

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CRIMINAL ACTION
Docket No. CR-10-25

REM - KEN - 3/7/2011

STATE OF MAINE

v.

NIXON A. LOUIS,

Defendant

**ORDER DENYING MOTION
FOR SPEEDY TRIAL AND/OR
MOTION TO DISMISS
WITH PREJUDICE**

Defendant filed this pending motion with the court on February 25, 2011. Argument was presented to the court by counsel for the defendant and the assistant district attorney on March 7, 2011. On March 4, 2011, the attorney for the State filed a dismissal of the pending indictment against the defendant pursuant to Rule 48(a) of the Maine Rules of Criminal Procedure.

Defendant argues that, despite the State's filing of its motion to dismiss, that the defendant's motion for dismissal *with prejudice* should still be granted. Defendant contends that the delay, which has already occurred in this case, as well as the subsequent delay, which would likely occur if the defendant were to be re-indicted, creates sufficient prejudice warranting a dismissal of this pending matter *with prejudice*.

Although the State filed its dismissal pursuant to M.R. Crim. P. 48(a) *after* the filing of the defendant's motion to dismiss, the court is not persuaded that the State's dismissal becomes ineffective. Rule 48(a) provides broad authority to the attorney for the State to file a written dismissal of an indictment with no limits to the timing of such a filing if the trial has not already commenced. It is not disputed that the trial has not commenced in the pending matter, and thus no issue of jeopardy has been presented. Thus, despite the prior filing (by seven days) of the defendant's motion to dismiss with prejudice, the language of Rule 48(a), as well as the case law addressing this same rule

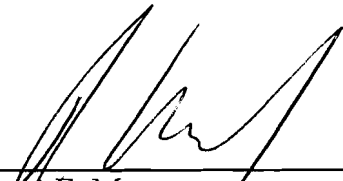
as set forth in *State v. Dumont*, 552 A.2d 1 (Me. 1988), suggest that the prosecution regarding the case for which a dismissal has been filed pursuant to Rule 48(a) shall terminate upon the filing of such a dismissal.

The court will note that the defendant is not precluded from filing a motion to dismiss any future prosecution should the State seek to pursue such. The court does not, in any way, address the merits of the defendant's motion based upon alleged undue delay or prejudice to him.

Accordingly, the defendant's motion for a speedy trial is deemed moot based upon the filing of the dismissal by the State, and the defendant's motion to dismiss with prejudice is hereby denied.

DATED:

3/7/11



Robert E. Murray
Justice, Superior Court

STATE OF MAINE
vs
NIXON A LOUIS
119 CENTER STREET
MANCHESTER CT 06040

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CR-2010-00025

DOCKET RECORD

DOB: 03/28/1970

Attorney: WILLIAM BAGHDOYAN
WILLIAM BAGHDOYAN, ATTORNEY AT LAW
72 WINTHROP STREET SUITE 2
AUGUSTA ME 04330
APPOINTED 01/03/2011

State's Attorney: EVERT FOWLE

Charge(s)

1 UNLAWFUL TRAFFICKING IN SCHEDULED DRUGS 01/07/2010 WATERVILLE
Seq 8541 17-A 1103(1-A)(A) Class B
CLOUTIER / WAT

2 UNLAWFUL POSSESSION OF SCHEDULED DRUG 01/07/2010 WATERVILLE
Seq 8571 17-A 1107-A(1)(C) Class D Charged with COMPLAINT on Suppleme

3 CRIMINAL FORFEITURE OF PROPERTY 01/07/2010 WATERVILLE
Seq 7049 15 5826 Class U

Docket Events:

