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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case No. 6:08-cr-118-Orl-DDD-DAB

JUDE LACOUR,

Defendant
_____/

DEFENDANT'S MOTION TO DISMISS FOR SPEEDY TRIAL VIOLATION

COMES NOW, Pro Se Defendant, Jude Lacour, submits this Motion to Dismiss for Violation of Speedy Trial. The basis for the instant motion is as follows:

1. The Speedy Trial Act provides for dismissal of an indictment, with or without prejudice, if a defendant is not brought to Trial within 70 days, not including various excusable periods, 18 U.S.C. 3161. United States v. Bass, 460 F.3d 830,834 (6th Cir.2006). The court sets trials within the permissible time frame, and also accounts for excludable time.

2. Defendant can establish a prima facie case of a Speedy Trial Act violation by showing more than 70 days passed between his indictment or appearance in court and his trial, scheduled to begin on March 30, 2009. 18 U.S.C. 3162(a) (2); United States v. Jenkins, 92 F,3d 430,438 (6th Cir. 1996). The government must then show that the number of properly excludable days is sufficient to bring the time period between indictment or appearance and trial, within the 70-day limit. 18 U.S.C. 3162 (a) (2); Jenkins, 92 F.3d at 438.

3. Defendant was indicted on May 8, 2008, and a warrant was issued for his arrest. He was arrested on May 9, 2008, at his residence in Portland, Oregon. A Federal Defender was appointed and he was pressuring the Defendant on behalf of the government to plea guilty, which undersigned refused. Defendant waived his right to an identity hearing as well as pretrial detention hearing and was told that he would be transferred to Florida immediately. Defendant was held in Oregon and Oklahoma for a period of approximately 30 days.

4. On June 11, 2008, the Defendant arrived in the Middle District of Florida. On that same date, United States Magistrate Judge Karla Spaulding arraigned the Defendant on the indictment and appointed attorney Edwin Ivy, Esq., to represent the Defendant. The Court entered a plea of not guilty on behalf of Defendant. Accordingly, June 11, 2008, was the first day of the 70 day speedy trial requirement of 18 U.S.C. 3161(c) (1) which requires a plea of not guilty for the seventy day time period to start running.

5. On June 18, 2008, United States District Judge Anne Conway held a status conference in the above-styled criminal case. Respective counsel for co-defendants Jeffrey Lacour, James Pickens, Hudsen Smith, Akhil Baranwal, Guennet Chebssi, Abel

Lau, and Alexis Roman-Torres appeared at the status conference, however, neither Jude Lacour nor his Court appointed attorney appeared at the June 18, 2008 status conference. Due to no fault of Defendant, his absence from this status conference denied him the ability to assert the Defendant's right to speedy trial or request a severance.

6. On June 19, 2008, the Defendant filed a motion to proceed pro-se. On June 23, 2008, Judge Spaulding held a hearing in response to the Defendant's motion to proceed pro-se. This request was made because the Defendant's Court appointed lawyer would not file appropriate motions, including severance motion. The Defendant informed the Court that the Defendant intended to file a motion to sever. Further into the colloquy, the Defendant informed Judge Spaulding that the Defendant did not "intend to waive [the Defendant's] rights to speedy trial," and the Defendant requested expeditious receipt of certain discovery items. Later in the proceedings, Judge Spaulding was conflicted out base upon her association with the law firm of Akerman Senterfitt, the same law firm that represented Defendant in his Internet Pharmacy business. Based upon the apparent conflict, Judge Spaulding recused herself from the above-styled cause.

7. Judge Spaulding directed the Clerk of Courts to assign the case to another Magistrate Judge. On that same date, in a subsequent unnumbered docket entry, the case was assigned to United States Magistrate Judge Gregory Kelly, who immediately entered a written Order recusing himself from the case based upon Judge Kelly's professional relationship with Akerman Senterfitt. The proceedings were ultimately transferred to United States Magistrate Judge David Baker, the only Judge who is authorized to handle cases involving Akerman-Senterfitt.

