

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

THE STATE OF NEW HAMPSHIRE

v.

BRANDON CASTIGLIONE

218-2019-CR-1132

**MOTION TO DISMISS DUE TO A VIOLATION OF
THE RIGHT TO A SPEEDY TRIAL**

NOW COMES Brandon Castiglione, by and through Wade Harwood, Esq. and Amy A. Ashworth, Esq., and respectfully requests that the Honorable Court Dismiss the Pending Charges as Mr. Castiglione's Right to a Speedy Trial has been Violated Under Both the New Hampshire, Part 1, Article 14, and the 14th Amendment to the United States Constitution.

In support thereof, the following is stated:

1. The State accuses Mr. Castiglione of alternate theories of Second-Degree Murder for causing the death of Luis Garcia.
2. Mr. Castiglione has been held without bail at the Rockingham County of Corrections since his arrest on October 2, 2019.
3. On December 2, 2019, the Defense filed a Motion to Determine Mr. Castiglione's Competency. All pre-trial motions were stayed during a determination of competency.
4. On December 19, 2019, the Court (Honigberg, J.), granted the State's Assented to Motion to Extend the Indictment Deadline to February of 2020. The basis for the Assented to Motion to Extend the Indictment Deadline included that the Defense

intended to raise the issue of competency and that there were several pieces of evidence still being tested at the NH State Laboratory.

5. On March 4, 2020, the Court (Wageling, J.), granted the State's Assented to Motion to Extend the Indictment Deadline again. The request extended the deadline to April 2020. The basis for this Assented to Motion was that Mr. Castiglione's competency had still not been determined
6. In an agreement filed on March 5, 2020, by the Defense and granted the same day (Wageling, J.), a Hearing on the Issue of Competency was continued. Defense Counsel requested that the Hearing not be rescheduled during the weeks of March 25-April 13, 2020, due to previously scheduled vacations.
7. On March 16, 2020, the State Supreme Court issued its first of many orders suspending in-person court proceedings. The Order followed the Governor's March 13, 2020 declaration of a State of Emergency due to the COVID-19 pandemic. The Courts remained closed for jury trials and grand jury proceedings for several months due to the global pandemic.
8. On April 29, 2020, the Court (Wageling, J.), approved an Agreement filed by the Defense, to reschedule the Competency Hearing for two reasons. The first being that the parties had just received the evaluation and needed more time to prepare. The second reason being that the defense needed additional time to consult with its own expert.
9. On May 15, 2020, the Defense filed a Brief Report Concerning the Status of Competency Proceedings. In Paragraph 8 D, it is noted that Mr. Castiglione is "troubled that Defense Counsel has not yet filed a notice of speedy trial..."

10. On July 14, 2020, the Supreme Court issued an Order authorizing the Superior Court to resume jury trials and grand jury proceedings in August 2020, consistent with the Superior Court's roll-out plan outlined in the State Court Jury Trial Plan and grand juries following the protocols. See Order (Supreme Court July 14, 2020).
11. The Court (Wageling, J.) issued an Order on August 12, 2020, finding Mr. Castiglione competent to stand trial.
12. On September 3, 2020, the Chief Justice of the New Hampshire Superior Court, (Nadeau, J.), issued an Order authorizing a multicounty grand jury that was available to all counties. Superior Court Administrative Order 2020-007.
13. Mr. Castiglione was ultimately indicted on the Second-Degree Murder charges on November 12, 2020.
14. The Defense filed an Assented to Structuring Proposal, on April 5, 2021. This Proposal was approved on April 6, 2021 (Wageling, J.), requesting that Jury Selection in Mr. Castiglione's case take place in February of 2022.
15. In an Order issued on May 14, 2021, by the NH Supreme Court it was noted that as of "August 2020, the Superior Court convened a statewide grand jury process to ensure all counties could conduct grand jury proceedings and has held forty-six jury trials. See paragraph 19 May 14, 2021, Supreme Court Order.
16. On July 14, 2021, the Court (Wageling, J.) issued an Order on a Status Conference. During the Status Conference it was noted that the Trial may need to be moved. Specifically, the Order noted "If Mr. Castiglione wishes to retain his current counsel, he will have to agree to move the trial to June 2022 and waive his

speedy trial rights. If Mr. Castiglione wishes to have his trial occur earlier, new counsel will be appointed. Mr. Castiglione was ordered to report back to the Court on or before July 23, 2021, as to what his decision was.