01/14/2010 FILING DOCUMENT - NON CASH BAIL BOND FILED ON 01/07/2010

01/14/2010 BAIL BOND - \$20,000.00 UNSECURED BAIL BOND FILED ON 01/12/2010

Bail Amt: \$20,000
Date Bailed: 01/07/2010

01/21/2010 Charge(s): 1
HEARING - INITIAL APPEARANCE SCHEDULED FOR 03/23/2010 @ 8:30

NOTICE TO PARTIES/COUNSEL

01/21/2010 Charge(s): 1,2
SUPPLEMENTAL FILING - COMPLAINT FILED ON 01/21/2010

02/22/2010 Party(s): NIXON A LOUIS
ATTORNEY - RETAINED ENTERED ON 02/22/2010

Attorney: JOHN ALSOP

02/22/2010 Charge(s): 1
HEARING - INITIAL APPEARANCE NOTICE SENT ON 02/22/2010

03/23/2010 Charge(s): 1
HEARING - INITIAL APPEARANCE HELD ON 03/23/2010
JOHN NIVISON , JUSTICE
DA: BRAD GRANT

03/23/2010 Charge(s): 1,2
HEARING - STATUS CONFERENCE SCHEDULED FOR 05/11/2010 @ 10:00

03/23/2010 Charge(s): 1,2

PLEA - NO ANSWER ENTERED BY DEFENDANT ON 03/23/2010

03/23/2010 BAIL BOND - UNSECURED BAIL BOND CONTINUED AS POSTED ON 03/23/2010

Date Bailed: 01/07/2010

05/11/2010 Charge(s): 1,2

HEARING - STATUS CONFERENCE HELD ON 05/11/2010

NANCY MILLS , JUSTICE

Defendant Present in Court

05/11/2010 Charge(s): 1,2

HEARING - STATUS CONFERENCE SCHEDULED FOR 07/13/2010 @ 10:00

05/11/2010 Charge(s): 1,2

HEARING - STATUS CONFERENCE NOTICE SENT ON 05/11/2010

05/26/2010 Charge(s): 1,2,3

HEARING - ARRAIGNMENT SCHEDULED FOR 06/29/2010 @ 8:30

05/26/2010 Charge(s): 1,2

HEARING - STATUS CONFERENCE NOT HELD ON 05/26/2010

05/26/2010 Charge(s): 1,2,3

HEARING - ARRAIGNMENT NOTICE SENT ON 05/26/2010

06/02/2010 MOTION - MOTION TO REVOKE BAIL FILED BY STATE ON 06/02/2010

REQUEST FOR A WARRANT

06/09/2010 HEARING - MOTION TO REVOKE BAIL HELD ON 06/09/2010

JOHN NIVISON , JUSTICE

Defendant Present in Court

TAPE 354, INDEX 2100

CONTINUED TO 6/14/2010

06/09/2010 BAIL BOND - NO BAIL ALLOWED SET BY COURT ON 06/09/2010

JOHN NIVISON , JUSTICE

06/09/2010 HEARING - MOTION TO REVOKE BAIL SCHEDULE OTHER COURT ON 06/14/2010 @ 8:30

SKOSC

06/10/2010 HEARING - MOTION TO REVOKE BAIL NOTICE SENT ON 06/10/2010

PARTIES OF RECORD

06/10/2010 Charge(s): 1,2,3

HEARING - ARRAIGNMENT NOT HELD ON 06/09/2010

DEF WAS ARRAIGNED IN SKOSC THIS DATE

06/10/2010 Charge(s): 1,2,3

HEARING - ARRAIGNMENT HELD ON 06/09/2010

JOHN NIVISON , JUSTICE

Defendant Present in Court

READING WAIVED. DEFENDANT INFORMED OF CHARGES. COPY OF INDICTMENT/INFORMATION GIVEN TO

DEFENDANT. 21 DAYS TO FILE MOTIONS

HELD AT SKOSC ON ER, TAPE 354, INDEX 2100

06/10/2010 Charge(s): 1,2,3

PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 06/09/2010

06/11/2010 MOTION - MOTION TO REVOKE BAIL FILED BY STATE ON 06/11/2010

06/21/2010 HEARING - OTHER HEARING SCHEDULED FOR 06/24/2010 @ 8:15

NOTICE TO PARTIES/COUNSEL

INITIAL

APPEARANCE ON MOTION TO REVOKE BAIL

06/21/2010 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 06/21/2010

CERTIFIED COPY TO SHERIFF DEPT.

