

SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Wilmington, DE 19801-3733
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December 6, 2011

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RE: State v. Louis Repetto
ID # 1010017295

Dear Counsel:

Defendant was arrested for driving under the influence on October 24, 2010. Since then, Defendant has requested continuances of almost every event in the case, mostly with success. This case's history suggests an institutional unwillingness to force a driving under the influence case to fruition against a defendant's will. In any event, having obtained a largely unbroken string of continuances, Defendant now argues the case must be dismissed under Superior Court Criminal Rule 48(b) because of unnecessary delay.

The key fact supporting Defendant's motion stems from the second trial date, August 12, 2011, when the case was in Justice of the Peace Court. After Defendant's request for a second trial continuance failed, the State realized that Defendant's October 24, 2010 offense could result in his third DUI conviction. That would make it a felony over which the Justice of the Peace lacked jurisdiction.

Eric H. Zubrow, Deputy Attorney General
Eugene J. Maurer, Jr., Esquire
State v. Louis Repetto
ID # 1010017295
Letter/Order
December 6, 2011
Page 2

Accordingly, the State also requested a continuance in order to seek an indictment, which it promptly obtained on August 29, 2011. Although that delay was attributable to the State, it bears emphasis that rather than his insisting on trial on August 12, 2011, Defendant asked for a delay first.

But for Defendant's having delayed trial back in February, the State would have done then what it did in August. Meanwhile, the six-month trial delay, between February and August 2011, is not attributable to the State and did not draw an objection or an insistence on a speedy trial by Defendant.

Since the indictment was handed-up and the case began in Superior Court, Defendant demanded, and was granted, continuances of his September 30, 2011 arraignment and the first rescheduled arraignment on October 7, 2011. On October 14, 2011, at Defendant's second rescheduled arraignment, Defendant, at his insistence, read a statement pleading that another rescheduling was necessary so that he could "obtain proper representation." Defendant explained that he had his current counsel's card and an appointment to meet him that afternoon. With misgivings – "You're playing games." – the Commissioner rescheduled the arraignment a third time, to October 21 2011.

When Defendant appeared without counsel on October 21, 2011, he was arraigned *pro se*. At that time, first case review was October 31, 2011; final case review was November 28, 2011; and trial was set for December 8, 2011. Despite the delay occasioned by Defendant's machinations, the case has moved rapidly in this court. The time between indictment and trial is around 100 days. Thus, any objectionable delay happened while the case was in the Justice of the Peace Court.

As presented above, in the Justice of the Peace Court, Defendant voiced no objection to delay. To the contrary, it seems that but for the first trial continuance at Defendant's behest, the case would have ended in the Justice of the Peace Court last February. Only now is Defendant combining the time the case was pending in both courts and calling it unnecessary.

Eric H. Zubrow, Deputy Attorney General
Eugene J. Maurer, Jr., Esquire
State v. Louis Repetto
ID # 1010017295
Letter/Order
December 6, 2011
Page 3

What happened in the Justice of the Peace Court passes muster under *State v. Zickgraf*.¹ *Baker v. State*,² on which Defendant relies, is inapplicable. In *Baker*, the State waited seven months after filing a *nolle prosequi* in the Court of Common Pleas to re-file in the Superior Court.³ Here, other than that the State did not pick-up immediately on the case's felony potential, the delay between arrest and now is entirely attributable to Defendant's efforts to avoid trial, including, perhaps, this motion's filing.

For the foregoing reasons, Defendant's November 28, 2011 motion to dismiss is **DENIED**. Presumably, in light of their positions on this motion, the parties will be ready for and insist on trial going forward, as scheduled, on December 8, 2011. If, due to unforeseen events, the trial must be continued on December 8, 2011, it will go forward on the next available day for criminal trials, December 13, 2011. Any request for a continuance must be directed to me, as Criminal Administrative Judge. We will resolve this 2010 arrest before the end of 2011.

Very truly yours,

/s/ Fred S. Silverman

FSS: mes
cc: Prothonotary (Criminal)

¹ 2005 WL 4858688 (Del. Super. Aug. 19, 2005) (Ableman, J.), *aff'd*, *Zickgraf v. State*, 897 A.2d 768 (Del. 2006) (TABLE).

² Cr. ID. No. 0803038600 (Del. Super. Dec. 16, 2009) (Babiarz, J.).

³ *Id.* at *7.