

At a Special Term of the County Court of the State of New York, held in and for the County of Franklin, at the Court-house in the Village of Malone, New York, on the 23rd day of September, 2019.

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF FRANKLIN

-----X

THE PEOPLE OF THE STATE OF NEW YORK

DECISION AND ORDER

-against-

Indictment Number
I-51-2016

COREY HALE,

Criminal Index Number
93-2016

Defendant.

-----X

DECISION AND ORDER

MAIN, JR., J. On October 14, 2016, a jury convicted defendant of two counts of criminal sexual act in the first degree and two counts of endangering the welfare of a child. On December 9, 2016, he was sentenced to aggregate determinate terms of twenty-five (25) years incarceration and ten (10) years of post-release supervision, together with fines, fees, and surcharges.

Defendant now moves, pursuant to Criminal Procedure Law § 440.10 (h), to vacate his conviction alleging the ineffective assistance of counsel. Defendant correctly cites *People v Obert*, 1 AD3d 631 (3d Dept 2003), for the premise that defense counsel's failure to raise a meritorious speedy trial claim is sufficient to constitute a denial of meaningful representation.

The Court scheduled a hearing on the merits of the speedy trial claim for August 15, 2019. With the Court's permission, the parties placed a stipulation of facts on the record and submitted memoranda of law based upon those stipulated facts. The Court has considered that stipulation and those memoranda of law. The Court has also taken judicial notice of

the information contained in its own files.

On January 15, 2015, a New York State Police investigator filed two felony complaints and two misdemeanor informations, containing the above charges, with the Town Court of the Town of Bombay, in Franklin County, New York. On the same date, an arrest warrant was issued by Town Court. A criminal action commences upon the filing of a felony complaint (*People v Osgood*, 52 NY2d 37 [1980]). Pursuant to Criminal Procedure Law § 30.30 (1) (a), the People must be ready for trial within six (6) months of the commencement of a criminal action where at least one count is a felony. Hence, the People, in this case, were required to announce readiness no later than June 13, 2015. An indictment against defendant was not even filed until June 15, 2016, more than a full year after the expiration of the statutory deadline for announcing readiness. The People filed a written "Statement of Readiness" on June 15, 2016. On June 16, 2016, the People served the same, by mail, upon defense counsel. Defendant was arraigned, in County Court, on June 22, 2016. On that date the People restated their readiness for trial, on the record, in open court.

Defendant has alleged, and the People concede, that there was no announcement of readiness for almost one and one-half years after the commencement of the criminal action. Hence, the burden of proof shifts to the People to establish that the delay was excusable pursuant to Criminal Procedure Law § 30.30 (4) (a-j) (*People v Santos*, 68 NY2d 859 [1986]). In an effort to meet this burden, the People invoke Criminal Procedure Law § 30.30 (4) (e) and (f).

Criminal Procedure Law § 30.30 (4) (e) excludes, from speedy trial calculations, the period of time that a defendant is incarcerated in another state, with the knowledge of the district attorney, if the prosecution has been "diligent and has made reasonable efforts to obtain the presence of the defendant for trial". The parties agree, at the time the warrant of arrest was issued, that defendant was incarcerated due to a conviction by a Vermont court and that he was serving his sentence in Tennessee.

The warrant of arrest was filed with the Vermont Department of Corrections on January 15, 2015, two days after it was issued. On April 29, 2015, a New York State Police investigator was informed by Vermont's Department of Corrections that defendant refused to consent to return to New York pursuant to the terms of Article III of the Interstate Compact on Detainers (Criminal Procedure Law, article 580). The People rely on *New York v Hill*, 528 US 110, 117 (2000), for the proposition

that the speedy trial limitations of the Interstate Compact on Detainers are subject to waiver, either by explicit declaration or affirmative request. However, nothing contained in that case indicates that a refusal to comply with an Article III invitation constitutes a waiver of the People's obligations under Article IV, a procedure whereby the transfer to New York may be compelled. Moreover, the very first section of the Interstate Compact on Detainers provides that

"[t]he attendance in a criminal action pending in a court of this state of a defendant confined as a prisoner in an institution of another jurisdiction of the United States may, under prescribed circumstances, be secured pursuant to:

1. Section 570.12 of article five hundred seventy, known as the uniform criminal extradition act" (Criminal Procedure Law § 580.10 [1]).

Hence, the People could have sought defendant's extradition. In fact, the parties have stipulated that defendant waived extradition on April 9, 2016, four (4) days before his Vermont sentence expired (Stipulation, August 15, 2019, pages 4 - 5).¹ The People have failed to meet their burden of proving why this same procedure, or the procedure established by Article IV of the Interstate Compact on Detainers, could not have been utilized one year earlier.