8. On that same date (June 23, 2008), Judge Baker held a second hearing regarding the Defendant's motion to proceed pro-se. During a colloquy with Judge Baker, the

Defendant informed the Court that "in order to represent [himself] and be able to review all of the electronic discovery, [the Defendant] need[ed] access to a computer." June 23, 2008 Transcript at 12-13. The Defendant reiterated to Judge Baker that the Defendant did not "want to waive speedy trial." Id. at 14. Judge Baker told the Defendant that ". . .the scheduling and the application of the Speedy Trial Act. . .that's an issue and that's preserved here, whatever rights you have on that, and what the other defendants may have done." Id. Judge Baker further informed the Defendant that "....the prosecutor has an interest in trying all the defendants together, but **".....that does not supersede the requirements of the Speedy Trial Act...."** At this hearing, Judge Baker asked the prosecutor **"....is this case on the August trial docket...."** prompting the prosecutor, Karen Gable, to respond "....it is on the August trial docket. However it's been actually sort of taken off of that because there are other defendants involved in this case....".

9. On July 16, 2008, United States District Judge Anne Conway held a status conference in the above-styled criminal case. The Defendant, and respective counsel for co-defendants Jeffrey Lacour, James Pickens, Hudsen Smith, Akhil Baranwal, Guennet Chebssi, Abel Lau, Alexis Roman Torres, and Margaret Mcintosh, appeared at the Status Conference. Judge Conway informed respective counsel for the defendants that **"....the case would not ....be ready for September...."** July 16, 2008 Transcript at 3. Judge Conway stated that she recognized that all of the defendants were "dying to go [to trial] in September, but except for Mr. [Jude] Lacour who apparently [was] asserting speedy trial." Id. at 3. The Court stated that it would not likely be possible to proceed to trial that early.

10. During that same hearing, the Court discussed with the Defendant certain letters that the Defendant had previously filed with the Court. The Court advised the Defendant that the Court had stricken the Defendant's letters "without prejudice to re-file in proper

form," and instructed the Defendant to file a motion if the Defendant wished to be heard on a particular issue. Id. at 5. The Defendant informed the Court that the Defendant did not "have the proper forms, the proper format, because the law library did "not have anything [F]ederal." Id. The Defendant informed the Court that the Defendant did not have access to other motions upon which to model the Defendant's pro-se submissions to the Court. Id. The Court instructed the Defendant to "take that up with Judge Baker next week." Judge Conway then stated that she would enter an Order continuing the trial until January. Id. at 6.

11. On July 22, 2008, United States Magistrate Judge David Baker held a hearing regarding the Defendant's previous pro-se filings with the Court. The Court attempted to ascertain **the reason for the Defendant's failure to abide** by the method previously described by Judge Baker in seeking relief from the Court. July 22, 2008 Transcript at 2. The Defendant informed the Court that the Defendant did not have access to resources or the proper format to file motions. Id. The Defendant further informed the Court that the Defendant had not "been given access to an adequate law library, and the one [library] that [the Defendant] [had] been given access to [had] nothing concerning [F]ederal laws." Id. The Defendant explained to the Court the difficulties in accessing the prison law library during the hours of 11:00 pm and 4:00 am, and not receiving Court documents at the prison in a timely fashion. Id. at 3. The Defendant further explained to the Court that the Defendant needed (1) a computer to view the 10 - 12 discs containing approximately 300,000 documents provided by the government in discovery, (2) access to a secure telephone line to call potential witnesses from the jail, (3) access to a private room in which to meet potential witnesses, and (4) means to produce photocopies. Id. at 6-7. During a subsequent colloquy with the Court, the Defendant inquired of the Court as to the application of speedy trial to the Defendant's case. Id. at The Court explained that the application of the Speedy Trial Act "can be pretty complicated" and advised the

Defendant that if he believed that his right to speedy trial had been violated, the Defendant should file a motion with the Court. Id. at 17. Defendant believed that he was intentionally targeted by the Orlando judiciary who used bureaucracy to deny him his due process rights because he caused three federal Judges to be recused for their financial involvement with the Akerman-Senterfitt law firm. Magistrate Judge Baker and Judge Anne Conway were "toying" and "playing games" with Defendant by striking his notices and or motions because of improper forms or for some minuscule "local rule" violation, that Pro Se inmates can never avoid. Defendant believes this was in violation of Haines v. Kerner, 404 U.S. 519 (1972), the United States Supreme Court decision that opined that the allegations of a Pro-Se complainant were to be held to a less stringent standard than formal pleadings drafted by lawyers. See Haines, 404 U.S. at 520, accord United States v. Roberts, 308 F.3d 1147, 1153 (11th Cir), cert. denied, 538 U.S. 1064 (2003).

