

Education/Constitutional Law

Not so Fast: The Supreme Court on Speedy Trial and New York's Speedy Trial Troubles

The Sixth Amendment reads, in relevant part, that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial....” Last month, the U.S. Supreme Court, in *Betterman v. Montana*, reiterated that “[p]rior to conviction, the accused is shielded by the presumption of innocence, the bedrock, axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law.”¹



By Cory H. Morris

The *New York Times* reported that the Court, however, “unanimously ruled that the Constitution’s guarantee of a speedy trial does not protect people convicted of crimes from lengthy sentencing delays.”²

What, then, about the stories of elongated court delays and adjournments, violations of the right to speedy trial in New York and extended pretrial incarcerations? Is that bedrock principle being eroded here in New York?

The week before the U.S. Supreme Court rendered its decision, a class action lawsuit, *Trowbridge et al. v. Cuomo et al.*, was filed against Governor Cuomo and the Chief Judge of the State of New York.³ The lawsuit alleges that while New York’s “speedy trial statute requires that prosecutors be ready to go to trial within 90 days of arraignment for Class A misdemeanors, 60 days for Class B misdemeanors, and 30 days for non-criminal violations...thousands of Bronx residents are waiting for far longer...and those whose cases do go to trial wind up waiting an average of 642 days for a non-jury trial and 827 days for a jury trial.”⁴ The speedy trial statute designed to prevent delay, is codified in the New York Criminal Procedure Law (“CPL”) § 30.30.

Even though the factual circumstances differ, the sheer number of delayed cases is staggering. One should note that, like a number of others incarcerated prior to trial, “[f]our out of 10 people on Rikers Island are there because they cannot afford bail.”⁵ Indeed, “hundreds of people are waiting for hours each day in Bronx criminal courts, missing school and work for the briefest of appearances before a judge, before being told to return at a later date. In the cases described in the suit, individuals waited upwards of 1,000 days, with as many as 38 court dates each, before their cases were adjourned.”⁶ Presumptively innocent, those criminally charged may be forced to post bail, suffer incarceration and/or significantly alter their lives to get to and remain in court.

Days after the class action was filed in the Southern District of New York, the U.S. Supreme Court held in *Betterman* that the Sixth Amendment “protects the accused from arrest or indictment through trial, but does not apply once a defendant has been found



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guilty at trial or has pleaded guilty to criminal charges.”⁷ Federal statutes and various state analogs, including in New York, provide precise statutory time limits for speedy trial. The Court held that this speedy trial right, and its “pain[ful]” remedy, are tied to the presumption of innocence. The remedy prescribed by the U.S. Supreme Court for speedy trial violations is dismissal.

*Betterman v. Montana*⁸ involved Brandon Betterman, who, after failing to appear in court to answer domestic assault charges, was charged with bail jumping. He pled guilty and was sentenced fourteen months after his plea to seven years imprisonment. He appealed arguing, *inter alia*, that the fourteen month gap in sentencing violated his speedy trial right. The U.S. Supreme Court disagreed.

The Sixth Amendment’s Speedy Trial Clause applies from arrest or indictment through conviction. “The constitutional right, our precedent holds, does not attach until this phase begins, that is, when a defendant is arrested or formally accused.”⁹ In a footnote, the U.S. Supreme Court reserved decision as to whether the Speedy Trial Clause applies to bifurcated proceedings or for the purposes of a renewed prosecution following a defendant’s successful appeal. However, “between accusation and conviction, the Sixth Amendment’s Speedy Trial Clause protects the presumptively innocent from long enduring unresolved criminal charges.”¹⁰ “The sole and only remedy for a violation of the speedy trial right—dismissal of the charges...fits the preconviction focus of the Clause.”¹¹

The Court held that the remedy for post-conviction delay was that “as at the prearrest stage, due process

serves as a backstop against exorbitant delay...[a]fter conviction, a defendant’s due process right to liberty, while diminished, is still present.”¹² Unfortunately for Betterman, he failed to advance and preserve a due process claim for the Supreme Court to review.

Unfortunately for those charged with a crime in the Bronx, “[a]t least 2,378 misdemeanor cases in the Bronx have been pending for over a year, and 538 have been pending for over two.”¹³

If the story sounds familiar, it is probably because you may have heard it before. “In 2010, at the age of 16, [Kalief Browder] 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.”¹⁴ Charged with robbery, grand larceny and assault, “because Browder was still on probation, the judge ordered him to be held and set bail.”

