

Not so Fast: The Constitutional Right to a Speedy Trial, and How Long Is Too Long?

Do Constitutional Speedy Trial rights exist in New York?

Recently, the New York Court of Appeals tackled the inquiry—how long is too long—in *People v. Wiggins*,² determining that over five years of incarceration without a trial is too long. The majority decision reminds legal practitioners of the constitutional right to a speedy trial, a due process right to prompt prosecution,³ and that “a defendant’s right to a CPL 30.30 dismissal has its origin solely in legislative enactment which is in no way expressive of or dependent on any constitutional right to speedy trial.”⁴ The dissent, however, exclaimed that there is no New York constitutional right to a speedy trial. Although not a per se violation based on time alone, *Wiggins* should prompt criminal defense attorneys to make the federal challenge when a case languishes.

Constitutional speedy trial violations require more than a sandglass inquiry. The *Wiggins* case recapitulates the five factors set forth in *People v. Taranovich*⁵ as the guiding light in evaluating whether the accused is suffering a constitutional violation based on a constitutional speedy trial violation. Those factors are: (1) the extent of the delay; (2) the reason for the delay; (3) the nature of the underlying charge; (4) whether or not there has been an extended period of pretrial incarceration; and (5) whether or not there is any indication that the defense has been impaired by reason of the delay.⁶ In reversing the First Department, the *Wiggins* court was a divided one, the majority holding that there was a constitutional speedy trial violation here, finding “presumptive prejudice,”⁷ mandating a dismissal, as the dissent, led by Chief Judge Lippman, came to a different conclusion based on a “careful balancing of all the [same *Taranovich*] factors.”

In *Wiggins*, the defendant was allegedly handed a gun at a party and shot a fifteen-year-old bystander; the unintended target of the shooting died. Sixteen-year-old defendant Reginald Wiggins “was arrested on May 28, 2008 and remanded without bail. Defendant [Wiggins] and [co-Defendant] Armstead were charged in an indictment with murder in the second degree, two counts of attempted murder in the second degree, and criminal possession of a weapon in the second degree.” The New York Court of Appeals recites a nearly five-year history of *Wiggins* waiting for trial while the People attempted to secure the testimony of co-defendant, Armstead, to be utilized against *Wiggins*. Reginald Wiggins filed his first motion to dismiss on constitutional speedy trial grounds in May 2013, five years after arrest. Reginald Wiggins remained incarcerated throughout this time. He was not afforded bail. He would turn twenty-two years old in prison before the resolve of this case.

Reginald Wiggins’s 2013 motion to dismiss was denied in December 2013. The court acknowledged the five-year delay “but reasoned that ‘a good part of the extraordinary delay was caused by’ Armstead, and that defendant had been incarcerated due to his unrelated pending cases during much of that time[and] that the defense did not appear to be

impaired by the delay.”⁸ The trials of the co-defendant served as the People’s reasoning to keep Reginald Wiggins incarcerated. After three trials, the codefendants’ fourth trial was scheduled for August 2014, six years after Reginald Wiggins was incarcerated and held without bail. “In June 2014, defendant filed a second motion to dismiss the indictment based on a violation of his constitutional right to a speedy trial.”⁹ Without a response to his motion, Wiggins pleaded guilty months later.

The story is not unique and should remind one of Kalief Browder who, “[i]n 2010, at the age of 16 . . . was arrested after being accused of stealing a backpack. He would spend three years in New York City’s Rikers Island prison, more than two of those years in solitary confinement.”¹⁰ Similarly, Reginald Wiggins would enter Rikers Island and languish there for years without a trial.¹¹ Not unique to Browder after his release, Wiggins has put the city on notice that he intends to sue, stating, among other things, that Rikers was a nightmare.¹² It is no wonder that the facility is due to close the “notoriously troubled jail complex over 10 years.”¹³

Unlike Browder, however, Reginald Wiggins pleaded guilty to get off Rikers Island. “The time between [Wiggins]’ arrest on May 28, 2008 and defendant’s plea on September 23, 2014 spanned six years, three months, and 25 days, from when defendant was 16 years old until he was 22. Defendant spent the entirety of that period incarcerated.”¹⁴ An appeal ensued and the Appellate Division, First Department, held that the defendant’s speedy trial rights were not violated. The Court of Appeals reversed. Rejecting the appellate division’s finding of prosecutorial good faith,¹⁵ the Court of Appeals emphasized the delay born after the indictment¹⁶ may have been prevented. In examining the above reasons for delay in the prosecution of a murder charge, although not dispositive, the over five years of delay where the defendant remained imprisoned coupled with the prejudicial effect of such delay seemed to have persuaded a majority of New York State’s highest court.