06/24/2010 HEARING - OTHER HEARING HELD ON 06/24/2010

NANCY MILLS , JUSTICE

Attorney: JOHN ALSOP

DA: JAMES MITCHELL

06/24/2010 HEARING - OTHER HEARING CONTINUED ON 06/24/2010

NANCY MILLS , JUSTICE

TO BE CONTINUED 6/25/10

06/24/2010 HEARING - OTHER HEARING SCHEDULED FOR 06/25/2010 @ 8:00

NANCY MILLS , JUSTICE

CONTINUATION OF HEARING ON MOTION TO REVOKE BAIL

06/25/2010 HEARING - OTHER HEARING HELD ON 06/25/2010

NANCY MILLS , JUSTICE

Attorney: JOHN ALSOP

DA: JAMES MITCHELL

Defendant Present in Court

TAPE#1324, INDEX#1072-1272

06/25/2010 BAIL BOND - \$2,500.00 CASH BAIL BOND SET BY COURT ON 06/25/2010

NANCY MILLS , JUSTICE

CONCURRENT WITH SOMERSET CASE CR-10-182 NO USE OR POSSESSION OF INTOXICANT AND RANDOM SEARCH AND TEST FOR INTOXICANTS. NO CONTACT IWTH TESLA GORDON, LINDSAY PHILBRICK, JAMES ANDERSON AND JAMES GORDON. CURFEW 8PM TO 7AM AND TO RESIDE AT 16 PARK ST WATERVILLE MAINE AND HE MUST PROVIDE THE COURT OF HIS GIRLFRIEND FULL NAME AND APARTMENT # BEFORED BEIG BAILED.

06/29/2010 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 06/29/2010

Attorney: JOHN ALSOP

06/29/2010 MOTION - MOTION FOR DISCOVERY FILED BY DEFENDANT ON 06/29/2010

Attorney: JOHN ALSOP

07/01/2010 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 09/08/2010 @ 8:45

NOTICE TO PARTIES/COUNSEL

07/01/2010 HEARING - MOTION FOR DISCOVERY SCHEDULED FOR 09/08/2010 @ 8:45

NOTICE TO PARTIES/COUNSEL

07/08/2010 ORDER - TRANSCRIPT ORDER FILED ON 07/08/2010

DA: JAMES MITCHELL

TRANSCRIPT OF BAIL HEARING
TRANSCRIPT PRODUCTION

07/09/2010 BAIL BOND - CONCURRENT BAIL BOND FILED ON 07/09/2010

BAIL IS CONCURRENT TO SKOSCCR201000182 HAVING BAIL ID WFF388 AS PRIMARY.

07/26/2010 MOTION - MOTION TO AMEND BAIL FILED BY DEFENDANT ON 07/23/2010

Attorney: JOHN ALSOP

07/28/2010 MOTION - MOTION TO AMEND BAIL GRANTED ON 07/27/2010

NANCY MILLS , JUSTICE

COPY TO PARTIES/COUNSEL

07/28/2010 BAIL BOND - UNSECURED BAIL BOND BAIL RELEASED ON 07/28/2010

Date Bailed: 01/07/2010

07/28/2010 BAIL BOND - UNSECURED BAIL BOND RELEASE ACKNOWLEDGED ON 07/28/2010

Date Bailed: 01/07/2010

09/03/2010 HEARING - MOTION FOR DISCOVERY CONTINUED ON 09/03/2010

09/03/2010 HEARING - MOTION FOR DISCOVERY SCHEDULED FOR 11/02/2010 @ 8:30

NOTICE TO PARTIES/COUNSEL

09/03/2010 HEARING - MOTION TO SUPPRESS CONTINUED ON 09/03/2010

09/03/2010 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 11/02/2010 @ 8:30

NOTICE TO PARTIES/COUNSEL

09/13/2010 MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY COUNSEL ON 09/13/2010

