

**McKay v Town of Southampton**

2021 NY Slip Op 33964(U)

February 23, 2021

Supreme Court, Suffolk County

Docket Number: Index No. 605696/2020

Judge: John H. Rouse

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This opinion is uncorrected and not selected for official publication.

Index Number: 605696/2020

**SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART I2 - SUFFOLK COUNTY**

**PRESENT:**

HON. JOHN H. ROUSE, ACTING J.S.C.

MOTION DATE: 12/23/2020

ADJ. DATE:

MOT. SEQ. MG

CASEDISP

*e-filed full participation*

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Joe L. McKay,

Plaintiff

**DECISION AND ORDER**

-against-

The Town Of Southampton,

Defendant

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**TO:**

SCOTT LOCKWOOD, ESQ.  
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631-242-3369

LAW OFFICES OF  
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**U**pon the reading and filing: (1) Notice of Motion by Defendant for summary judgment; and (2) e-filed documents 1-52; it is:

**ORDERED**, that Defendants motion for summary judgment is granted and the case is dismissed.

**ENTER**

**DECISION**

On May 26, 2020, Plaintiff commenced this action to recover from the Defendant upon his complaint that he was falsely imprisoned upon a felony complaint after the expiration of the Criminal Procedure Law § 180.80 release date. Plaintiff had been arrested and held on bail on two felonies, Reckless Endangerment in the First Degree and Criminal Possession of a

Controlled Substance in the Fifth Degree. Bail was set in superior court. Plaintiff alleges his CPL § 180.80 release date was to have been Friday, June 21, 2019. The case was not presented to the grand jury and Plaintiff became eligible for release in his own recognizance. Nonetheless, the Plaintiff remained in the custody of the Suffolk County Sheriff. Plaintiff alleges, upon information and belief, that the Assistant District Attorney advised the Southampton Town Justice Court that the Plaintiff had not been indicted on the felony complaint. However, it was not until the Plaintiff's mother inquired about the Plaintiff's continued incarceration that Plaintiff was released on September 5, 2019. Issue has been joined and the Defendant moves for summary judgment.

Accepting the facts as alleged in the complaint that Plaintiff's 180.80 time expired on June 21, 2019, upon his application, Plaintiff was eligible for release pursuant to CPL § 180.80. Plaintiff did not make application on June 21, 2019 and was released in his own recognizance on September 5, 2019.

Further, on October 29, 2019 Plaintiff appeared in court with counsel and pleaded guilty to Reckless Endangerment in the Second Degree in that he admitted he had engaged in conduct which created a substantial risk of serious physical injury to another person or persons by firing a handgun on a residential street while several other individuals were present at that location. Plaintiff was sentenced to time served.

Criminal Procedure Law § 180.80 provides in relevant part:

**Upon application of a defendant against whom a felony complaint has been filed with a local criminal court or the youth part of a superior court, and who, since the time of his arrest or subsequent thereto, has been held in custody pending disposition of such felony complaint, and who has been confined in such custody for a period of more than one hundred twenty hours or, in the event that a Saturday, Sunday or legal holiday occurs during such custody, one hundred forty-four hours, without either a disposition of the felony complaint or commencement of a hearing thereon, the court must release him on his own recognizance unless:**

1. The failure to dispose of the felony complaint or to commence a hearing thereon during such period of confinement was due to the defendant's request, action or condition, **or occurred with his consent;** or
2. Prior to the application:
  - (a) The district attorney files with the court a written certification that an indictment has been voted; or
  - (b) An indictment or a direction to file a prosecutor's information charging an offense based upon conduct alleged in the felony complaint was filed by a grand jury; or

3.

(a) The court is satisfied that the people have shown good cause why such order of release should not be issued. Such good cause must consist of some compelling fact or circumstance which precluded disposition of the felony complaint within the prescribed period or rendered such action against the interest of justice.

Plaintiff in this case, while eligible to be released in his own recognizance, never made such an application to the court, and Plaintiff's detention was never continued over his objection. Moreover, had such an application been made to the court, the local criminal court, at that time, had the authority to continue bail on the misdemeanor charges if the prosecution reduced the charges pursuant to CPL § 180.50 as the prosecution ultimately did.

To the extent Defendant contends it deputized the Assistant District Attorney to advise the court that there had been no indictment this may have been a convenient accommodation between those parties, but when it was unavailing the Defendant retained his right to make application himself as provided by statute and he did not.

Accordingly, Defendant's motion for summary judgment is granted on the ground that Plaintiff never made application to the court for his release and ultimately Plaintiff incurred no damages because he pleaded guilty to the misdemeanor of Reckless Endangerment in the Second Degree and agreed to a sentence of the time he had served in the county jail.

The foregoing shall constitute the decision and order of the court.

Dated: February 23, 2021

ENTER:

  
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**JOHN H. ROUSE**

ACTING J.S.C.

FINAL DISPOSITION