrested and arraigned on January 13, 1972, for attempted murder, possession of a dangerous drug in the sixth degree, resisting arrest, leaving the scene of an accident, operating a motor vehicle while impaired and operating a motor vehicle without a license. *Id.* at 443-44, 335 N.E.2d at 304, 373 N.Y.S.2d at 80. The defendant successfully moved to have the indictment dismissed on the grounds that the 12 month delay between his arraignment and indictment violated his constitutional and statutory rights to a speedy trial. *Id.* at 443, 335 N.E.2d at 304-05, 373 N.Y.S.2d at 80. The appellate court unanimously reversed the order and the defendant appealed. *Id.* The court of appeals affirmed the appellate court decision and reinstated the indictment, holding that the defendant's right to a speedy trial was not abridged. *Id.*

of a speedy trial."[43] The *Taranovich* court consequently proffered the following five factors to be considered when determining whether a defendant's constitutional right to a speedy trial has been violated: "(1) the extent of the delay; (2) the reason for the delay; (3) the nature of the underlying charge; (4) whether or not there has been an extended period of pretrial incarceration; and (5) whether or not there is any indication that the defense has been impaired by reason of the delay."[44] In *Taranovich*, the Court of Appeals held that:

> A one-year delay between the alleged occurrence of a crime and an indictment for a class C felony, even when it results from prosecutorial inattention, in and of itself does not entitle a defendant to a dismissal of the indictment where there is no lengthy pretrial incarceration and no apparent impairment of his defense caused by the delay.[45]

In applying the *Taranovich* factors to the case at bar, the *Beckett* court stated that:

> Considering that the postreadiness delay was not caused by prosecutorial inaction and since defendant was not incarcerated, and as there is no indication that his ability to mount a defense has been compromised by the delay, we also conclude that [defendant's] constitutional right to a speedy trial has not been abridged.[46]

Accordingly, the Third Department reversed the order and reinstated the indictment.[47]

While the New York and Federal Constitutions differ in that only the Federal Constitution explicitly contains a speedy trial provision, they both similarly protect a criminal defendant's right

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43. *Id.* at 444-45, 335 N.E.2d at 305, 373 N.Y.S.2d at 81.

44. *Id.* at 445, 335 N.E.2d at 306, 373 N.Y.S.2d at 81-82. The *Taranovich* court stated that "no one factor or combination of the [five] factors. . . is necessarily decisive or determinative of the speedy trial claim, but rather the particular case must be considered in light of all of the factors as they apply to it." *Id.* at 445, 335 N.E.2d at 305, 373 N.Y.S.2d at 81.

45. *Id.* at 447, 335 N.E.2d at 307, 373 N.Y.S.2d at 83.

46. *Beckett*, 627 N.Y.S.2d at 99.

47. *Id.*

to a speedy trial. Furthermore, a defendant may invoke due process pursuant to both constitutions.[48] Under the Federal Constitution, the balancing tests utilized to determine whether a defendant has been denied the right to a speedy trial, are similar to the factors discussed and applied in *Taranovich*.[49] In *Barker v. Wingo*,[50] the United States Supreme Court proffered a balancing test which weighed the following factors in determining whether a defendant's constitutional right to a speedy trial has been abridged: "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant."[51] The Supreme Court reaffirmed the use of the *Barker* factors in determining whether a defendant had been denied the right to a speedy trial in *Doggett v. United States*.[52]

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48. *See* Doggett v. United States, 505 U.S. 647, 655 n.2 (1992) (stating that "a defendant may invoke due process to challenge delay both before and after official accusation").

49. *See Taranovich*, 37 N.Y.2d at 445, 335 N.E.2d at 306, 373 N.Y.S.2d at 81-82.

50. 407 U.S. 514 (1972). In *Barker*, the defendant and an accomplice were arrested for murdering an elderly couple. *Id.* at 516. The prosecution had a stronger case against the defendant's accomplice, Manning, and believed the defendant would not be convicted absent Manning's testimony at defendant's trial. *Id.* The United States Supreme Court held that although more than five years had passed from time of defendant's arrest until his subsequent trial, with more than four of those years attributable to the People's desire to utilize Manning as a witness in Barker's trial, the defendant's right to a speedy trial was not violated because the prejudice against the defendant was minimal, and more importantly, the defendant "did not want a speedy trial." *Id.* at 533-34.

51. *Id.* at 530. The *Wingo* Court stated that none of the four factors are dispositive or even necessary in a finding of a violation of a defendant's right to a speedy trial. *Id.* at 533. As the Court stated, "they are just related factors and must be considered together with such other circumstances as may be relevant." *Id.* The Court stated that the fourth factor, prejudice, should be considered in light of the following interests the right to a speedy trial was aimed to protect: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Id.* at 532.

52. 505 U.S. 647 (1992). In *Doggett*, the defendant was indicted for conspiring to import and distribute cocaine. *Id.* at 648. Subsequently, the DEA sought to arrest the defendant at his mother's house, but was informed that he had left for Columbia four days earlier. *Id.* at 648-49. The DEA learned that

However, in *Doggett*, the Court stated that excessive delay creates a presumption of prejudice.[53] Thus, pursuant to *Doggett*, "affirmative proof of particularized prejudice is not essential to every speedy trial claim."[54] In comparison, New York utilizes the *Barker* test, but includes the consideration of an independent factor, namely, "whether or not there has been an extended period of pretrial incarceration,"[55] as opposed to comprising a part of the prejudice factor.[56] However, since no one factor is dispositive,[57] and the *Barker* factors are illustrative and not exhaustive, the two approaches are essentially identical.

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the defendant was under arrest on drug charges in Panama, but was released by the Panamanian authorities before they could secure his extradition. *Id.* at 649. He returned to the United States where he "lived openly under his own name, and stayed within the law." *Id.* After a United States Marshall's Service credit check on outstanding arrest warrants revealed the defendant's address, the defendant was arrested. *Id.* at 650. The arrest occurred eight and one-half years after the defendant was indicted. *Id.* During that time, the defendant was unaware of the charges against him. *Id.* The defendant moved to dismiss the indictment, alleging that he was denied the right to a speedy trial, but the district court denied the motion on the grounds that the defendant did not make an affirmative showing that the delay prejudiced him. *Id.* The court of appeals affirmed. *Id.* at 651. On review, the United States Supreme Court reversed the order of the district court and held that the defendant's right to a speedy trial had been violated. *Id.*

53. *Id.* at 655-56.

54. *Id.* at 655 (citation omitted).

55. *Taranovich*, 37 N.Y.2d at 445, 335 N.E.2d at 306, 373 N.Y.S.2d at 81-82.

56. *See supra* note 44 and accompanying text.

57. *See supra* notes 42-45 and accompanying text.