Attorney: JOHN ALSOP

09/13/2010 OTHER FILING - TRANSCRIPT FILED ON 09/13/2010

TRANSCRIPT OF BAIL HEARING

09/17/2010 MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 09/14/2010

NANCY MILLS , JUSTICE

COPY TO PARTIES/COUNSEL

09/17/2010 Party(s): NIXON A LOUIS

ATTORNEY - WITHDRAWN ORDERED ON 09/14/2010

Attorney: JOHN ALSOP

10/01/2010 BAIL BOND - \$2,500.00 CASH BAIL BOND FILED ON 07/06/2010

Bail Receipt Type: CR

Bail Amt: \$2,500

Receipt Type: CK

Date Bailed: 07/02/2010

Prvdr Name: NIXON LOUIS

Rtrn Name: TREASURER STATE OF MAINE

APPLY TO COUNSEL FEES

10/06/2010 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 10/06/2010

10/06/2010 HEARING - MOTION FOR DISCOVERY NOTICE SENT ON 10/06/2010

11/02/2010 HEARING - MOTION TO SUPPRESS CONTINUED ON 11/02/2010

NANCY MILLS , JUSTICE

11/02/2010 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 01/03/2011 @ 8:30

NOTICE TO PARTIES/COUNSEL

11/02/2010 HEARING - MOTION FOR DISCOVERY CONTINUED ON 11/02/2010

NANCY MILLS , JUSTICE

11/02/2010 HEARING - MOTION FOR DISCOVERY SCHEDULED FOR 01/03/2011 @ 8:30

NOTICE TO PARTIES/COUNSEL

11/02/2010 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 11/02/2010

CERTIFIED COPY TO SHERIFF DEPT.

12/16/2010 MOTION - MOTION TO CONTINUE FILED BY STATE ON 08/31/2010

12/16/2010 MOTION - MOTION TO CONTINUE GRANTED ON 09/02/2010

NANCY MILLS , JUSTICE

COPY TO PARTIES/COUNSEL

01/10/2011 Charge(s): 3

PLEA - DENY ENTERED BY DEFENDANT ON 06/09/2010

01/10/2011 HEARING - MOTION TO REVOKE BAIL NOT HELD ON 06/14/2010

01/10/2011 HEARING - MOTION FOR DISCOVERY CONTINUED ON 01/03/2011

01/10/2011 HEARING - MOTION TO SUPPRESS CONTINUED ON 01/03/2011

01/10/2011 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 01/03/2011

01/10/2011 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 01/03/2011

ROBERT E MURRAY JR, JUSTICE

COPY TO PARTIES/COUNSEL

01/10/2011 Charge(s): 1,2,3

HEARING - MOTION TO SUPPRESS SCHEDULED FOR 03/09/2011 @ 9:15

NOTICE TO PARTIES/COUNSEL

01/10/2011 Charge(s): 1,2,3

HEARING - MOTION TO SUPPRESS NOTICE SENT ON 01/10/2011

01/10/2011 Charge(s): 1,2,3

HEARING - MOTION FOR DISCOVERY SCHEDULED FOR 03/09/2011 @ 9:15

NOTICE TO PARTIES/COUNSEL

01/10/2011 Charge(s): 1,2,3

HEARING - MOTION FOR DISCOVERY NOTICE SENT ON 01/10/2011

01/10/2011 HEARING - MOTION TO REVOKE BAIL SCHEDULED FOR 03/09/2011 @ 9:15

NOTICE TO PARTIES/COUNSEL

01/10/2011 HEARING - MOTION TO REVOKE BAIL NOTICE SENT ON 01/10/2011

01/10/2011 Party(s): NIXON A LOUIS

ATTORNEY - APPOINTED ORDERED ON 01/03/2011

Attorney: WILLIAM BAGHDOYAN

01/10/2011 WRIT - HABEAS CORPUS TO PROSECUTE REMANDED ON 01/03/2011
ROBERT E MURRAY JR, JUSTICE
01/10/2011 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 01/10/2011

CERTIFIED COPY TO SHERIFF DEPT.