The prosecution in Browder’s case lost their key witness. Over 1,000 days elapsed and yet the People continued to push a case in which they were obviously not ready for trial.¹⁵ Browder’s criminal case was eventually dismissed and he was released.

On June 6, 2015, two years after his release, Browder “removed an air-conditioner from the wall, tied the homemade cord around his neck, and jumped out through the opening[.]” killing himself.¹⁶ The publicity of this case attracted the attention of then Chief Judge Jonathan Lippman, the news and several politicians.

The New York Assembly recently passed A8296/AS5988A, Kalief’s Law, which would amend CPL § 30.30 by, *inter alia*, attributing court congestion delay to prosecutors and requiring prosecutors to certify readiness and discovery compliance. CPL § 30.30 seeks to accomplish its goal by obligating the People to prepare promptly for trial.¹⁷ “CPL 30.30 demands prosecutorial readiness, not for its own sake, but to reduce delays in criminal prosecutions.”¹⁸

Provisions of the same law also mandate the release of an individual in jail when the prosecutor is not ready within a certain period of time. “In light of this existing law requiring release after 90 days, why are there so many people spending one, two, or more years in a Rikers cell rather than experiencing the liberty to which a person presumed innocent is entitled? The reason is that the working of the ‘speedy-trial’ law has been undermined since its enactment in 1972.”¹⁹

The “modern reality” is that the “criminal justice today is for the most part a system of pleas, not a system of trials.”²⁰ “As in the case of Kalief Browder, the very real time endured at Rikers Island is simply not counted in CPL § 30.30 release calculations.”²¹

The *Betterman* case is not simply one that limits the confines of the Speedy Trial Clause; it affirms the sole remedy for its violation: dismissal. Not just any Bronx Tale, *Trowbridge*, “[t]he [New York] lawsuit tells the stories of alleged victims like Sarah Bello, a 40-year-old single mother who had to wait 1,166 days for a misdemeanor or assault charge against her to be dismissed. In the meantime, she lost her New Jersey nursing license and was suspended from her job as a home health aide, the lawsuit said.”²²

Where was her dismissal? It seems that the pain is often felt by those who suffer charges and endure the onslaught of appearances or pretrial incarceration, yet, as the U.S. Supreme Court reminds us, retain the presumption of innocence.²³

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1 *Betterman v. Montana*, 578 U.S. ____ (2016).
2 Adam Liptak, *Supreme Court Rules Right to Speedy Trial Ends at Guilty Verdict*, N.Y. Times, May 19, 2016, at A.12.
3 *Trowbridge et al. v. Cuomo et al.*, No. 1:2016cv03455 (S.D.N.Y. May 10, 2016).
4 *Id.*; Miranda Katz, *Extreme Bronx Court Delays Are Unconstitutional, Lawsuit Claims*, Gothamist, May 10, 2016.
5 James C. McKinley, Jr., *State’s Chief Judge, Citing ‘Injustice,’ Lays Out Plans to Alter Bail System*, N.Y. Times, Oct. 1, 2015, at A23.
6 Katz, *supra* n. 3.
7 *Betterman*, *supra* n.1.
8 *Id.*
9 *Id.* at 3 (citing *United States v. Marion*, 404 U.S. 307, 320–321 (1971)).
10 *Id.* n. 1, at 11.
11 *Id.* at 7 (internal citations omitted).
12 *Id.* at 10.
13 Katz, *supra* n. 3.
14 Amy Goodman and Denis Moynihan, *Kalief Browder, Albert Woodfox and the Torture of Solitary Confinement*, DemocracyNow, June 11, 2015.
15 See Thomas M. O’Brien, *The Undoing of Speedy Trial in New York: the ‘Ready Rule’*, N.Y.L.J., January 14, 2014.
16 Jennifer Gonnerman, *Kalief Browder learned how to commit suicide on Rikers*, The New Yorker, June 2, 2016.
17 *People v. Price*, 14 N.Y.3d 61, 63 (2010).
18 *People v. Sibbles*, 22 N.Y.3d 1174, 1178 (2014).
19 Thomas M. O’Brien, *Eliminate Flaws in Speedy Trial Act*, N.Y.L.J., June 3, 2016.
20 *Betterman*, *supra* n. 1, at 8 (citing *Lafler v. Cooper*, 566 U.S. ____ (2012)).
21 O’Brien, *supra* n. 17.
22 Kaja Whitehouse, *Lawsuit claims courthouse is denying rights to a speedy trial*, N.Y. Post, May 10, 2016.
23 See O’Brien, *supra* n. 13.