

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JAMES T. VAUGHN, JR.
PRESIDENT JUDGE

KENT COUNTY COURT HOUSE
38 THE GREEN
DOVER, DELAWARE 19901

June 19, 2014

Dennis Kelleher, Esq.
Department of Justice
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***Re: State v. Robert P. Bryer
ID. No. 1008011916***

Counsel:

The defendant has filed a motion to dismiss this case on the grounds that his speedy trial and due process rights have been violated. He also moves to dismiss for unnecessary delay in the prosecution under Rule 48(b). I grant the motion under Rule 48(b).

On August 14, 2010, the defendant, Robert P. Bryer, Jr., was involved in an incident with a Milford police officer. Bryer was arrested and charged with assault in the second degree, two counts of reckless endangering in the first degree, offensive touching, resisting arrest, endangering the welfare of a child, and disorderly conduct. He was indicted on these charges on October 4, 2010.

On May 16, 2011, the State *nolle prossed* all of the charges against Bryer. By letter dated May 16, 2011 to defense counsel, the Deputy Attorney General assigned to the case stated “[t]his letter will confirm our agreement that in exchange for the State dismissing the charges pending against your client. . . your client agrees not to pursue any civil remedies against The City of Milford or any officers involved in the incident.” It appears that there is no underlying written agreement. It appears that the letter is the only evidence of an agreement.

On May 6, 2013, Bryer was reindicted on the same original charges that were

State v. Robert P. Bryer

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June 19, 2014

nolle prossed in 2011. Bryer acknowledges that the letter was sent by the State to his defense attorney, but argues that no enforceable agreement was reached.

The State responds that it believed at the time that the defense had agreed not to pursue civil remedies in exchange for the termination of the 2011 prosecution. The State contends that Bryer subsequently filed an action in federal court, thus violating the agreement.¹ The State does not address whether the alleged agreement was enforceable or valid and contends that it was Bryer's responsibility to correct the State's belief that an agreement had been reached. The State argues that both parties are responsible for the delay and thus the case should not be dismissed.

STANDARD OF REVIEW

Superior Court Criminal Rule 48(b) allows the Court to exercise its discretion to dismiss an indictment or information for "unnecessary delay."² While speedy trial rights are implemented by Rule 48(b), prejudice in the traditional sense is not required and the Court's discretion is "broader than normally associated with a Sixth Amendment analysis."³ There are two criteria required for a dismissal under Rule 48(b): the unnecessary delay must be attributable to "the deliberate choice of the prosecuting authorities for no valid reason," and that the delay was prejudicial.⁴

DISCUSSION

Although the letter written to defense counsel at the conclusion of the first prosecution refers to an agreement not to file a civil case, it is a letter between counsel which refers to "our" agreement. The record is ambiguous as to whether the

¹ The suit was filed by different counsel for Bryer, not his defense counsel on the criminal charges.

² *State v. Budd Metal Co., Inc.*, 447 A.2d 1186, 1188 (Del. 1982).

³ *Id.*

⁴ *State v. McElroy*, 561 A.2d 154, 156 (Del. 1989).

