State of New York
Court of Appeals

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

ROBERT GUY DICKINSON,

Appellant.

Brief of the New York State Defenders Association

Amicus Curiae

Alfred O'Connor, Esq.
New York State Defenders Association
194 Washington Avenue
Suite 500
Albany, NY 12210
(518) 465-3524
(518) 465-3249 (fax)

September 30, 2011

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes

Other Authorities

Interest of Amicus

The New York State Defenders Association (NYSDA) is a not-for-profit membership association of more than 1700 public defenders, legal aid attorneys, 18-b counsel and private practitioners throughout the state. With funds provided by the state of New York, NYSDA operates the Public Defense Backup Center, which offers legal consultation, research, and training to nearly 6,000 lawyers who serve as public defense counsel in criminal cases in New York. The Backup Center also provides technical assistance to counties that are considering changes and improvements in their public defense systems. The New York State Defenders Association is contractually obligated "to review, assess and analyze the public defense system in the state, identify problem areas and propose solutions in the form of specific recommendations to the Governor, the Legislature, the Judiciary and other appropriate instrumentalities." This Court has granted NYSDA *amicus curiae* status in numerous cases dealing with the rights of criminal defendants.

The instant case raises an important issue about a prosecutor's obligation to announce readiness for trial pursuant to CPL § 30.30 . The Appellate Division, Third Department, held that time during which the parties are engaged in "ongoing plea discussions" is excludable as a matter of law from calculation of

the statutorily mandated readiness period. As detailed in Appellant's brief, the Third Department's unprecedented holding conflicts with the clear language of the statute, and is inconsistent with this Court's prior holdings. The decision below would also lead to increased delays in the criminal courts, compromise the quality of justice administered in those courts, hamper the ability of defense attorneys to effectively advocate for their clients, and prejudice important rights of criminal defendants, especially those held in pre-trial detention. Therefore, the New York State Defenders Association has a substantial interest in the outcome of this appeal.

ARGUMENT

There is no reason in law or logic to hold that "ongoing plea discussions" between the prosecution and defense, without more, toll a prosecutor's trial readiness obligation under CPL section 30.30 (4).

In People v. Waldron, 6 N.Y.3d 463 (2006), this Court endorsed a time-honored and straightforward method for prosecutors to assure that the days, weeks or even months during which plea discussions are ongoing between the parties effectively suspend their trial readiness obligation under CPL § 30.30: *get it in writing.* Criminal defendants have no constitutional or statutory right to engage in plea bargaining. People v. Esajerre, 35 N.Y.2d 463, 466-467 (1974); CPL § 220.10 (4). Therefore, a prosecutor can condition plea discussions on a

defendant's agreement to waive the trial readiness obligation rule. A waiver of this sort can be accomplished by letter or other written expression of the parties' intent; the writing need not be formally entered into the trial court record. People v. Waldron, *supra.* Such written agreements are commonplace in criminal practice in New York.

Here, it is undisputed that appellant, Robert Guy Dickinson, never expressly waived – in writing or otherwise – compliance with the prosecution's trial readiness obligation. Lacking the straightforward written agreement Waldron contemplated, the district attorney urges this Court to endorse the seismically-shifting new rule adopted by the Appellate Division: that all time during which the parties are engaged in plea discussions is excludable *as a matter of law* from a prosecutor's readiness obligation under the statute. It is clear why the district attorney advocates such a drastic change in the governing law: there is no other way for him to prevail on the conceded facts here. But this Court should decline the prosecutor's invitation to so radically alter the landscape of rules governing CPL § 30.30. As detailed in Appellant's brief, Respondent's proposed rule finds no support in the statutory language or this Court's precedents. Moreover, as detailed below, the Appellate Division's rule would foster a debilitating and prejudicial culture of unreadiness in the criminal courts in contravention of legislative purpose and design.

The district attorney basically argues it is unfair and inefficient to require prosecutors to become ready for trial when there is a possibility that pending criminal charges will be resolved by a guilty plea. Respondent complains that the "People relied upon the defense counsel's actions and representations made by and during those negotiations that a plea agreement could be reached without indictment." *Respondent's Br. at 11.* But here Respondent simply fails to acknowledge that there is a difference between a wish and an enforceable legal expectation.

The fault in Respondent's logic is that there is nearly always a *possibility* that trial can be averted through negotiated disposition of criminal charges. A defendant's willingness to engage in plea discussions, *in and of itself*, says virtually nothing about the likelihood that a case will, in fact, be resolved by a guilty plea. Plea bargaining occurs at some level in virtually all criminal cases. The practice is generally understood to be an essential component of a defense lawyer's professional obligation to a client. *See* ABA Standards for Criminal Justice – Pleas of Guilty, Standard 14-3.2; Trial Manual for the Defense of Criminal Cases, § 206 ("When the risks or costs are substantial, effective plea bargaining is part of effective representation of one's client.") In felony prosecutions, defendants typically don't decide to plead guilty or proceed to trial until *after* plea negotiations have disclosed enough information to permit

intelligent assessment of the relative risks and benefits of either option. Thus, defense lawyers regularly explore plea options with prosecutors in situations where clients might otherwise be expressing firm commitment to pursuing vindication at trial. And even when the parties do settle on a negotiated disposition, supervising judges can – and routinely do – reject these agreements, necessitating a trial in any event. *See* CPL § 220.10 (2)(3)(4); People v. Schultz, 73 N.Y.2d 757 (1988).