12. On August 6, 2008, the Defendant filed a Motion for Court Appointed Lawyer and Investigator [DE 123] with the Court. In his motion, the Defendant stated that "[t]he Court and the Plaintiffs know that the Defendant is seeking a SPEEDY TRIAL. . ." On August 7, 2008, in a docket entry Order [DE 124], Judge Baker denied without prejudice the Defendant's Motion for Court Appointed Lawyer and Investigator, granting the Defendant leave to refile a complete motion for further consideration.

13. On or about August 25, 2009, Defendant caused defense attorney Cheney Mason to withdraw as co-defendant's counsel for his absolute conflict in the representation of Defendant, co-defendant Jeff Lacour and government witness John Labosco. As the Court is probably aware by now, Jeff Lacour is Defendant's father who ran Jive Network and John Labosco is Defendant's former business partner.

14. On September 8, 2008, the undersigned retained a private attorney, William Bryan who unbeknown to Defendant was a friend of prosecutor Karen Gable and former prosecutor Rick Jancha, currently representing one of the co-defendant's. The prosecutor and Rick Jancha were professionally linked and shared the same United States Attorney's Office at the time Defendant was being investigated. Rick Jancha was a high level prosecutor and supervised the activities of Karen Gable and others. He retired in January of 2007, and according to an ethics opinion obtained by the Defendant, his representation in the instant case is in violation of the law and or other related misconduct. Defendant subsequently discovered that his defense attorney was renting an office from Rick Jancha and that his attorney was undermining the Defendant by intentionally delaying filing notices, motions, and appeals that he agreed to do when retained.

15. On September 17, 2008, the Grand Jury returned a superseding indictment, which eliminated certain money laundering and drug trafficking counts from the original indictment. Defendant pled not guilty during this and subsequent indictment.

16. On September 18, 2008, prosecutor Karen Gable filed a Notice of Possible Conflict of Interest involving ten defense attorneys, including Defendant's attorney, William H. Bryan III. Ms. Gable offered no proof of what the conflict entailed.

17. On September 26, 2008, the Court arraigned the Defendant on the superseding indictment. During the arraignment, the Defendant, again asserted his right to speedy trial.

18. On October 8, 2008, the Court held a hearing on the defendant's motion for bond and following closing arguments by the prosecution and counsel for the Defendant, Magistrate Judge David A. Baker denied the Defendant's motion for bond and ordered

Defendant detained pending trial. The Court heavily relied on the "alarming evidence" of Defendant's intent to flee that was proffered in the form of suborning perjurious testimony by Internal Revenue Service Special Agent Donald Metzger. Defendant's attorney, a friend of the prosecutor, promised he would appeal the ruling and intentionally delayed the appeal by stating that a Motion for Reconsideration is a prerequisite before an appeal can be pursued.

19. On October 14, 2008, Defendant caused his attorney to file a motion demanding conflict-free representation and to force the government to file motions as may be necessary to clarify what the government perceives as continuing conflicts of interest, involving all defense attorneys. It was essential to Defendant that the government timely inform defense counsel and their respective clients in the instant case of any pre-existing or newly discovered conflicts known to the government **to avoid any potential delay of the trial.**

20. On December 15, 2008, the prosecutor filed a Response to Defendant's Motion for Clarification Regarding Possible Conflict of Interest stating "....The United States is not aware of any information that counsel (William Bryan) has a potential conflict in the representation of the defendant in this case....(and)....If the United States becomes aware of any information that may give rise to a conflict of interest, the United States will file the appropriate motion. The response by the prosecutor, Karen Gable, was patently false because she was aware of Rick Jancha's conflict that according to William Bryan constituted a crime. The prosecutor was covering up her own involvement in a cover up involving Rick Jancha and William Bryan.

21. On January 24, 2009, Defendant wrote a letter to his attorney William Bryan, stating, among other things:"

"....The Court, as you know is prejudiceously allowing only Federal Prosecutors and Federal Public Defenders to bring computers into the Orange County Correctional Facility. My legal team continues to be barred from bringing in their computers. How can you as my defense lawyer and a previous Assistant United States Attorney tolerate this discriminatory practice without confronting the Court? What are you afraid off? I cannot get a fair trial with a corrupt prosecutor and a Judiciary that aids corruption by ignoring the facts.

