

SUPERIOR COURT
of the
STATE OF DELAWARE

Jeffrey J Clark
Judge

Kent County Courthouse
38 The Green
Dover, DE 19901
Telephone (302)735-2111

February 27, 2017

Sean Motoyoshi, DAG
Department of Justice
102 West Water Street
Dover, DE 19901

William Deely, Esq.
Office of the Public Defender
45 The Green - Sykes Building
Dover, DE 19901

RE: State v. Brandon Flowers
#1610006341

Counsel:

Before the Court is a motion by Defendant Brandon Flowers (hereinafter “Mr. Flowers”) seeking dismissal of the State’s case pursuant to Superior Court Criminal Rule 48(b). Mr. Flowers was charged with stalking on November 21, 2016, and was incarcerated on that date. Since his waiver of his preliminary hearing on December 9, 2016, the State has not indicted him on this charge and he remains incarcerated.

Mr. Flowers argues that dismissal is warranted because the State has no valid reason for failing to indict him until this point in time, and that he has suffered significant prejudice because he remains incarcerated. The Defendant cites no authority, other than Rule 48(b), regarding the appropriateness of dismissal of the charges. The State argues that he is being simultaneously held on other charges in Family Court and also a pending violation of probation. The State did not provide a

reason for not indicting him to present, but represented that he would be indicted at the next cycle in March.

Dismissal is warranted pursuant to Superior Court Criminal Rule 48(b) if “there is unnecessary delay in presenting a charge to a grand jury.” Here, the delay is attributable to the State and there is prejudice to the Defendant based on his incarceration. The Court does not find at this point, however, that dismissal of the charge is warranted for this delay. The Defendant cites no case authority in support of dismissal of pending charges for a two month delay in presenting the matter to the Grand Jury, even given the defendant’s incarcerated status. At this point, the State represents that it will seek to indict Mr. Flowers in March. Notably, in balancing the factors required under Rule 48(b), the State’s continued failure to cite good cause for the delay coupled with Mr. Flowers incarcerated status, will rapidly become an issue in this case. Accordingly, Mr. Flowers’ motion is denied, without prejudice, to refile should an indictment not be returned in March, or as separately appropriate based on other potential delay in the future.

IT IS SO ORDERED

Very truly yours,

/s/Jeffrey J Clark
Judge