The facts here are perfectly illustrative. Robert Guy Dickinson's attorney engaged in plea discussions with an eye toward reaching a disposition that would be agreeable to his client, the district attorney, and presumably the trial judge. Initial discussions focused on the possibility of a drug treatment court placement, which for some reason did not work out. Ongoing negotiations between defense counsel and the prosecutor then resulted in a tentative deal that included a proposed guilty plea to a felony in exchange for a one year definite sentence. However, the trial judge rejected the proposed disposition, and Dickinson's case proceeded to trial.

There is nothing unusual in these facts; they are essentially repeated scores – if not hundreds - of times each working day in the criminal courts of this state. Yet, under Respondent's reasoning and proposed statewide rule, the clock would not even *start* ticking on a prosecutor's obligation to become ready

for trial until plea bargaining had fully run its course and failed to result in a court-approved guilty plea.

Clearly, such a rule would encourage delay, with prosecutors withholding grand jury presentments, and otherwise laying aside the preparation and legal work associated with trial readiness until plea negotiations had broken down, or reached a "stalemate." *Respondent's Br. at 11.* The purpose of CPL 30.30's trial readiness obligation is to promote fairness and efficiency by requiring prosecutors to be ready for trial within six months of the commencement of a felony, and shorter periods for misdemeanors and violations. If adopted, the Appellate Division's new rule would have the opposite effect, needlessly slowing down criminal case processing, and compromising the rights of criminal defendants, especially pre-trial detainees.

The holding below would also tend to diminish the quality of justice administered in the courts. It is through the process of working a criminal case to trial-ready status that a prosecutor learns about and realistically assesses its strengths and weaknesses. In turn, the information so gleaned informs a prosecutor's plea offers, resulting in a continuum of hard-line to more conciliatory offers to the defense based on the perceived strength of the People's case. But if prosecutors don't need to be concerned about trial readiness until plea bargaining has concluded, they will, on average, have less

incentive to learn about their cases, and be less prepared to engage in timely and meaningful negotiations. Judges would also know less when called upon to approve or reject plea bargains negotiated by the parties.

The Appellate Division offered no explanation why the occurrence of *mutually* beneficial plea discussions, without more, should result in automatic tolling of the prosecutor's trial readiness obligation. And Respondent does not offer one now, other than to vaguely suggest that the prevailing, contrary rule creates "an unreasonable and unnecessary restraint upon the interest of justice." *Respondent's Br. at 9.* But, as discussed, there are compelling policy reasons why CPL § 30.30 (4) has not previously been interpreted to automatically exclude time required for "ongoing plea negotiations" from the trial readiness calculation.

The holding below would also trigger other negative consequences. First, it would tend to discourage negotiation in cases where plea bargaining might otherwise be profitably employed. If the price of plea bargaining were tolling of the People's trial readiness obligation, some percentage of defendants would forego the practice altogether. Second, the rule would tend to encourage defense lawyers to "beat around the bush" in discussions with prosecutors in order to avoid being accused of plea bargaining. At the same time, prosecutors would have an incentive to interpret the words and actions of

defense lawyers as "plea bargaining" regardless of counsel's true motivations. In other words, plea bargaining would take on a somewhat disreputable cast as a practice which unavoidably compromises the rights of criminal defendants. Fewer defense lawyers would readily admit to doing it, but prosecutors would likely detect hints of it in every aspect of a defense attorney's advocacy. And, as Appellant points out, this regrettable state of affairs would spawn endless battles about the timeliness of prosecutors' trial readiness announcements, factual disputes that would require hearings and court time to resolve. *Appellant's Br. at 26.*

It is difficult to see anything good in a rule that would prolong the pretrial detention of defendants, discourage plea bargaining, promote less informed plea negotiations, encourage needless posturing by defense lawyers, create unnecessary additional work for judges, and slow down case processing in an already overburdened court system. The Waldron rule authorizes prosecutors and defense lawyers engaged in plea bargaining to execute side-agreements waiving the trial readiness obligation on a case-by-case basis. Clearly, this well-established practice is the better and correct interpretation of the statutory rule.

The order of the Appellate Division should be reversed.

CONCLUSION

FOR THE ABOVE-STATED REASONS THE ORDER OF THE APPELLATE DIVISON SHOULD BE REVERSED.

Respectfully submitted,

Alfred O'Connor
New York State Defenders Association
194 Washington Ave., Suite 500
Albany, New York 12210
(518) 465-3524
Fax (518) 465-3249

September 30, 2011