

STATE OF NEW YORK
ERIE COUNTY COURT

THE PEOPLE OF THE STATE OF
NEW YORK

v.

AFFIRMATION IN SUPPORT OF
MOTION TO DISMISS

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

 ██████████ ESQ., 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 Mr. ██████████, who is charged in this indictment with one count of criminal possession of a weapon in the second degree (Penal Law § 265.03[3]).
2. On ██████████ ██████████, the criminal action was commenced with the filing of a felony complaint. The prosecution had six months, or until March 2, 2023, to be ready for trial (CPL 30.30[1][a]).
3. The prosecution could not make a valid statement of readiness until filing and serving a valid certificate of compliance with their discovery obligations (CPL 30.30[5]).
4. The prosecution filed and served a certificate of compliance on February 27, 2023. I received it on March 1, 2023.
5. The discovery did not include the Grand Jury minutes, which are subject to automatic discovery (CPL 245.20[1][b]).
6. I brought this omission to the attention of the prosecution and the Court in accordance with CPL 245.50(4)(b).
7. As of today, the prosecution has still not disclosed the Grand Jury minutes.

8. "If in the exercise of reasonable diligence, and due to the limited availability of transcription resources, a transcript is unavailable for disclosure," the time period in which to disclose the Grand Jury minutes may be stayed by thirty days without invalidating the certificate of compliance (CPL 245.20[1][b]).
9. However, this thirty-day period lapsed on March 29, 2023 without the minutes being provided.
10. The certificate of compliance must be stricken, and the prosecution is now beyond the six-month period within which to be ready for trial, requiring dismissal of the indictment.

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