17. In its Order on Ex-Parte Hearing-Status of Counsel, dated August 6, 2021, the Court noted in part, that, Mr. Castiglione asserted his speedy trial rights and asked that the trial begin as soon as possible. The Court further noted that the trial date was going to be moved back if Mr. Castiglione did request changing counsel.
18. Between August 6, 2021, and March of 2022, several Status of Counsel Hearings were held. During a Hearing held on January 11, 2022, Mr. Castiglione orally requested a Show Cause Hearing concerning his right to a speedy trial, but decided to wait until after the Court ruled on his Motion for new counsel.
19. On February 7, 2022, the Court issued an Order (Honigberg, J) discharging Mr. Castiglione's counsel.
20. On February 16, 2022, the Court (Honigberg, J.), granted the State's Expedited Motion to Clarify Scheduling. Specifically, the Court ordered that:

the March 21, 2022, jury selection has been canceled and will need to be rescheduled after a new appearance is filed for the Defendant. The postponement is due to no fault of the State or Court.
21. On March 17, 2022, the Court (Ruoff, J.), issued an Order on Status of Counsel, approving the appointment of two new attorneys to represent Mr. Castiglione.
22. In the same Order, Mr. Castiglione's trial was scheduled to May 2023.

LEGAL ANALYSIS

23. The United States Constitution guarantees a criminal defendant's right to a speedy trial:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Const. amend. VI.

24. The New Hampshire Constitution assures a criminal defendant the right to a speedy trial:

Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; comfortably to the laws.

N.H. Const. part I, art. 14.

25. The United States Supreme Court uses a four-prong test to analyze speedy trial claims. Barker v. Wingo, 407 U.S. 514, 530 (1972). The New Hampshire Supreme Court has adopted this test in its entirety. State v. Colbath, 130 N.H. 316, 319 (1988).
26. To determine if a criminal defendant's speedy trial rights have been violated, the Court balances (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right to a speedy trial; and (4) the prejudice to the defendant caused by the delay. Colbath, 130 N.H. at 319; State v. Cotell, 143 N.H. 275, 282 (1998).

LENGTH OF THE DELAY

27. Pursuant to New Hampshire Superior Court Speedy Trial policy, where a defendant is incarcerated, without resolution after 4 months from the filing of charges, a Show Cause Hearing shall be scheduled to determine whether, under the principles of Barker v. Wingo, 407 U.S. 514 (1972), the case should be dismissed for lack of speedy trial. See New Hampshire Superior Court Speedy Trial Policy. The exception to this policy is if the Court record establishes that there is no basis for a speedy trial violation. See Id.
28. The New Hampshire Supreme Court has repeatedly held that, in a felony case, a delay beyond nine months is presumptively prejudicial. See Cotell, 143 N.H. at 282 (1998); State v. Bernaby, 139 N.H. 420, 422 (1995); State v. Maynard, 137 N.H. 537, 539 (1993); State v. Stow, 136 N.H. 598, 602 (1993); State v. Fletcher, 135 N.H. 605, 605 (1992); State v. Tucker, 132 N.H. 31, 32 (1989); Colbath 130 N.H. at 319.
29. There were 897 days from October 2, 2019 to March 17, 2022. These dates mark the timeframe from arrest to the date new counsel were appointed. The time span from March 17, 2022 to May 3, 2023, is further delay of one year, one month and 16 days.
30. For purposes of this Motion to Dismiss for Lack of Speedy Trial, the defense is using the dates between October 2, 2019, to December 2, 2019 and August 12, 2020 to April 6, 2021, to calculate the presumptive prejudice timeframe, because there is no argument that Mr. Castiglione had any fault for those delays. The 61 days from October 2, 2019, to December 2, 2019, marks the timeframe from the

date of Mr. Castiglione's arrest to the date Defense Counsel raised the issue of Competency in Mr. Castiglione's case. The 237 days from August 12, 2020 to April 6, 2021, marks the timeframe from the date of the Court's finding that Mr. Castiglione was competent to stand trial, to the date the Structuring Proposal was approved scheduling trial for the following February.

31. Even the delays in this case, where it is uncontroverted that it was no fault of the defendant are beyond nine months and should be deemed presumptively prejudicial. As such, the remaining factors should be considered.