02/25/2011 MOTION - MOTION FOR SPEEDY TRIAL FILED BY DEFENDANT ON 02/25/2011
02/25/2011 HEARING - MOTION FOR SPEEDY TRIAL SCHEDULED FOR 03/09/2011 @ 9:15

NOTICE TO PARTIES/COUNSEL

03/04/2011 MOTION - MOTION FOR SPEEDY TRIAL MOOT ON 03/07/2011
03/04/2011 HEARING - MOTION TO REVOKE BAIL NOT HELD ON 03/04/2011
03/04/2011 Charge(s): 1,2,3
HEARING - MOTION FOR DISCOVERY NOT HELD ON 03/04/2011

03/04/2011 Charge(s): 1,2,3
HEARING - MOTION TO SUPPRESS NOT HELD ON 03/04/2011

03/04/2011 BAIL BOND - CONCURRENT BAIL BOND BAIL RELEASED ON 03/04/2011
03/04/2011 BAIL BOND - CASH BAIL BOND BAIL RELEASED ON 03/04/2011

Date Bailed: 07/02/2010
APPLY TO COUNSEL FEES

03/04/2011 MOTION - MOTION FOR DISCOVERY MOOT ON 03/04/2011
03/04/2011 MOTION - MOTION TO SUPPRESS MOOT ON 03/04/2011
03/04/2011 Charge(s): 1,2,3
FINDING - DIS BY DA/AG-OTHER ENTERED ON 03/04/2011

FOR PRESENTATION TO GRAND JURY AFTER NECESSARY WITNESS/CO DEFENDANT IS CONVICTED

03/04/2011 Charge(s): 1,2,3
ABSTRACT - SBI ISSUED ON 03/04/2011

03/04/2011 BAIL BOND - CONCURRENT BAIL BOND RELEASE ACKNOWLEDGED ON 03/04/2011
03/04/2011 BAIL BOND - CASH BAIL BOND RELEASE ACKNOWLEDGED ON 03/04/2011

Date Bailed: 07/02/2010
APPLY TO COUNSEL FEES

03/04/2011 Charge(s): 1,2,3
HEARING - MOTION TO DISMISS SCHEDULED FOR 03/07/2011 @ 8:30

NOTICE TO PARTIES/COUNSEL

03/04/2011 WRIT - HABEAS CORPUS TO PROSECUTE ISSUED ON 03/04/2011

CERTIFIED COPY TO SHERIFF DEPT.

03/07/2011 Charge(s): 1,2,3
HEARING - MOTION TO DISMISS HELD ON 03/07/2011

ROBERT E MURRAY JR, JUSTICE
Attorney: WILLIAM BAGHDOYAN
DA: JAMES MITCHELL
Defendant Present in Court

03/07/2011 HEARING - MOTION FOR SPEEDY TRIAL HELD ON 03/07/2011

ROBERT E MURRAY JR, JUSTICE
Attorney: WILLIAM BAGHDOYAN
DA: JAMES MITCHELL
Defendant Present in Court

03/07/2011 MOTION - MOTION FOR SPEEDY TRIAL UNDER ADVISEMENT ON 03/07/2011

03/07/2011 MOTION - MOTION TO DISMISS FILED BY DEFENDANT ON 02/25/2011

03/07/2011 MOTION - MOTION TO DISMISS UNDER ADVISEMENT ON 03/07/2011

ROBERT E MURRAY JR, JUSTICE

03/07/2011 MOTION - MOTION TO DISMISS DENIED ON 03/07/2011

ROBERT E MURRAY JR, JUSTICE

COPY TO PARTIES/COUNSEL

03/07/2011 ORDER - COURT ORDER ENTERED ON 03/07/2011

ROBERT E MURRAY JR, JUSTICE

ORDER DENYING MOTION FOR SPEEDY TRIAL AND/OR MOTION TO DISMISS WITH PREJUDICE

A TRUE COPY

ATTEST: _____

Clerk