

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	:	
	:	
v.	:	Criminal I.D. No. 0008017053
	:	
MARTIN L. WILLIS,	:	
	:	
Defendant.	:	

Submitted: January 24, 2001  
Decided: April 24, 2001

**ORDER**

DEL PESCO, Judge.

On this 24<sup>th</sup> day of April, 2001, upon consideration of defendant's motion to dismiss and the memoranda submitted by counsel, it appears that:

(1) On January 24, 2001, defendant, Martin L. Willis ("Willis"), filed a motion to dismiss the indictment against him. Willis claims the State violated his right to a speedy trial under the Superior Court's Criminal Administrative Order "*In re: Policy, Time Standards, and Procedures Relating to Criminal Case Disposition*" ("Administrative Order") issued January 16, 1991.<sup>1</sup>

(2) Section Five of the Administrative Order provides in relevant part:

(a) *Time for Filing an Indictment or Information.* If an individual is arrested on a complaint charging an offense to be prosecuted before this Court, any indictment or information should be filed within 30 days from the date of arrest.

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<sup>1</sup> Crim. Admin. Order, Del. Super., Ridgely, P.J. (Jan. 16, 1991).

**(c) *Sanctions for Indictment Delay.* When a case is pending indictment for more than 45 days after arrest, the Court may impose any of the sanctions as provided in section 18 of this Criminal Administrative Order.**

Regarding the Attorney General Intake Hearings, Section Eight of the Administrative Order also provides in relevant part: “(a) *Attorney General Intake Hearings.* Attorney General intake hearings with the arresting officer should occur within five days of arrest.”

A claim for unnecessary delay under the Administrative Order should be analyzed in the same manner as a claim for unnecessary delay under Superior Court Criminal Rule 48(b).

**Rule 48(b) provides in relevant part:**

**(b) *By court.* If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer in Superior Court . . . the court may dismiss the indictment, information or complaint.**

**(3) For an indictment to be dismissed under Rule 48(b) for “unnecessary delay,” the delay must be attributable to the prosecution, and must have a prejudicial effect on the defendant. The types of prejudice recognized by Rule 48(b) include:**

**the unexplained commencement of a new prosecution long after a dismissal by the State of the same charge in another court; the anxieties suffered by a defendant as the result of delay and uncertainty in duplicative prosecutions against him; the notoriety suffered by a defendant and his family as the result of repeated commencement of prosecutions for the same offense; and the expenses, legal and otherwise, attendant upon a subsequent**

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<sup>2</sup> Crim. Admin. Order, Del. Super., Ridgely, P.J. (Jan. 16, 1991) at 8.

<sup>3</sup> Crim. Admin. Order, Del. Super., Ridgely, P.J. (Jan. 16, 1991) at 8.

<sup>4</sup> Super. Ct. Crim. R. 48(b).

<sup>5</sup> *State v. James C. McElroy*, Del. Supr., No. 67, 1988, Horsey, J. (May 11, 1989).

renewal in another court of a dismissed prosecution.”

(4) In determining whether the prosecution’s reason for delay is valid, the Court should consider the extent to which the State is at fault in causing the delay and the amount of control the State has over the event causing the delay. “The less control that the State has over the event which causes delay, the more valid the reason for delay. The more control the State has over the event which causes delay, the less valid the reason for delay.”

(5) In the present case, the State claims the five-month delay between arrest and indictment was caused by a delay in the Amtrak Police Department officially bringing the case to the Attorney General’s Office. The alleged offense occurred on August 22, 2000. Willis was arrested by an Amtrak police officer and charged with Assault Second Degree, a felony, and misdemeanor counts of Disorderly Conduct and Public Intoxication. Although the Attorney General’s Office made three separate contacts with the Amtrak Police Department to schedule an intake hearing, the first such call was not made until October 26, 2000, followed by a second on November 27, 2000, and a third on January 17, 2001. The intake meeting occurred on January 23, 2001. The case was presented to the Grand Jury on February 12, 2001, and a true bill was issued on that date.

The Attorney General’s Office acknowledges that it was dilatory in scheduling the intake of this case. Scheduling intake was clearly within the control of the Attorney General’s

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<sup>6</sup> *State v. Fischer*, Del. Supr., 285 A.2d 417, 419 (1971).

<sup>7</sup> *State v. Ellis*, Del. Super., Cr.A. Nos. IN86-03-1241 – 1247, Gebelein, J. (Feb. 10, 1987).

<sup>8</sup> *Id.* at 3-4.

Office.

(6) Willis also argues that he has suffered prejudice due to the five-month delay in bringing his case before the Grand Jury. He claims that due to the combination of a diabetic reaction and his consumption of alcohol on the day in question, he already had problems remembering the incident in the weeks immediately following his arrest. Thus, he asserts that the five-month delay in indicting him has further diminished his recollection of the event. Consequently, he will be of very little assistance to counsel at trial. Willis also argues that the delay potentially has caused the Amtrak passenger lists to become unavailable. The defendant offers no documents, medical reports or affidavits to support either claim of prejudice.

(7) The State responds that Willis, knowing he suffers from memory loss due to his medical condition and the consumption of alcohol on the day of his arrest, should have memorialized his recollection of the events in some manner in order to preserve his defense. The State notes that even if Willis had been indicted within the 30-day time period mandated in the Administrative Order, he nevertheless would have suffered from the same memory loss he now claims will prevent him from assisting his counsel at trial. The State also notes that the Court ordered defense counsel to ascertain the availability or non-availability of the Amtrak passenger lists, and to date, defense counsel has failed to do so.

(8) The issue of actual prejudice need not be resolved under the circumstances of this case because of the egregious nature of the delays. While shorter lapses might be explained, the indictment here occurred at the point in time when the case should otherwise have been

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resolved. The import of the 1991 directive referenced above was further underscored by the Criminal Administrative Order issued by the Superior Court on March 28, 2000 which declared delays “other than reasonably required . . . [to be] unacceptable.”

(9) The defendant has met his responsibilities by posting bond, appearing for arraignment in the Court of Common Pleas, and hiring counsel to assist him in presenting the Motion to Dismiss. It is also curious that the person who presumably had the greatest interest in a prosecution, the alleged victim of the assault, is the person who did not appear for intake until after the third contact to Amtrak by the Attorney General’s office.

Under the totality of the circumstances, I find that the State has violated Rule 48(b).  
The indictment is dismissed with prejudice.

**IT IS SO ORDERED.**

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**Judge Susan C. Del Pesco**

**Original to Prothonotary**  
xc: **Marsha J. Epstein, Esquire**  
**Thomas A. Pedersen, Esquire**