

CENTER FOR APPELLATE LITIGATION

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ISSUES TO DEVELOP AT TRIAL

April 2017 - Vol. 2, Issue 4

*This month's issue urges defense practitioners not to overlook **constitutional** speedy trial motions (CPL § 30.20) when there has been protracted delay in a case. This is especially so in misdemeanor practice, where your client may ultimately take a plea. **A guilty plea waives a statutory 30.30 claim on appeal but does NOT waive a constitutional speedy trial claim.** Therefore, there is no reason why a speedy trial claim should not include both CPL § 30.20 and § 30.30. The motion is easy to make, as outlined below. Further, unlike with a 30.30 motion, you do not need to order adjourn dates. Nor is a reply required to preserve the issue, as is usually necessary with 30.30. However, the motion **does** need to be in writing, and **must** be made prior to the commencement of trial or the entry of a guilty plea. Ask for dismissal of the accusatory instrument or, alternatively, for a hearing.*

Background: CPL. § 30.20(1) contains New York's speedy trial guarantee. Further, an "unreasonable delay" in prosecuting a defendant constitutes a violation of state due process, and the State due process requirement of a prompt prosecution is "broader than the right to a speedy trial" guaranteed by C.P.L. § 30.20. People v. Singer, 44 N.Y.2d 241 (1978).

Criminal court practitioners take note! Appellate courts have shown a recent readiness to dismiss on constitutional speedy trial grounds where the charges were not complex and the delay was protracted. See People v. DeJesus, 52 Misc.3d 138(A) (App. Term 1st Dep't 2015) (DWI case dismissed based on 42-month delay between defendant's arrest and his plea of guilty; no showing of actual prejudice); People v. Ortiz, 53 Misc.3d 129(A) (App. Term 1st Dep't 2017)(43-month delay between arrest and plea in DWI case warranted dismissal despite absence of any actual prejudice to defendant); People v. Brown, 54 Misc.3d 133(A) (App. Term, 2nd, 11th, and 13th Jud. Dists. 2013)(affirming trial court's dismissal pursuant to 30.20 of DWI charge; of 38-month delay, 20 months were through no fault of the defendant); People v. Ballard, 42 Misc.3d 139(A)(App. Term, 9th and 10th Jud. Dists.)(dismissing charges, including resisting arrest, obstruction of governmental administration and driving while intoxicated, based on "protracted delay" with "no justifiable reason").

CPL § 30.20/due process claims will rise or fall on the facts of the

case. In general, your motion should:

- Set forth the number of months that have passed since the defendant's arrest or arraignment to the point of the motion. Note that under state due process, periods of unjustifiable pre-and post- accusatory delay are aggregated to determine whether an accused has been deprived of a prompt prosecution. If the defendant hasn't been responsible for any of that period, say so. If the defendant was responsible, for any portion, explain the circumstances.
- Explain that the nature of the underlying charges didn't justify the extensive delay (obviously easier with less complex charges), the length of pretrial incarceration (if any), and any facts that would support specific prejudice that the defendant suffered as a result of the delay. Note that, in contrast to federal provisions, state due process allows dismissal even if the defendant cannot show specific prejudice; however, make the showing if you can.
- The burden will fall on the prosecutor to show good cause for the delay. Unlike with 30.30, you do not need to do a reply to preserve the issue.
- Include all the provisions supporting dismissal, e.g., that the total period of delay has in the aggregate resulted in a denial of defendant's right to at timely prosecution and a speedy trial in violation of the Sixth Amendment to the United States Constitution, CPL § 30.20, and the Due Process Clauses of the Federal and State Constitutions. If you are including 30.30 as well, your motion will additionally need to satisfy the showing for that, requirements not covered in this newsletter.

Caselaw: People v. Singer, 44 N.Y.2d 241 (1978)(holding that an unreasonable delay in prosecuting a defendant constitutes a violation of state due process)

People v. Taranovich, 37 N.Y.2d 442 (1975)(setting forth factors court will consider in determining whether defendant has been denied his or her state due process right to a prompt prosecution)

Please see our website at <http://appellate-litigation.org/forms-for-trial-practitioners/> for a sample form notice of motion and affirmation.

