

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against- Respondent,

DECISION and ORDER

Ind. No.: [REDACTED]

[REDACTED]
Appellant,
-----X

Special Term, Return Date: October 3, 2022

Appearances: **Kenneth Klein, Esq.**
 Town of Rockland Prosecutor
 4880 NY-52
 Jeffersonville, New York 12748

Benjamin Goldman, Esq.
Attorney for Defendant
108 South Franklin Avenue, Suite 15
Valley Stream, New York 11580

JOSE-DECKER, J.

Appellant, [REDACTED] (hereinafter "Appellant"), filed a Notice of Appeal on January 28, 2022, seeking to appeal the Decision and Order entered on or about January 27, 2022 from the Town of Rockland Justice Court (hereinafter "Town"), Docket Number [REDACTED]. Appellant filed a Notice of Appeal on January 28, 2022. Appellant filed an Affidavit of Errors on March 16, 2022. Pursuant to the Court's July 13, 2022 Decision and Order, the Town filed their Court's Return with the Sullivan County Court Clerk's Office on August 2, 2022. On September 15, 2022, the Appellant filed a Notice of Argument pursuant to CPL Section 460.70(2)(a), along with a Brief and accompanying Exhibits A through C. In response, on September 22, 2022, the People filed a Notice of Motion to dismiss the appeal, along with Exhibit A and a Brief. On September 30, 2022,

the Appellant filed a Reply Brief. The matter was deemed fully submitted and placed on the Court's October 3, 2022 Special Term calendar for review and consideration.

Appellant submits that the trial court erred in denying the motion to dismiss based on timeliness, erred in finding that CPL Section 30.30 does not apply to traffic infractions, and erred in denying the motion to dismiss when the People failed to produce discovery pursuant to CPL Section 245.

The People submit that the Appellant failed to timely perfect the appeal and notice the appeal for argument in compliance with the requirements of CPL Section 460.70(2) and 22 NYCRR Section 200.33.

For the reasons set forth herein, the Court determines that the decision of the Honorable Justice Feinberg, Town of Rockland Justice Court shall be vacated, along with Appellant's conviction and sentence. The People's notice of motion to dismiss is denied in all respects.

FINDINGS OF FACT

The Appellant was issued a summons on July 28, 2021 for a Section 1180(d) violation. On September 15, 2021, Appellant entered a plea of not guilty. On September 16, 2021, a pretrial conference was scheduled for December 2, 2021. On December 6, 2021, a trial was scheduled for January 27, 2022. On January 26, 2022, Appellant's counsel filed a Notice of Motion requesting dismissal of the 1180(d) charge pursuant to CPL Section 170.30(1)(e) based upon speedy trial grounds. The motion addresses speedy trial violation as per Section 30.30 of the Criminal Procedure Law, concomitant with Article 245 of the Criminal Procedure Law. In the case at bar, no Certificate of Compliance and Statement of Readiness was filed by the People. The motion was made returnable for the date of the hearing, January 27, 2022. On January 27, 2022, the trial court summarily denied Appellant's motion to dismiss.

Appellant was convicted on January 27, 2022 in the Town of Rockland Justice Court of a violation of Section 1180(d) of the Vehicle and Traffic Law, for traveling at 88 miles per hour in a 65 mile per hour zone. Appellant was sentenced to a fine in the amount of \$167.00 and a surcharge in the amount of \$93.00, with 6 statutory points assessed.

A transcript of the proceedings has not been provided in connection with the appeal.¹

CONCLUSIONS OF LAW

Preliminarily, the People request dismissal of the appeal based upon the Appellant's failure to comply with the provisions of CPL Section 460.70(2)(c) and NYCRR Section 200.33, in that the Appellant did not timely perfect the appeal or notice the appeal for argument in the appropriate "appellate term". The language of the section affords the Court discretion: "If the appellant does not file a notice of argument as provided in paragraph (a) or does not comply with all applicable court rules as provided in paragraph (b), the appellate court *may*, either upon motion of the respondent or upon its own motion, dismiss the appeal." (*emphasis added*). See People v. Evans, 69 NY2d 997 (1987).