My Speedy Trial and Due Process violations are getting even worse since you entered my case in September 2008. It's been over five months and not a single subpoena duces tecum or motion has been filed. The motions I am referring to are the Speedy Trial dismissal motion, bond motion with a request for a new hearing because the first hearing was based on perjurious testimony, the selective prosecution motion, the grand jury transcripts motion and the list goes on and on.

You did not do a discovery motion concerning among other things, the State case that involved a corrupt Daytona Beach cop. The State investigated Jive Network and me for years before they turned it over to the FBI.

Bill informed me that you said you would serve the subpoenas after the bond and Speedy Trial motion. The slow pace at what you are doing, or not doing, is going to hinder your ability to serve subpoena duces tecums on the FBI, DEA, IRS, Volusia Bureau of Investigation, Daytona Beach Police Department and so on.

I am asking you for the last time to do the things that you promised and do them as soon *as possible. I am losing faith in you. If you are incapable of doing what you promised, please let me know...."*

22. On February 11, 2009, the Grand Jury returned a superseding indictment and during the arraignment, the Defendant, again asserted his right to speedy trial.

23. On or about March 3, 2009, attorney William Bryan came to visit Defendant at Orange County Correctional Facility and asked the Defendant to sign a Joint Defense Agreement with Jeff Lacour's lawyers because of common defense interests and belief that it would be in their best interests to cooperate by exchanging confidential work

product and privileged information, relevant to the Indictment. On the advice of Defendant's attorney the undersigned signed the Joint Defense Agreement.

24. On March 7, 2009, Defendant's attorney, at the request of his client, filed a Motion To Withdraw As Counsel For Defendant Jude Lacour. Mr. Bryan indicated that the motion was based upon the Defendant's perceived conflict of interest created by (William Bryan's) prior working relationship, as a former Assistant United States Attorney in the Middle District of Florida, with Assistant United States Attorney Karen Gable, counsel of record for the Government, and Rick Jancha, counsel of record for co-defendant Abel Lau. Mr. Bryan requested a hearing on the motion to withdraw to allow him and the Defendant an opportunity to address the issues relating to this motion.

25. On March 11, 2009, the prosecutor filed Government's Response Opposing Motion To Withdraw As Counsel For Jude Lacour ignoring her conflicted involvement with Rick Jancha and William Bryan, by citing non-payment as argument for withdrawal. The prosecutor falsely relied on Local Rule 2.03 of the Middle District of Florida that provides:

> *In all criminal cases non-payment of attorney's fees shall not be sufficient justification to withdraw if the withdrawal of counsel is likely to cause a continuance of a scheduled trial date; nor shall leave be given to withdraw in any other case, absent compelling ethical considerations, if such withdrawal would likely cause continuance or delay. If a party discharges an attorney it shall be the responsibility of the party to proceed pro se or obtain the appearance of substitute counsel in sufficient time to meet established trial dates or other regularly scheduled proceedings as the Court may direct.*

The prosecutor once again used official documents to misrepresent the facts and covered up her conflicted involvement with her former boss Rick Jancha and William Bryan.

26. On March 13, 2009, the Motion To Withdraw As Counsel concerning Willaim Bryan was granted by Magistrate Judge David A. Baker without ever mentioning the conflict involving Karen Gable, Rick Jancha and attorney William Bryan.

MEMORANDUM OF LAW

Title 18, United States Code, Section 3161(c)(1), provides that "[i]n any case in which a plea of not guilty is entered, the trial of a defendant charged in an. . .indictment with the commission of an offense shall commence within seventy days from the filing date of the indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs." Title 18, United States Code, Section 3161(h), provides for periods of delay that are to be excluded "in computing the time within which the trial. . .must commence." Title 18, United States Code, Section 3162, provides that "[i]f a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the indictment shall be dismissed on motion of the defendant. As declared by the United States Supreme Court, ". . .the statute admits no ambiguity in its requirement that when such a violation has been demonstrated, ['']the information or indictment shall be dismissed on motion of the defendant.['']" United States v. Taylor, 487 U.S. 326, 332 (1988). Since Defendant has not been brought to trial within the 70 day time limit required by 18 U.S.C. 3161(c) as extended by section 3161(h), the Act requires dismissal of the indictment.

