

THE STATE OF NEW HAMPSHIRE

COOS SS.

MARCH TERM 2025

STATE OF NEW HAMPSHIRE

V.

DUSTIN DUREN

214-2024-CR-28

MOTION TO DISMISS FOR VIOLATION OF SPEEDY TRIAL RIGHT

NOW COMES the defendant, Dustin Duren, by and through his counsel, Hanna Kinne and Margaret Kettles, Public Defenders, and moves to dismiss this matter due to a violation of his speedy trial right guaranteed under Part I, Article 14 of the New Hampshire Constitution, and the Sixth and Fourteenth Amendments of the Federal Constitution.

In support thereof, the following is stated:

PROCEDURAL HISTORY

1. In the above docket, Mr. Duren is charged with First Degree Murder and, in the alternative, Second Degree Murder. Mr. Duren is also charged with Reckless Conduct and Endangering the Welfare of a Child.
2. On March 1, 2024, Mr. Duren was arrested for allegedly causing the death of Caitlyn Naffziger.
3. On March 4, 2024, Mr. Duren, deemed indigent, was appointed counsel from the New Hampshire Public Defender's office. The State filed a complaint charging him with Second Degree Murder.
4. Mr. Duren was indicted on June 21, 2024. Substitute indictments were obtained on August 16, 2024.

5. Mr. Duren waived arraignment and entered pleas of not guilty on June 28, 2024 and again on August 28, 2024.
6. A Scheduling Conference was held on September 4, 2024. On October 3, 2024, the Court scheduled trial in this matter for July 2025 and sent out notice to the parties.
7. On February 3, 2025, a Status Conference was held. During the Status Conference, the Court indicated that it had undertaken an internal evaluation into whether the July 2025 trial dates were feasible, given the Court's resources. Mr. Duren asserted his right to speedy trial at this hearing.
8. On February 28, 2025, the Court sent the parties a notice cancelling the July jury trial dates.
9. On March 2, 2025, undersigned counsel filed a Motion for Scheduling Conference. In that motion, Mr. Duren again asserted his right to a speedy trial and requested a trial as soon as possible.
10. On March 10, 2025, a Scheduling Conference was held via Webex. During the Conference, Mr. Duren, through counsel, again asserted his constitutional rights to a speedy trial, under both state and federal constitutions.
11. On March 11, 2025, undersigned counsel received the Court's order scheduling this matter for trial in October 2025.
12. Since his arrest in March 2024, the defendant has remained incarcerated pending resolution of this criminal matter.
13. Mr. Duren has never waived his right to speedy trial.

LEGAL ARGUMENT

14. Mr. Duren has a right to a speedy trial under Part I, Article 14 of the New Hampshire Constitution, and the Sixth and Fourteenth Amendments of the Federal Constitution.. The Court analyzes a motion to dismiss due to a speedy trial violation under the standard set out in Barker v. Wingo, 407 U.S. 514 (1972). State v. Allen, 150 N.H. 290, 292 (2003). Four factors are balanced to determine whether a defendant’s right to a speedy trial has been violated: “(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.” Allen, 150 N.H. at 292.
15. The first factor is a “threshold inquiry,” and if the length of the delay is “presumptively prejudicial,” the Court considers the other three factors. Id. The Court puts “substantial emphasis on the latter two of the Barker factors.” State v. Cole, 118 N.H. 829, 831 (1978). However, no factor is “either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial.” Barker, 407 U.S. at 533. Rather, the Court must “engage in a difficult and sensitive balancing process.” Id.
16. Here, the length of the delay is presumptively prejudicial, and the three remaining factors weigh against the State and in favor.
- I. The length of delay since Mr. Duren’s arrest is presumptively prejudicial**
17. The anticipated nineteen-month delay between Mr. Duren’s arrest and incarceration and his trial is presumptively prejudicial and triggers an analysis of the remaining Barker factors.

18. “The period of delay considered for purposes of analyzing a defendant’s speedy trial claim begins to run when he is arrested or charged, whichever comes first.”
Humphrey v. Cunningham, Warden, 133 N.H. 727, 734 (1990). Here, the period began to run from March 1, 2022—the day Mr. Duren was arrested. As of the date of this filing, the delay is just over twelve months. By the time trial is held in October 2025 as presently scheduled, the delay will be nineteen months.
19. The twelve months Mr. Duren’s case has been pending without trial is presumptively prejudicial. See Superior Court Speedy Trial Policy (“every felony case pending without disposition after 9 months from the date of an indictment shall be scheduled forthwith for a show cause hearing as to whether...the case should be dismissed for lack of speedy trial”); (“where the defendant is incarcerated, every case pending without disposition after 4 months from the date of entry or indictment shall be scheduled forthwith for a show cause hearing as to whether... the case should be dismissed for lack of a speedy trial”).
20. Thus, the twelve-month delay in Mr. Duren’s trial is presumptively prejudicial, and it is necessary to examine the other three Barker factors.