Moreover, the Court notes that the Town of Rockland Justice Court failed to file the Court return in a timely fashion, thereby necessitating the Appellant to file a motion to compel the Town Court to file a return and resulting in this Court ordering the production of same. Based upon a balance of the equities in this case, the Court will deny the People's motion to dismiss which is predicated on procedural deficiencies and will address the merits of the Appellant's appeal.

¹ Appellant sets forth in the opposition that on September 13, 2022, the transcriber notified the Appellant's Attorney that a CD of the hearing was received.

Speedy Trial

The main issue addressed in the appeal involves the applicability of CPL Section 30.30 to a single traffic infraction, in particular, a violation of Section 1180(d) of the Vehicle and Traffic Law. The Court finds that it does not apply. “The text brings traffic infractions, when charged jointly with at least one of the other listed offenses, within the scope of CPL 30.30 (1). Reading the amendment in context, the newly worded CPL 30.30 (1) puts to rest any question of the legislature’s intent that the time limits specified in that provision apply to criminal actions in which a traffic infraction is *jointly charged* with a higher-grade offense.” People v. Galindo, 38 NY3d 199, 204 (2022). (*emphasis added*). “There is no evidence to suggest that the governmental delay the legislature sought to address through the criminal speedy trial statute exists where the criminal action only involves a traffic infraction.” Id. at 206.

“Pursuant to the 2020 amendments to CPL 30.30 the 30-day time period of CPL 30.30 (1) (d) only applies if (1) the accusatory instrument accuses defendant of one or more offenses, (2) one or more of the offenses is a violation, and (3) no offense is a crime. Although CPL 30.30 (1) (e) provides that a traffic infraction is an offense, and Vehicle and Traffic Law § 155 provides that a traffic infraction is not a crime, Penal Law § 10.00 (3) defines a violation as “an offense, other than a ‘traffic infraction.’ ” Consequently, as the statutory speedy trial requirements of 30.30 (1) (d) would not apply here.” People v. Ambrosini, 163 NYS3d 360, 362 (App. Term, 9th & 10th Jud. Dist. 2022).

Accordingly, it cannot be said as a matter of law that the trial court abused its discretion in denying the motion to dismiss based on the inapplicability of speedy trial as per CPL Section 30.30.

Discovery

However, it is undisputed that the People failed to serve any discovery upon the Appellant in the case at bar. The Court is unpersuaded that the issue of the People's noncompliance with discovery was not sufficiently pled so as to be unpreserved for appellate review. To the contrary, although the facial relief requested by Appellant's motion was for dismissal based upon speedy trial violations in contravention of CPL 170.30(1)(e), the Appellant argued in the January 26, 2022 Affirmation in Support of Benjamin Goldman, Esq. as set forth in ¶¶ 11 through 22 that discovery had not been provided in accordance with Article 245 of the Criminal Procedure Law. Therefore, the People were sufficiently put on notice.

Further, at the time the speeding infraction was issued in this matter and for which the trial was held, the following version of CPL Section 245.10 Timing of Discovery, *in pertinent part*, was in effect (May 3, 2020 to May 8, 2022):

1. (a) Subject to subparagraph (iv) of this paragraph, the prosecution shall perform its initial discovery obligations under subdivision one of section 245.20 of this article as soon as practicable but not later than the time periods specified in subparagraphs (i) and (ii) of this paragraph, as applicable.....(iii) Notwithstanding the timelines contained in the opening paragraph of this paragraph, the prosecutor's discovery obligation under subdivision one of section 245.20 of this article shall be performed as soon as practicable, but not later than fifteen days before the trial of a simplified information charging a traffic infraction under the vehicle and traffic law, or by an information charging one or more petty offenses as defined by the municipal code of a village, town, city, or county, that do not carry a statutorily authorized sentence of imprisonment, and where the defendant stands charged before the court with no crime or offense, provided however that nothing in this subparagraph shall prevent a defendant from filing a motion for disclosure of such items and information under subdivision one of such section 245.20 of this article at an earlier date.

