STATE OF MAINE UNIFIED CRIMINAL DOCKET

COUNTY, ss LOCATION: [CITY/TOWN OF COURT]

 DOCKET NO.: [DOCKET #]

 )

STATE OF MAINE )

 ) MOTION TO DISMISS FOR

v. ) SPEEDY TRIAL VIOLATION

 )

[DEFENDANT’S NAME] )

 Defendant )

COMES NOW Defendant and moves this Honorable Court to dismiss the above-captioned matter with prejudice pursuant to the United States Constitution, the Constitution of Maine, and Maine Rules of Unified Criminal Procedure 48(b). In support thereof, Defendant submits as follows:

Procedural History:

*Include all relevant procedural history here. This should include dates of offense, court appearances, and instances in which the case was continued through no fault of the defendant. Highlight State’s motions to continue and not when the defendant objected. If the defendant was in custody or under other restraint (such as bail conditions), point that out.*

1. On DATE, Defendant was arrested for CHARGE, which is alleged to have occurred on OFFENSE DATE;
2. On DATE, Defendant appeared for his initial appearance;
3. On DATE, defendant was arraigned on this charge;
4. On DATE, the State moved to continue this case. That motion was granted over Defendant’s objection;
5. ETC.

Law:

United States Constitution:

The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial…” This right has been deemed fundamental and made applicable to the states by the Fourteenth Amendment. *Kloper v. North Carolina*, 386 U.S. 213 (1967).

As the United States Supreme Court noted in *Barker v. Wingo*, the right to a speedy trial not only protects fairness to the accused, but societal interests as well. *Barker v. Wingo*, 407 U.S. 514 (1972). In *Barker*, the Court delineated a balancing test applicable to the analysis of whether a defendant’s federal right to a speedy trial has been violated. The Court outlined four factors which should be considered in it the balancing test: the length of the delay, the reason for the delay, the defendant’s assertion of his speedy trial right, and prejudice to the defendant. *Id*. at 530.

The length of delay that is prejudicial depends on the circumstances of each case. *Id*. at 530-31. One of those circumstances is the complexity of the case. A shorter delay is permissible in a straightforward “street crime” case than in a more complex case. *Id*. The length of delay is measured from the time of arrest, indictment, or information, whichever occurs first. *Dillingham v. U.S.*, 423 U.S. 64 (1975).

Regarding the second factor, the reason for the delay, the Court in *Barker* held:

[D]ifferent weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as 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. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay. *Barker* at 531 (footnote omitted).

The third factor is the defendant’s assertion of his speedy trial right. Although the right to a speedy trial is fundamental, the defendant has the responsibility to assert his right. *Id*. The Court in *Barker* held that, “The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right.” *Id*. at 531-32.

The final factor, prejudice to the defendant, is considered “in the light of the interests of defendants which the speedy trial right was designed to protect.” *Id*. at 532. The Court proceeded to highlight three of those interests: “(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*. Footnote omitted. The Court noted that the defense being impaired is the most critical of those interests because, when a delay impairs a defendant’s ability to defend himself, the entire system of fairness is skewed. When, after a delay, a witness is missing or unavailable, the prejudice is “obvious.” There is also prejudice when a witness’ memory is impaired. *Id*. Oppressive pretrial incarceration is another significant prejudice to the defendant. *Id*. at 533. Pretrial incarceration should be taken seriously because the defendant is incarcerated despite the presumption of innocence. Moreover, pretrial incarceration hinders a defendant’s ability to prepare his defense. There is also prejudice to a defendant who is not incarcerated pre-trial because “he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion, and often hostility.” *Id*.

The *only* remedy for a speedy trial violation is dismissal of the indictment. *Id*. at 522. Emphasis added.

The Constitution of Maine:

*\*\*\*Watch for the Law Court’s decision in Dennis Winchester v. State of Maine, Law Court docket number Aro-21-312. That decision is anticipated to determine the proper test for analyzing speedy trial claims under the Maine Constitution. Update this section accordingly.\*\*\**

The right to a speedy trial is also guaranteed by the Constitution of Maine: “In all criminal prosecutions, the accused shall have a right…to have a speedy, public and impartial trial…” Me. Const. Art. I, § 6.

The Maine Rules of Unified Criminal Procedure:

The Maine Rules of Unified Criminal Procedure provide for dismissal when there is a delay in bringing the defendant to trial. M.R.U. Crim. P. 48(b)(1).

Argument:

*Use your judgment as to how much you include here and how much you reserve for oral argument. You may want to at least briefly address how each of the Barker factors apply to your case.*

1. Defendant’s right to a speedy trial, guaranteed to him by the Sixth Amendment of the United States Constitution was violated.
2. Defendant’s right to a speedy trial, guaranteed to him by Article I, § 6 of the Constitution of Maine was violated.
3. Because Defendant’s speedy trial right was violated, the only remedy is dismissal of this indictment.
4. Without waiving the above arguments, even if this Court finds that Defendant’s right to a speedy trial under the federal and state constitutions was not violated, this indictment should be dismissed pursuant to Maine Rules of Unified Criminal Procedure 48(b)(1).

WHEREFORE, Defendant prays this Honorable Court grant this Motion to Dismiss.

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[ATTORNEY NAME], Esq., Bar No. [BAR #] Dated: November 4, 2022

Attorney for Defendant

Firm Name

Address

Phone

CERTIFICATE OF SERVICE:

I certify that a true copy of the foregoing Motion was sent to the State via electronic mail to [prosecutor’s email] on November 4, 2022.

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[ATTORNEY NAME], Esq., Bar No. [BAR #] Dated: November 4, 2022

Attorney for Defendant

ORDER:

Defendant’s Motion is granted // denied.

Judge/Justice Unified Criminal Court