Article III of the Interstate Compact on Detainers is the proverbial carrot to the extradition stick. If a defendant agrees to, or demands, transfer to a state where charges are pending, "he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered ... written notice of ... his request for a final disposition" (Criminal Procedure Law § 580.20, Art. III [a]). By utilizing Article III, the defendant imposes an obligation upon the People to actually commence the trial within six (6) months. This is more onerous upon the prosecutor than the mere obligation to announce readiness within six (6) months.

Article IV of the Interstate Compact on Detainers

¹ Although the Stipulation states that defendant waived extradition on April 9, 2016, documentary evidence indicates that this occurred on May 9, 2016, four days before his Vermont sentence expired on May 13, 2019.

provides a method for the transfer of an unwilling defendant. In that case, the court of the requesting state which has jurisdiction of the case must approve the request. Then the governor of the sending state has thirty (30) days to approve or disapprove the request. The defendant has rights to challenge the request in the courts of the sending state. This process may take some significant time. However, if the requesting state is successful, then trial must be commenced within one hundred twenty (120) days of the defendant's actual arrival in the requesting state.

Finally, the People can use the "stick" of extradition as authorized by Criminal Procedure Law §§ 570.12 and 580.10 (a). This method does not seem to impose any trial obligation upon the People except that contained in Criminal Procedure Law § 30.30 (1) (a).

Defendant has the statutory right to decline the People's invitation for a voluntary interstate transfer. The exercise of that right does not, by itself, constitute a waiver of the People's obligation to use diligence to secure defendant's attendance, as imposed by Criminal Procedure Law § 30.30 (4) (e). Indeed, the People did not even have to rely on Article III of the Interstate Compact on Detainers. They did not need to seek defendant's consent. The People simply could have used either Article IV or pursued extradition.

The Court finds that the People did not use "diligent and ... reasonable efforts to obtain the presence of the defendant for trial" as required by Criminal Procedure Law § 30.30 (4) (e). Therefore, this section of law is unavailable to the People to toll the requirements of Criminal Procedure Law § 30.30 (1) (a).

The People also argue that the time that the defendant was without counsel, through no fault of the Court, tolls the speedy trial clock pursuant to Criminal Procedure Law § 30.30 (4) (f). The People allege that the time between defendant's refusal of the People's invitation to voluntarily consent to a transfer to New York (April 25, 2015) and his first appearance with counsel for arraignment in the Town of Bombay on May 17, 2016, should be excluded.

This novel argument is without merit. Essentially, the People argue that speedy trial obligations should be tolled, if a defendant has no attorney, before he is even arraigned in local criminal court. The People have not submitted any legal precedent for this position, and this Court has found none. The Court concludes that Criminal Procedure Law § 30.30 (4) (f) does

not apply to periods of time where a defendant is without counsel prior to his initial arraignment in a local criminal court.

In the present matter, defendant first appeared in local criminal court for arraignment on May 13, 2016. Counsel was assigned on May 17, 2016, and appeared with defendant on that date to complete the arraignment. Five hundred sixteen (516) days passed between the filing of the accusatory instrument and the People's declaration of readiness. Even if the People were entitled to a deduction of four (4) days between defendant's first appearance without counsel and subsequent appearance with counsel, the People clearly exceeded the six (6) month window for announcing readiness.

Moreover, the People's invitation to defendant, in Vermont (or Tennessee), to consent to a voluntary transfer to New York, was not even in the context of any actual proceeding in that state, in which an attorney could appear.

Upon a finding that the defendant's right to a speedy trial was violated, and that trial counsel did not raise the violation of the defendant's right to a speedy trial as an issue, the Court concludes that the defendant did not receive effective assistance of counsel (*People v Obert*, 1 AD3d 631 [3d Dept 2003]).

NOW, THEREFORE, for the reasons set forth herein, it is

ORDERED that defendant's motion to vacate the judgment of conviction of two counts of criminal sexual act in the first degree and two counts of endangering the welfare of a child be, and the same hereby is, granted; and it is further

ORDERED that defendant's conviction of two counts of criminal sexual act in the first degree and two counts of endangering the welfare of a child, and the sentences imposed thereon, be, and the same hereby are, vacated; and it is further

ORDRED that Indictment I-51-2016 against defendant be, and the same hereby is, dismissed; and it is further

ORDERED that the commitment dated December 9, 2016, signed by Donna Rubadeau, Court Assistant, remanding defendant to the custody of the New York State Department of Corrections and Community Supervision be, and the same hereby is, vacated, as moot; and it is further

ORDERED that the New York State Department of

Corrections and Community Supervision be, and it hereby is,
directed to release defendant with respect to this proceeding.

ENTER

Robert Mann

Franklin County Judge

Dated at Malone, New York, this 23rd day of September, 2019.