

I. FACTS AND PROCEDURAL HISTORY

On June 14, 2007 a trial was held and as of April 8, 2008, more than nine months later, no verdict has rendered.

II. APPLICABLE STANDARDS

a. CPL §350.10 Requires a Court to Render a Verdict within a Reasonable Time Following the Conclusion of Trial

CPL §350.10 governs the conduct of bench trials. After summation by both sides, §350.10(3) (d) sets forth that “The Court must then consider the case and render a verdict.” In People v. South, 41 NY2d 451 (1977), the Court of Appeals held that §350.10(3) (d) requires that a justice in a non-jury trial must render his verdict within a reasonable time following trial when no special circumstances exist. While the Court acknowledged that what is “reasonable” depends on the circumstances of each case, “There will come a point, however, beyond which delay becomes unreasonable as a matter of law.” Id. at 454.

The defendant in People v. South was convicted of third degree assault following a bench trial before a local town justice. Similar to the case at bar, the justice reserved judgment for an initial 30 days. The Court of Appeals found that the town court’s delay of 58 days from trial in rendering a verdict was unreasonable, and listed a number of factors which it considered in its decision:

“In the present submission to us we find no sufficient explanation or warrant for the long delay from the close of the four-hour trial during the evening of October 2, 1973 to the following November 29 when the verdict of guilty was rendered. Defendant consented to no delay. No theory of justification is advanced by the People....No complicated issues of fact were presented; no evidentiary questions remained to be resolved; there were no contested propositions of law; no post trial submissions were sought or offered.”

Id. at 454. The Court of Appeals also indicated that its decision was strong influenced by constitutional considerations, noting that:

“Although we base our decision in this case on statutory rather than constitutional grounds, we note that the salutary considerations which undergrid a defendant’s right to speedy trial extend in part to his right to a prompt verdict while recollection of the evidence is fresh, and argue strong against dangling delay.”

Id. at 455. The holding in South places beyond question a defendant’s entitlement to a prompt verdict. Absent special circumstances which call for a prolonged delay, a court must render its verdict within 58 days as a matter of law.

This principle is roundly applied throughout the courts of this state. In at least one case, a delay of less than 58 days was found unreasonable as a matter of law. In People v. O’Brien, 89 Misc.2d 139 (Wayne Co. Ct., 1976) (relied upon by the Court of Appeals in South), the County Court found that the village court committed reversible error by reserving judgment for 35 days from the end of the trial.

The prompt verdict rule has also been applied to reverse convictions on far more serious charges than those in the instant case. In People v. Plaza, 175 Misc2d 277 (App. Term 2d Dept. 1997), where the defendant was charged with driving while intoxicated, the Appellate Term, Second Department ruled that the trial court’s 76 day delay in rendering a verdict was unreasonable. In People v. Chapman, 177 Misc.2d 551 (App. Term. 2d Dept. 1998), where the defendant was charged with sexual abuse, the Appellate Term, Second Department ruled unreasonable as matter of law a trial court’s 84 day delay in rendering a verdict.

In People v. Hryne, 144 AD 2d 961 (4th Dept. 1988), the Appellate Division, Fourth Department reversed the conviction of the defendant for recklessly shooting a police officer because the trial court delayed rendering a verdict for seven and a half months.

b. A Court's Reservation of Judgment Has No Effect on a Defendant's Right to a Prompt Verdict

It is expected that in some cases a trial court will reserve judgment for a reasonable period of time without objection by the defendant. However, a defendant's consent to a reasonable reservation does not result in a waiver of his right to a prompt verdict. In People v. Chapman, the Appellate Term noted that "While it is plausible that defendant may not have objected to a reasonable adjournment when the court below informed him that it would reserve decision and mail it to him, it is implausible that defendant would consent to an 84 day delay on such a simple case." 177 Misc.2d at 552. Similarly in People v. Plaza, the Appellate Term, Second Department noted that "Since the record is devoid of consent by defendant to any delay beyond two weeks, the judgment cannot stand as the time is unreasonable." 175 Misc.2d at 278 (citing People v. South). Based on the foregoing, it is also clear that, for the purpose of gauging the promptness of a verdict, the time is calculated from the conclusion of trial and not from the date reserved by the court for a decision.¹

¹ In People v. Plaza, the trial concluded on November 14, 1995 and the court rendered its verdict on January 29, 1996 (the 76 day period which the Appellate Term cites in its decision). In People v. Chapman, the Appellate Term

c. A Defendant's Failure to Object to A Court's Delay Has No Effect on His Right to a Prompt Verdict.

A defendant does not waive his right to a prompt verdict by failing to raise that objection or request a verdict in the face of a court's delay. "The defendant has no duty to request that the court render a verdict." People v. Hryn, 144 AD2d at 961 – 962. The Appellate Division has pointed out that "It would be unrealistic to require a defendant to move the court to render a decision or bring an article 78 proceeding to compel a verdict. Such maneuver, apart from engendering even more delay, would merely serve to antagonize the court." Id. at 962. (See also People v. Chapman, 177 Misc.2d at 552).

III. ARGUMENT

a. The Court's 9 month Delay in Rendering the Decision and Order is Unreasonable as a Matter of Law

This was a typical speeding trial. None of the "special circumstances" contemplated by the Court of Appeals in People v. South (41 NY2d at 454) were present. There were no complicated issues of fact, scientific evidence, or expert testimony. There were no evidentiary questions left to resolve since the Court allowed the People's calibration records into evidence. The Judge is required

notes that the trial court reserved its decision for 84 days "After a one day bench trial..." 177 Misc.2d at 552.

merely to render a verdict of “guilty” or “not guilty”. People v. South, 41 NY2d at 454.

In sum, since there were no special circumstances warranting a delay of the Court’s Decision and Order for over 9 months, and since delays of 35 days (People v. O’Brien) 58 days (People v. South) and 76 days (People v. Plaza) are unreasonable as a matter of law, then so too is the Court’s delay in this case.

b. The Defendant’s need not demand a decision.

It is clear that the defendant’s right to a prompt verdict runs from the conclusion of trial, and *not* from the date the Court reserves for rendering its verdict. See People v. South, People v. Chapman, and People v. Plaza, *supra*.

In any event, even calculating the time for a prompt verdict from the reserve date, the Decision and Order is still unreasonably untimely since it still has not been rendered more than 9 months later, far in excess of the 35 days ruled unreasonable in People v. O’Brien, *supra*.

Furthermore, neither defendant’s silence during the continued delay, nor his failure to request a decision from the Court has any effect on his right to a prompt verdict. See People v. Hryn, 144 AD2d at 961 – 962.

CONCLUSION

Based on the foregoing, the charge must be dismissed with prejudice.

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