It is clear that the discovery statute at the time covered a simplified traffic information and that the Appellant was entitled to discovery.

Likewise, at the time the speeding infraction was issued in this matter and for which the trial was held, the following version of CPL Section 245.80 Remedies or sanctions for non-compliance, *in pertinent part*, was in effect (January 1, 2020 to May 8, 2022):

2. Available remedies or sanctions. For failure to comply with any discovery order imposed or issued pursuant to this article, the court may make a further order for discovery, grant a continuance, order that a hearing be reopened, order that a witness be called or recalled, instruct the jury that it may draw an adverse inference regarding the non-compliance, preclude or strike a witness's testimony or a portion of a witness's testimony, admit or exclude evidence, order a mistrial, order the dismissal of all or some of the charges, or make such other order as it deems just under the circumstances; except that any sanction against the defendant shall comport with the defendant's constitutional right to present a defense, and precluding a defense witness from testifying shall be permissible only upon a finding that the defendant's failure to comply with the discovery obligation or order was willful and motivated by a desire to obtain a tactical advantage.

While it appears that the People failed to provide any discovery and file Statement of Readiness and Certificate of Compliance, CPL Section 245.80 provides that the defense must show prejudice, prior to the Court assessing a remedy or sanction. “While prosecution under the prior statute would have obligated production of discovery fifteen days prior to the commencement of trial, the defendant's burden of demonstrating prejudice by the late or non-disclosure remains. The court could not, until that time, impose a sanction or remedy. Courts have consistently implemented a stringent standard prior to finding a defendant has suffered prejudice.” People v. Velardi, 173 NYS3d 426, 432 (Utica City Ct 2022).

In the case at bar, the Court is without the transcripts of the proceedings; however, the Court finds based upon the limited record before it, that the Appellant was *de facto* prejudiced by the undisputed fact of having received no discovery, and the trial having been commenced notwithstanding that a motion to dismiss was filed. Appellant was effectively usurped from the opportunity to articulate prejudice beyond asserting the impropriety of the People's non-compliance with discovery. Accordingly, because the Appellant raised the discovery argument by way of motion prior to the commencement of trial in these proceedings, the Court finds that the trial court abused its discretion in dismissing Appellant's motion to dismiss for untimeliness and in proceeding to trial without adjourning the matter to set a motion and/or discovery schedule.

Accordingly, the January 27, 2022 conviction and sentence is hereby vacated and the matter remanded to the Town of Rockland Justice Court for a new trial not inconsistent with the findings as set forth in this Decision and Order.

Based on the foregoing, it is

ORDERED, that the conviction and sentence of [REDACTED], entered on January 27, 2022 for guilty verdict of a violation of Section 1180d of the Vehicle and Traffic Law, \$167.00 fine, \$93.00 surcharge, and 6 license points is hereby vacated in its entirety; and it is further

ORDERED, that the matter is remanded to the Town of Rockland Justice Court for a *de novo* trial; and it is further

ORDERED, that the relief requested in the People's Notice of Motion to dismiss the appeal is denied in its entirety.

This shall constitute the decision and order of this Court. All papers, including the original copy of this Decision and Order, are being forwarded to the Chief Clerk of the Sullivan County Court for filing. Counsel are not relieved from the provisions of CPLR §2220 regarding service with notice of entry.

Dated: Monticello, New York
November 16, 2022

ENTER:



HON. E. DANIELLE JOSE-DECKER
COUNTY COURT JUDGE

Papers Considered:

1. Appellant's Notice of Argument and Brief with A-C by Benjamin Goldman, Esq.
2. Respondent's Brief by Kenneth C. Klein, Esq.
3. Respondent's Notice of Motion to Dismiss by Kenneth C. Klein, Esq.
4. Appellant's Opposition to Respondent's Notice of Motion to Dismiss by Benjamin Goldman, Esq.