Implicit in the statutory language of Title 18, United States Code, Section 3161, is that the Defendant have proper access to the Court to assert his/her right to speedy trial. As set forth above, the Defendant in the instant case consistently expressed his desire to exercise his right to speedy trial. However, at every turn, the Defendant was either denied

access to the Court or ignored in his assertion of his right to speedy trial.

Inmates are permitted to take advantage of the liberal pleading rules for pro se litigants. Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998)"....Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed....". Defendant was effectively denied meaningful access to the Court in order to exercise his right to speedy trial and was a victim of literal interpretations of "Local Rules" that don't necessarily apply to pro se litigants.

Once the Court determines that a violation of the Speedy Trial Act has occurred, and that, as a result, the indictment must be dismissed pursuant to 18 U.S.C. §1961(c), "'[i]n determining whether to dismiss the case with or without prejudice, the court shall consider, among other others, the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact on the administration of [the Speedy Trial Act and on the administration of justice.'" Taylor, 487 U.S. at 333, citing 18 U.S.C. §3162(a)(1).

The second criteria to be considered by the Court in determining the propriety of dismissing the indictment with prejudice are the facts and circumstances leading to the dismissal. The length of delay between the accused's indictment and trial is relevant in considering the propriety of dismissing the indictment with or without prejudice. As the Supreme Court noted, "[t]he length of delay, a measure of the seriousness of the speedy trial violation, . . .is closely related to the issue of the prejudice to the defendant. The inability to effectively confront and cross-examine the testimony of witnesses, review 400,000 pages of discovery that the Defendant never received and serve appropriate subpoenas to prove governments excesses would deny the Defendant a fundamental right guaranteed by the Sixth Amendment.

When the accused is incarcerated, as in the case at bar, the Supreme Court has noted "[i]t is self-evident that the possibilities that long delay will impair the ability of an accused to defend himself are markedly increased when the defendant is incarcerated.

In the case at bar, the Defendant, while appearing pro-se, was denied at every turn effective access to the Court to assert his right to Speedy Trial, or was ignored in each such request. While perhaps not overly noteworthy in terms of the total number of days, the time period in which the Defendant represented himself pro-se and was denied access to the Court was crucial because it was precisely during this time period that the Court entered an Order continuing trial from August, 2008 to January, 2009, contrary to the express desire of the Defendant.

The final criteria to be considered in determining the propriety of dismissal with prejudice is the impact of reprosecution on the administration of justice and the Speedy Trial Act. As the Supreme Court noted, "[i]t is self-evident that dismissal with prejudice always sends a stronger message than dismissal without prejudice, and is more likely to induce salutary changes in procedures, reducing pretrial delays." Taylor, 487 U.S. at 342. A dismissal of the indictment without prejudice would allow for reprosecution of the Defendant, which process would only further prejudice the Defendant's defense of the criminal allegations levied against him. Dismissal without prejudice would undermine the overall intent of the Speedy Trial Act, that is, to protect the interests of the accused and society as a whole in the prompt disposition of criminal cases, especially those cases involving incarcerated defendants such as the case at bar. If the indictment is dismissed without prejudice and the Defendant is required to be incarcerated for an additional period pending trial, the Defendant would endure a most egregious situation precisely intended to be eliminated by the Speedy Trial Act: the denial of the Defendant's right to Speedy Trial, to the Defendant's substantial prejudice, based upon the deficiencies of the

criminal justice system, through no fault of the Defendant. Justice would certainly not be served under such circumstances.

WHEREFORE, for the reasons set forth above, this Pro Se Defendant respectfully move this Court to dismiss the indictment herein with prejudice.

Respectfully,

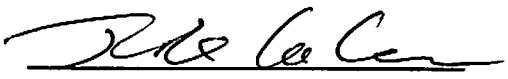
Jude Lacour, Pro Se Inmate

I HEREBY CERTIFY that on March 26,2009, I cause the foregoing to be filed with the Clerk of the Court and Assistant U.S. Attorney by hand delivering this motion to the following entities:

Clerk's Office, US. District Court
Middle District of Florida, Orlando Division
United States Courthouse, Suite 1200
401 West Central Boulevard
Orlando, FL 32801

Karen L. Gable, Assistant U.S. Attorney
501W. Church St., Ste. 300,
Orlando, FL 32801

Respectfully submitted,



Jude T. Lacour, Pro Se Inmate