

STATE OF NEW YORK
ERIE COUNTY COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

NOTICE OF MOTION

STATE OF NEW YORK)
COUNTY OF ERIE) ss.
CITY OF BUFFALO)

_____, an attorney licensed to practice in the courts of this State, affirms the truth of the following statements under penalties of perjury.

1. I am counsel to _____, who is charged in this indictment with criminal possession of a weapon in the second degree (Penal Law § 265.03[3]), assault in the second degree (Penal Law § 120.05[2]), and criminal possession of stolen property in the fourth and fifth degrees (Penal Law §§ 165.45[5], 165.40).
2. I make this affirmation in support of my motion to dismiss the indictment on the ground that the prosecution was not ready for trial within the time period prescribed by CPL 30.30. This affirmation is made upon information and belief, the source of which is my review of the file and the executive orders relating to the COVID-19 pandemic.

I. Background

3. _____ was charged by felony complaint on _____, which commenced the criminal action. The prosecution had six months to be ready for trial, so the original 30.30 date was June 23, 2021 (CPL 30.30[1][a]).
4. On _____, the Governor of New York issued Executive Order 202.87. The order, in relevant part, suspended CPL 30.30 “to the extent necessary to toll any time periods contained therein for the period during which the criminal action is proceeding on the basis of a felony complaint through arraignment on the indictment” (*id.*).

5. At the time, no Grand Jury was empaneled in Erie County. However, on January 28, 2021, a new Grand Jury was empaneled (https://buffalonews.com/news/local/crime-and-courts/erie-county-grand-jury-recommences-for-second-time-since-start-of-covid-19-pandemic/article_af6d0826-61a2-11eb-9e15-eb0dcc4f6e66.html).
6. On May 23, 2021, Executive Order 202.87 was rescinded by the issuance of Executive Order 202.106.
7. ██████████ indicted on ██████████ 2021 and arraigned on the indictment on ██████████ 2021.

II. Legal Argument

8. As of January 28, 2021, Executive Order 202.87 no longer suspended the speedy trial period for criminal cases in Erie County, because the empanelment of the Grand Jury made the suspension unnecessary.
9. “The governing rule of statutory construction is that courts are obliged to interpret a statute to effectuate the intent of the Legislature, and when the statutory language is clear and unambiguous, it should be construed so as to give effect to the plain meaning of the words used. In interpreting the language of Executive Order 202.87, it is clear that the use of the phrase ‘to the extent necessary’ is qualifying language that must be narrowly construed, as it is language that was not included in Executive Order 202.8, which initially tolled CPL § 30.30” (*People v. Fuentes*, 75 Misc3d 909 [Westchester County Ct 2021], Prisco, J.).
10. In *Fuentes*, the court dismissed an indictment where the prosecution failed to show why it was ‘necessary’ for a time period to be tolled when there was a Grand Jury empaneled during the period (*id.* at 916-917).
11. The same result is compelled here.
12. Accordingly, only the 29-day period from December 30, 2020 to January 28, 2021 is properly excluded from the speedy trial period.

13. The speedy trial period thus expired on July 22, 2021, long before [REDACTED] was indicted.

In order to vindicate [REDACTED] right to a speedy trial, the indictment must be dismissed.

[REDACTED]