

ORDER ON MOTION

STATE OF NEW JERSEY
(PLAINTIFF-APPELLANT)
V.
FABIAN F. FRATER, MARSHEA
ANTHONY, KHALIF HAMILTON,
CHARLES JACKSON, GLIBERTO LARA,
SHADEIK N. STRATFORD, HUDHAIFA
H. JOHNSON, NHAZIR BRIGGS-
SMITH, JAVON PARKER AND MICHAEL
LAWHORN
(DEFENDANTS-RESPONDENTS)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. AM-000286-18T6
MOTION NO. M-004008-18
BEFORE PART A
JUDGE(S): JACK M. SABATINO
THOMAS W. SUMNERS JR.

MOTION FILED: 02/04/2019 BY: STATE OF NEW JERSEY
REPLY: 02/14/2019 &
2/20/2019
ANSWER(S) 02/14/2019 BY: MICHAEL LAWHORN
FILED: 02/15/2019 BY: FABIAN F FRATER
02/15/2019 BY: HUDHAIFA H JOHNSON
02/17/2019 BY: JAVON PARKER

SUBMITTED TO COURT: February 15, 2019

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
21st day of February, 2019, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION LEAVE TO APPEAL AND TO STAY
TRIAL COURT'S 1/23/19 ORDER AND
EXTEND TIME TO INDICT : GRANTED AND OTHER

SUPPLEMENTAL:

We grant the State's emergent motion for leave to appeal the trial
court's January 23, 2019 order denying its motion under N.J.S.A.
2A:162-22(a)(1), and Rule 3:25-4(b), to extend the time to detain
various defendants in this matter for an additional forty-five days
before the State issues an indictment.

We summarily affirm the challenged order, substantially for the reasons expressed in the January 23, 2019 lengthy oral opinion of Judge Adam Jacobs, as further articulated in his written amplification dated February 7, 2019.

We reach this disposition on a summary basis in light of the time-sensitive nature of the State's emergent application and the ongoing detention of defendants, and also given the patent soundness of the trial court's decision. We add only a few additional comments.

N.J.S.A. 2A:162-22(a)(1)(a) establishes a ninety-day time limit to return an indictment, not counting excludable time, and then goes on to provide:

If the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result, and also finds that the failure to indict the eligible defendant in accordance with the time requirement set forth in this subparagraph was not due to unreasonable delay by the prosecutor, the court may allocate an additional period of time, not to exceed 45 days, in which the return of an indictment shall occur.

[N.J.S.A. 2A:162-22(a)(1)(a)(emphasis added).]

These provisions in the statute are reiterated and implemented in Rule 3:25-4(b)(2), (3), and (4).

The use of the pivotal term "may" within the statute, mirrored by the use of that term in Rule 3:25-4(b)(4), signifies that trial courts are to be afforded substantial deference in deciding, in their discretion, whether to grant the State a time extension, even if the preconditions of a public safety risk or obstruction and a lack of "unreasonable delay" are shown. We review on appeal such a discretionary ruling under an abuse of discretion standard. Cf. State v. S.N., 231 N.J. 497, 515 (2018) (similarly applying an abuse of discretion standard).

Applying that standard here, we are unpersuaded that the trial court abused its discretion in denying the State's motion for an extension.

The trial court correctly noted that the State could obtain indictments within the ninety-day deadline without an extension, and the State does not dispute this. Moreover, the court noted that the State's concerns regarding complexity and its ongoing investigation could be addressed by the use of a complex case designation under Rule 3:25-4(i)(7), or superseding indictments. The State does not really

dispute this, either; rather, it eschews the possibility of a complex case designation and contends that it would be inconvenient and inefficient to compel it to obtain superseding indictments.

Under the circumstances, the trial court was within its discretion to deny the State an extension on the deadline to indict.

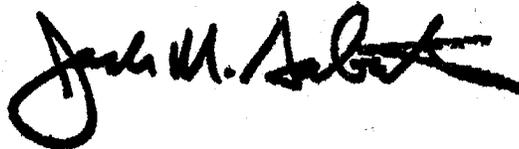
The trial court provided sound reasons for finding that the State had not shown the necessary predicate of a lack of unreasonable delay.

In addition, even if this court were to second-guess that determination as to the predicate element of reasonable delay, the State's argument that it was entitled to an extension as a matter of law is incorrect.

A stay of the trial court's ruling shall expire at 4:00 p.m. on Monday, March 1, unless the State files an emergent application with the Supreme Court by that time, in which case the interim stay will remain in place unless and until directed otherwise by the Court. Nothing prevents the State in the meantime to have an indictment issued that will allow defendants' continued detention.

The motion of the ACLU to appear on short notice as an amicus is granted. We note the State responded to the ACLU's arguments in its reply brief.

FOR THE COURT:



JACK M. SABATINO, P.J.A.D.