Notable in *Wiggins* was the Court of Appeals majority stating that although the “[d]efendant has not demonstrated any specific impairment to his defense as a result of the extraordinary delay . . . both the United States Supreme Court and this Court have recognized that a demonstration of specific prejudice is not necessarily required” in asserting a constitutional speedy trial violation.¹⁷ Between troubled prisons and clogged courts, the focus seems to be on the extent and reason for delay.

So, How Long Is Too Long?

Answering the question of how long is too long in Kings County, “there is no indication that the trial of [a] Driving While Ability is Impaired by Alcohol charge is a complex legal matter requiring much preparation and proof to prosecute.”¹⁸ The glut of traffic violations and misdemeanors that sit for years



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should be met with a motion to dismiss. The constitutional factors set forth by in *Taranovich*, and reaffirmed by the New York Court of Appeals in *Wiggins*, still sets forth the appropriate standard. Perhaps *Wiggins* is a signal that criminal defense counsel should not be callous in applying such standard and filing the motion when a defendant remains incarcerated.

Practitioners must be clear that “the problem of prosecutorial readiness addressed by CPL 30.30 and the constitutional speedy trial right are not analogous.”¹⁹ Further, “each criminal defendant has an individual constitutional right to a speedy trial that cannot be rendered meaningless by the dilatory tactics of his or her codefendant.”²⁰ As the Court of Appeals made clear, “[w]here the delay is long enough, the Defendant need not show any actual prejudice.”²¹ One must look past the sandglass however as the delay, in itself, may simply not be enough in some cases.²² Practitioners should emphasize the purported reason for delay. Rather than a case of court congestion, People’s continued failure to be ready is not a

reason to continue to burden the defendant.²³

From cases such as Reginald Wiggins to Kalief Browder, the government and the public are putting pressure on courts to recognize and treat differently pre-trial detainees,²⁴ persons who are innocent until proven guilty. While it may start with the criminal defense attorney, *Wiggins* should serve as a reminder that it is a shared responsibility.

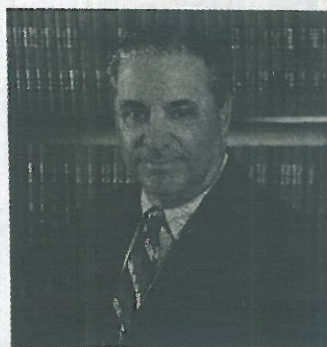
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1. See, e.g., Ben Kochman and Victoria Bikiempis, *Bronx Criminal Court So Slow It Violates Constitutional Right To Due Process, Lawsuit Says*, Daily News (May 11, 2018), <http://www.nydailynews.com/new-york/bronx/bronx-criminal-court-slow-violates-constitution-lawsuit-article-1.2631376>; see also Stephen Rex Brown, *Settlement Reached Over Delays In Bronx Courts As Case Backlog Reduced*, Daily News (Aug. 9, 2018), <http://www.nydailynews.com/new-york/ny-metro-bronx-court-delays-lawsuit-20180809-story.html>.
2. *People v. Wiggins*, 31 N.Y.3d 1 (2018).
3. *People v. Vernace*, 96 N.Y.2d 886, 887 (2001).
4. *People v. Brothers*, 50 N.Y.2d 413, 418 (1980).
5. *People v. Taranovich*, 37 N.Y.2d 442 (1975).
6. *Id.* at 445; see also *Barker v. Wingo*, 407 U.S. 514, 530 (1972) (citing the federal constitutional factors for whether a defendant’s right to a speedy trial has been violated); but see *Wiggins*, 31 N.Y.3d

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