II. The 12-month delay is attributable to the State

21. In balancing this factor, the Court considers to whom, if anyone, the delay can be attributed. Here, none of the 12-month delay can be attributed to Mr. Duren. All of the delay, including those related to court resources, are attributable to the State.
22. The delays in scheduling this matter have two causes: the trial schedules of the State and the resource issues of the Court. The defense has repeatedly asserted that it is ready to proceed to trial as soon as possible. The State has presented a number of

scheduling conflicts that prevent it from proceeding to trial more quickly. Delays due to the State's scheduling conflicts are attributable to the State.

23. Delays caused by lack of court resources are also attributed to the State, albeit not as heavily as delays caused by the State itself. While delays caused by overcrowded or under resourced courts do not weigh heavily against the State, they “nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant.” Barker, 407 U.S. at 531. Thus, because the 19-month period between Mr. Duren's arrest and his October jury trial was due to the State's trial schedule in other matters as well as lack of Court resources, the delay weighs against the State.
24. Lastly and perhaps most importantly, the cancellation of the July jury trial could have been prevented. This trial was on the Court's docket since October 3, 2024. Mr. Duren has never waived his right to a speedy trial, and the Court has been aware of that fact since the onset of criminal proceedings.
25. Thus here, as in Cole, “the State established no valid excuse for the delay” and as such this factor weighs heavily against the State. 118 N.H. at 831.

III. **Mr. Duren asserted his right to a speedy trial repeatedly and often**

26. Mr. Duren has consistently asserted his right to a speedy trial and has never waived it. This factor therefore weighs heavily in his favor.
27. On February 3, 2025, Mr. Duren, through counsel asserted his right to a speedy trial.
28. On March 2, 2025, through a Defense Motion for a Scheduling Conference, Mr. Duren again asserted his right to a speedy trial.

29. On March 10, 2025, during a Scheduling Conference, Mr. Duren asserted his right to a speedy trial once more under both state and federal constitutions.

30. Mr. Duren has been consistent and insistent about asserting his right to a speedy trial. This important factor weighs heavily in favor of Mr. Duren.

IV. Mr. Duren has suffered actual prejudice due to the delay

31. The Court assesses this factor “in the light of the interests of defendants which the speedy trial right was designed to protect.” Barker, 407 U.S. at 532. These include “(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. While the last interest is considered the most serious, it is not the sole determinant of this factor, and Barker “rejected the notion that an affirmative demonstration of prejudice [to the defense] was necessary to prove a denial of the constitutional right to a speedy trial.” Moore v. Arizona, 414 U.S. 25, 26 (1973).

32. For a defendant who has been continually incarcerated since his arrest twelve months ago, the Court has stated that, “the time spent in jail awaiting trial has a detrimental impact on the individual.” Barker, 407 U.S. at 532. Ongoing incarceration means “loss of a job; it disrupts family life; and it enforces idleness.” Id. Additionally, an incarcerated defendant is “hindered in his ability to gather evidence, contact witnesses, or otherwise prepare for his defense.” Barker, 407 U.S. at 533. The Court notes that, “imposing those consequences on anyone who has not yet been convicted is serious.” Id.

33. Mr. Duren has suffered greatly from almost every harm laid out above for defendants in pre-trial incarceration. He has lost employment, housing, and the custody of his

children. He has had to deal with the anxiety of a pending criminal matter for over twelve months, with at least seven more months until the October 2025 jury trial.

34. Mr. Duren and defense counsel have been limited in their abilities to adequately prepare for the case because they must adhere to the restrictions Coos County House of Corrections places on telephone calls, visitations, and the approval of electronic devices for those visitations. The location of Coos County House of Corrections has created an additional limitation for defense counsel as it is almost 65 miles from the nearest Public Defender satellite office.

35. Lastly, Mr. Duren has suffered from personal embarrassment due to this pending case and his not being able to defend himself at trial. His name has been published by various news media outlets and social media sites. These have been seen by numerous acquaintances, family and friends of his.

36. The State “had a constitutional duty to make a diligent, good-faith effort” to bring Mr. Duren to trial. Smith v. Hooey, 393 U.S. 374, 383 (1969). It has not done so, as evidenced by the Barker factors. Every factor weighs against the State, thus demonstrating that Mr. Duren’s speedy trial right has been violated.

WHEREFORE, Mr. Duren respectfully requests that this Honorable Court:

- A. Grant this motion and dismiss this matter due to a violation of Mr. Duren’s speedy trial right; or
- B. If not inclined to grant this motion on the pleadings, hold a hearing on this motion; and
- C. Grant all other relief as is just and proper.

Respectfully submitted:
/s/ Margaret Kettles
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CERTIFICATION

I, Margaret Kettles, Public Defender, do hereby certify that a copy of this MOTION TO DISMISS has been forwarded this 17th day of March, 2025 to Bethany Durand, Esq. and Charles Bucca, Esq. of the Office of the Attorney General.

/s/ Margaret Kettles
Margaret Kettles, Esq.
Public Defender