REASONS FOR THE DELAY

32. Closely related to the length of delay is the reason the government assigns to justify the delay. Barker at 406 U.S. 532. The State has a constitutional duty to make a diligent, good faith effort to bring the defendant to trial. Humphrey, 133 N.H. at 735; State v. Locke, 149 N.H. 1, 9 (2002). Different weights should be assigned differently depending on the reason for the delay. Barker Id. Reasons for delay including "negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government, rather than with the defendant." Id.
33. 61 days passed after Mr. Castiglione was charged with the death of Louis Garcia on October 2, 2019, to December 2, 2019, the date defense counsel raised the issue of competency.
34. The Courts closed in March of 2020, due to the unprecedented COVID-19 pandemic. The Supreme Court of New Hampshire produced several emergency

orders as noted above prohibiting jury trials and grand juries from occurring.

Obviously, this time frame cannot be attributable to Mr. Castiglione. He had no control over the timing. While the State had no control of the shut down either, the delay must be charged to the government, but weighed less heavily than if the State was the direct cause of the delay.

35. In Mr. Castiglione's case, assuming the process and timelines were stayed while the issue of competency was pending, the Court (Wageling, J.) found Mr. Castiglione competent to stand trial on August 12, 2020.
36. Prior to the Emergency Orders going into effect because of the pandemic, the State filed two separate Assented to Motions to Extend the Indictment date. Both Motions were filed while the issue of Competency was pending. Given that Mr. Castiglione was not able to take positions on issues that impacted his case substantially while competency was pending, the delay caused by the first and second Assented to Motion to Extend Indictment Deadline and suspension of grand jury deadlines should not be attributable to Mr. Castiglione. While there were Emergency Orders in place staying the 90-day deadline to indict defendants up until the last Emergency Order, the Superior Court authorized the multicounty grand jury on September 3, 2021. The State indicted Mr. Castiglione on November 12, 2021, well over a year after he was charged with the offense.
37. The scheduling of Mr. Castiglione's actual jury selection and trial didn't happen until April 6, 2021, when the Court approved the Assented to Structuring Proposal.

ASSERTING THE RIGHT TO A SPEEDY TRIAL

38. That Mr. Castiglione asserted his right to a speedy trial several times during the pendency of this case should not be at issue. He asserted at several hearings, through defense counsel's motions and in his own pro se motions.

PREJUDICE CAUSED BY THE DELAY

39. Although a delay beyond the New Hampshire Superior Court policy should be held to be presumptively prejudicial, Mr. Castiglione has also suffered actual prejudice from the lengthy delay.
40. "We generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify.' Delay is 'part of the mix of relevant facts, and its importance increases with the length of delay.'" Locke, 149 N.H. 1 at 16 (2002) (quoting Doggett v. United States, 505 U.S. 647, 654-58 (1992)).
41. "The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges." United States v. MacDonald, 456 U.S. 1, 8 (1982).
42. The Sixth Amendment's guarantee of a speedy trial "is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself." United States v. Ewell, 383 U.S. 116, 120 (1966).

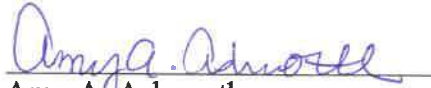
43. Mr. Castiglione has been incarcerated since October 2, 2019. While this court found Mr. Castiglione competent to stand trial, at least initially, there were concerns about Mr. Castiglione's mental health by not only defense, but also the State and the jail. It cannot be disputed that during the unprecedented time of the pandemic, that pretrial incarcerated defendants suffered significantly with having to stay in their cells, with lack of any programming, no visits from friends and/or family and having virtually no contact with other human beings. The circumstances brought on by the pandemic for incarcerated individuals, presumed to be innocent, presented the harshest environment for "unduly and oppressive" incarceration that exists for pre-trial inmates. Not only were they not able to do anything other than remain in their cells, but they were also denied visits by their attorneys, they had no indictment timeframes and no answers about when trials would resume, and they would have their day in court. Preventing these types of scenarios, and the anxiety that goes along with it, is exactly what the Sixth Amendment protects against.

44. Because Mr. Castiglione has been denied the right to a speedy trial, under the Barker v. Wingo test, given the totality of the circumstances, dismissal is the only remedy. See Strunk v. United States, 412 U.S. 434, 439-40 (1973).

WHEREFORE, Mr. Castiglione respectfully requests that this Honorable Court grant the following relief:

- A. Dismiss this case; or
- B. Schedule a hearing on this motion.

Respectfully submitted,



Amy A. Ashworth

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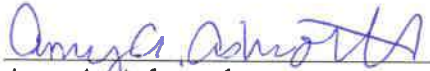
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Dismiss Due to a Violation of the Right to a Speedy Trial has been forwarded this 4th day of October 2022 to Senior Assistant Attorney General, Benjamin Agati, Esq., and Adam Woods, Esq. through the Court's electronic case filing system.



Amy A. Ashworth