

STATE OF MAINE
YORK, ss.

UNIFIED CRIMINAL DOCKET
Location: BIDDEFORD
Docket No.: YRKCD-CR-23-201

STATE OF MAINE

v.

JOSHUA WILLETTE,

Defendant.

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ORDER ON DEFENDANT'S
MOTION TO DISMISS

Defendant Joshua Willette, having been indicted on or about June 6, 2023, on eight counts including, but not limited to, a single count of aggravated trafficking in scheduled drugs (Class A) and a single count of unlawful trafficking of scheduled drugs (Class B), is being held at the Cumberland County Jail (previously at the York County Jail) pursuant to a cash bail order. His case was set for docket call at the York Judicial Center ("YJC") on November 6, 2023. At the docket call, Mr. Willette's attorney, Robert LaBrasseur, appeared in-person and orally moved the Court to dismiss the case arguing that he could not have a secure and private communication with his client, while counsel was in Court, because of poor internet service and poor cell service. Moreover, the jail, per counsel, refused to transport Mr. Willette to the Court for the docket call, preventing counsel from having an in-person meeting with his client. Counsel argues that these facts violate Mr. Willette's Sixth Amendment rights to legal counsel and a speedy trial. The State, by and through an assistant attorney general, opposed Defendant's motion. Attorney LaBrasseur

declined the Court's offer for him to submit a legal brief on the issue, arguing that doing so would further delay the case and prevent his client from having a speedy trial. Additionally, he acknowledged to the Court that he had not previously formally asserted Defendant's request for a speedy trial, nor did he file a motion to have Defendant transferred from the jail to the Court for the docket call.

DISCUSSION

The Sixth Amendment right to counsel, which was made binding on the States through the Fourteenth Amendment, is among the "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions." *Gideon v. Wainwright*, 372 U.S. 335, 341, 343-44 (1963) (quotation marks omitted). Here, Mr. Willette certainly has counsel, duly and timely appointed by the Court. Moreover, counsel had opportunities pre- docket call to communicate with his client at the jail. The Court has in no way restricted such communication. Although the Court acknowledges that, presently, the YJC is experiencing some internet connectivity issues and there is also difficulty with cell service, nothing prevents or did prevent counsel from stepping out of the YJC to communicate privately with his client by phone or other electronic means.

The Maine Constitution provides "[i]n all criminal prosecutions, the accused shall have a right...[t]o have a speedy, public and impartial trial" Me. Const. art. 1, § 6. The Law Court has stated many times that the constitutional standard for a speedy trial is flexible, and the application of the standard is dependent on the unique circumstances

of each case. The factors to be considered are the length of the delay, the reason(s) for the delay, the assertion of the right, and the prejudice to the defendant. *Winchester v. State of Maine*, 2023 ME 23, ¶¶ 25-31, 291 A.3d 707. In Mr. Willette's case, he was initially charged by complaint on or about March 31, 2023. A Commitment Order with Conditions of Release was executed on March 31, 2023. Mr. Willette was indicted by a Grand Jury on June 6, 2023. His docket call, as stated above, was November 6, 2023. By any reasonable standard, there has not been a lengthy delay in getting the case set for trial. In fact, whatever plea offer, if any, the State may have made to defense counsel during the docket call should have been communicated to Mr. Willette directly by his attorney either later that day or in the immediate days thereafter.

The reasons for the so-called delay have already been set forth herein. Defense counsel felt he could not have a secure and private communication with his client during the docket call. However, the docket call was not the trial date; defense counsel could have communicated with his client outside the Court building; and the case can certainly remain on the current trial list if Mr. Willette so desires. The Court does, however, agree with counsel that the jail should transfer Mr. Willette and all in-custody defendants to the YJC for docket calls. But, in this case, the non-transfer on November 6, did not violate Mr. Willette's right to a speedy trial.

As stated above, Defendant never formally asserted his right to a speedy trial to the Court prior to his defense counsel's oral motion to dismiss on November 6. "Our

precedent contains adamant language that the accused must assert the right to a speedy trial." *Winchester*, 2023 ME 23, ¶ 29, 291 A.3d 707.

The last factor to assess is prejudice to Defendant. The Court finds that Defendant has not been prejudiced to date. His case remains on the trial list; he has not been in jail for an exorbitant period of time awaiting trial; and his attorney can certainly communicate with him in-person at the jail, or at reasonable times by phone while counsel prepares for trial.


CONCLUSION

Based on the unique circumstances of this case, and the Court's careful analysis of all relevant factors, it determines that neither Mr. Willette's right to counsel nor his right to a speedy trial have been violated.

Based on all the above, it is hereby **ORDERED** that Defendant Joshua Willette's motion to dismiss is **DENIED**. It is further **ORDERED** that Mr. Willette shall be transferred by the jail in which he is incarcerated (be it York County or Cumberland County) to the York Judicial Court for all further, if any, docket calls on his case.

The Clerk is specifically directed to incorporate this Order by reference on the criminal docket. M.R.U. Crim. P. 53(a).

Dated: 11/13/2023


James F. Martemucci
Justice, Maine Superior Court