

VERMONT SUPERIOR COURT
Franklin Unit
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CRIMINAL DIVISION
Case No. 1475-11-17 FrCr

State vs. Castellanos, Hilarie

COURTS DECISION AND ORDER TO DISMISS CASES PURSUANT TO V.R.Cr.P. 48(b)
IN THE
INTEREST OF JUSTICE

As the parties are aware this court has resumed criminal jury trials after a hiatus of approximately eighteen months. The resulting interruption caused by COVID-19 and the court's transition to a paperless case management system (*Odyssey*) has left the court with an unprecedented backlog of pending cases. The court has recently reviewed the number of pending criminal cases in this unit confirming that there are hundreds of cases which have been pending for more than one or two years. Some cases date back to 2017 and 2018. The actual number of pending cases is actually difficult to determine with precision. Odyssey presents unique challenges with obtaining those statistics, or at least, displaying them in a comprehensible fashion. This court concludes, after including Civil Suspension, Fish and Game, Violations of Probation, and matters in arrest warrant status, that the number of pending criminal dockets is approximately 2400. Any particular docket may include multiple counts. Pre-covid numbers would yield closer to an average of 400 pending dockets at any time.

The court has noticed that Defense counsel has, in some cases, filed motions to dismiss, under V.R.Cr.P 48(b). This has been more frequent in misdemeanor cases. While the court, and the State, have dismissed some misdemeanor cases on the record, on a case by case basis, it seems evident to the court that this piecemeal process has done little to alleviate the massive backlog. Also, with the resumption of jury trials, the process of bringing matters to a conclusion has resulted in resolution of many cases at the pretrial stage. Still, it appears to the court that with each day, more criminal charges are being filed, than being resolved.

The court also recognizes besides the large number of nonviolent misdemeanor cases pending, there are many defendants held in custody pretrial. (In excess of 30 as of September 2021). While it seems logical, and preferable, to bring the cases to trial that involve incarcerated defendants, the everyday process of managing an overwhelming docket creates barriers to focusing on those cases. In addition to challenges noted above, this court suffers from serious staffing shortages making scheduling of, and conducting hearings more difficult.

The court recently met with State's Attorney Hughes and Attorney Dunham from the public defender's office to discuss possible options for addressing the backlog. The court informed counsel that it intended to dismiss a substantial number of nonviolent misdemeanor cases pursuant to V.R.Cr.P. 48(b). Rule 48 of the Vermont Rules of Criminal Procedure permits the trial court to dismiss an indictment or information, "(1) [i]f the prosecution does not bring the defendant to trial within such time as the Supreme Court may provide by Administrative Order; or (2) [i]f the court concludes that such dismissal will serve the ends of justice and the effective administration of the court's business." V.R.Cr.P. 48(b).

The State has requested that it be given prior notice, and an opportunity to file objections to dismissal of any case which it determines does not meet the standards under the rule. An example of such a case might involve the issue of unpaid restitution or other aggravating factors that had not been considered. Implicit in the rule is that the State may object to the dismissal of an information by the court. If there is an objection the court must state, on the record, its findings of fact and reasons for dismissal. V.R.Cr.P. 48(c).

When relevant, the trial court should consider factors which "weigh the respective interests of the defendant, the complainant, and the community at large," as follows:

(1) the seriousness and circumstances of the charged offense; (2) the extent of harm resulting from the offense; (3) the evidence of guilt and its admissibility at trial; (4) the likelihood of new or additional evidence at trial or retrial; (5) the defendant's history, character, and condition; (6) the length of any pretrial incarceration or any incarceration for related or similar offenses; (7) the purpose and effect of imposing a sentence authorized by the offense; (8) the impact of dismissal on public confidence in the judicial system or on the safety and welfare of the community in the event the defendant is guilty; (9) the existence of any misconduct by law enforcement personnel in the investigation, arrest, or prosecution of the defendant; (10) the existence of any prejudice to defendant as the result of the passage of time; (11) the attitude of the complainant or victim with respect to dismissal of the case; and (12) any other relevant fact indicating that judgment of conviction would serve no useful purpose.

State v. Sauve, 164 Vt. at 140–41 (adopting factors from N.Y. Code of Crim. Proc. § 210.40). Balancing of these factors is an exercise of the trial court's "broad discretion." *State v. Prior*, 174 Vt. 49, 52 (2002).

While not every factor listed above is particularly relevant, the court concludes that "the existence of any prejudice to defendant as the result of the passage of time", is the most compelling factor. Also, while the court cannot review each case, the charges being dismissed all appear to be nonviolent offenses. This court has never issued such an order, however, given the current circumstances, the court is persuaded that such action is necessary to allow the court to focus on the oldest and most serious cases on the docket, including cases involving defendant's incarcerated awaiting trial.

In an effort to provide some case load relief the court concludes that a dismissal of a large number of the oldest misdemeanor cases in accordance with V.R.Cr.P 48(b) will serve the ends of justice and effective administration of justice.

In determining which cases should be considered for dismissal the court has looked at the charge and the age of the case. The court concludes that the following types of case fall within the criteria for dismissal: DLS(including those based upon a suspension for DUI); VCRs; Misdemeanor drug possession cases; Unlawful trespass; Retail Theft; Disorderly Conduct.¹

With regard to the age of the cases being considered for dismissal the court has determined that all cases filed prior to 2021 will be subject to dismissal. The court has reviewed Administrative Order 5, which provides that all cases should be brought to trial within six months, and 90 days for incarcerated defendants. The Vermont Supreme Court has found that those guidelines are discretionary, and in fact are not reasonable with respect to more serious cases. It seems to the court that nonviolent misdemeanor cases which have been pending for a year or more are not likely to be brought to trial. Meanwhile Defendants have had their matters delayed, some with conditions of release in place, with no end in sight.

The court acknowledges that the cut-off date is somewhat arbitrary and that some defendant's will have other pending cases that remain open. However the court is focused on bringing the criminal docket into some balance so that cases can be brought to trial in a reasonable time-frame.

Attached is a list of the dockets subject to dismissal under this order. The State will file any objections identifying any cases that it contends should not be dismissed by November 18, 2021. Defense counsel may also notify the court of any cases assigned to them that fall within this category but have not been included on this list.

So Ordered.

Electronically signed: November 4, 2021 pursuant to V.R.E.F. 9(d)


Martin A. Maley
Superior Court Judge

¹ With regard to drug possession charges the court can only locate five pending cases, all cocaine possession cases. It seems to the court that the number is actually greater as there may be other cases involving different substances that have not populated during the court's Odyssey search. The court suspects that defense counsel will let the court know if there are any cases that were omitted from the list. Also, while compiling the list of pending DLS cases, other cases populated that list, including negligent operation cases. The court does not intend to dismiss those cases. Also, as noted above, after reviewing the court's list, the State may file an objection to cases which should not be included in this list for reasons such as outstanding restitution or other reasons as raised by the State.