



By Motion dated December 2, 2021, the defendant moves to dismiss the indictment on the ground that the People's time to prosecute the charge against him has expired under CPL 30.30, 30.20, 170.30 and 210.20.

The People contend that they have sufficient excludable time to defeat the defendant's motion to dismiss.

### LAW & ANALYSIS

In order to avoid a dismissal on speedy trial grounds, the People must declare ready for trial within six months of the commencement of a prosecution charging a felony. (See, CPL 30.30[1][a]). Commencement occurs when an accusatory instrument is filed against a defendant in a criminal court. (CPL 1.20[17]), in this case on February 22, 20/20. Here, **569** days elapsed between commencement of the action and the People's declaration of readiness on October 12, 2021.

Due to the Covid-19 pandemic Gov. Andrew Cuomo signed a series of Executive Orders tolling<sup>1</sup> the time periods in the Criminal Procedure Law including 30.30 time.

Per Gov. Cuomo's Executive Order No. **202.8** all pertinent time limits under the Criminal Procedure Law were **tolled**, effective **March 20, 2020**, and for felony offenses<sup>2</sup> continued to be suspended through a series of subsequent orders, until said **suspension was lifted on October 4, 2020** by Executive Order No. **202.67**.

Per subsequent Executive Order No. **202.87** on **December 30, 2020** sections 30.30 and 190.80 of the Criminal Procedure Law were **re-suspended**, as necessary, to

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<sup>1</sup> (See, *Brash v Richards*, 195 AD 3d 582[2d Dept., 2021], a case interpreting the language of said orders to create a true tolling and not merely a suspension.

<sup>2</sup> See Executive order 202.60 referencing misdemeanors only.

toll any time periods “during which the action is proceeding on the basis of a felony complaint through arraignment on the indictment or on a superior court information”.

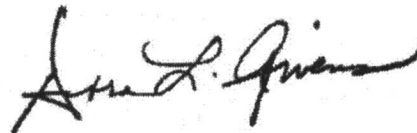
Last, per subsequent Executive Order, **202.106**, the **suspensions** of time under CPL 30.30 and 190.80 **were rescinded**, effective **May 23, 2021**.

Accordingly, the following periods of time are excluded from the speedy trial calculation: The periods of time between the effective dates of Executive Order **202.8 (3/20/20)** and Executive Order **202.67 (10/4/20)**, a period of **198 days**; and between Executive Order **202.87 (12/30/20)** and Executive Order **202.106 (5/23/21)**, a period of **144 days**, for a **total exclusion of 342 days**.

The People’s reliance on verbiage in Executive Order **202.67** continuing its suspension and tolling on unindicted felonies through October 19, 2020 or the date of arraignment upon an indictment or upon a superior court information, whichever is later, by its own wording, pertains only to the counties of New York City named therein.

Hence, **227 days** are chargeable to the People, a period in excess of the six months allowable under CPL 30.30. Therefore, the People have exceeded their time to prosecute this case and the defense motion to dismiss is **GRANTED**. This decision shall constitute the order of this Court.

Dated: February 17, 2022



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HON. DEBRA L. GIVENS, A.J.S.C.