

January 27, 2022

VIA ELECTRONIC FILING

Honorable Chief Justice and Associate Justices
Supreme Court of New Jersey
25 Market Street
Trenton, New Jersey 08625

**Re: State v. Marcus Mackroy-Davis
(Sup. Ct. Filing ID 1032836)
App. Div. Docket No. AM-000194-21**

Honorable Chief Justice and Associate Justices:

Please accept this letter brief in lieu of a more formal submission from amici curiae the Office of the Public Defender (OPD) and American Civil Liberties Union of New Jersey (ACLU-NJ) in support of Defendant's Motion for Leave to Appeal.

TABLE OF CONTENTS

PRELIMINARY STATEMENT.....2

STATEMENT OF FACTS/PROCEDURAL HISTORY.....2

ARGUMENT.....2

I. LEAVE TO APPEAL SHOULD BE GRANTED TO ADDRESS A RECURRING PROBLEM IN THE APPLICATION OF THE CRIMINAL JUSTICE REFORM ACT.....2

CONCLUSION.....5

PRELIMINARY STATEMENT

The time has come for the Court to set meaningful limits on the issuance of excludable time. The COVID-19 pandemic and resultant difficulty in conducting jury trial has, understandably, created tension with the speedy trial requirements of the Criminal Justice Reform Act (CJRA). But, as demonstrated by this case, the solution is not to ignore the mandates of the law and the associated Rules. When courts disregard those plain requirements the public loses faith in the fair functioning of the legal system and question whether judicial determinations are results driven rather than dictated by law. To prevent this outcome and to provide meaningful guidance to lower courts, amici urge the Court to grant leave to appeal and reverse the excludable time order under review.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

For the purpose of this brief, amici accept the statement of facts and procedural history contained in Defendant's Brief in Support of Leave to Appeal.

ARGUMENT

I. LEAVE TO APPEAL SHOULD BE GRANTED TO ADDRESS A RECURRING PROBLEM IN THE APPLICATION OF THE CRIMINAL JUSTICE REFORM ACT.

The continued viability of the Criminal Justice Reform Act hinges on the careful balance struck by the Legislature allowing pretrial detention while imposing strict deadlines for bringing a detained defendant to trial. As this Court cautioned just a

year ago, pretrial detention cannot be unending: "due process concerns impose limits on how long a defendant may be held in custody before trial." Matter of Request to Release Certain Pretrial Detainees, 245 N.J. 218, 231 (2021). These time limits ensure the constitutionality of the CJRA. Ibid. See also States v. Salerno, 481 U.S. 739, 747 (1987) (finding federal Bail Reform Act constitutional because "maximum length of pretrial detention is limited by the stringent time limitations" of statutory scheme).

Yet it appears that trial courts across the state routinely grant excludable time in violation of the CJRA, gutting the time limits of the statute. The excludable time orders in State v. Mackroy-Davis exemplify this problem. The State obtained a superseding indictment on the eve of the deadline to bring Mr. Mackroy-Davis to trial. The court granted over 200 days of excludable time -- more than the total time allowed to bring the initial indictment to trial -- without analysis and though the State had all of the information to bring these charges more than a year before obtaining the new indictment. (2T 3:22-4:6) (explaining that the State obtained new information in May of 2020, which gave rise to two new counts in the indictment and noting that "[o]therwise, the indictment remains the same"); R. 3:25-4(f). The court then applied this excludable time not only to the 180-day deadline, but also to the 2-year "outer limit"

even though this excludable time is not attributable to the defendant. R. 3:25-4(d).

The excludable time order violates the plain language of the CJRA (N.J.S.A. 2A:162-22(a)(2)(a) (limiting excludable time beyond two year limit to delays "attributable to the eligible defendant")) and our Court Rules (see R. 3:25-4(f) (requiring courts to consider "the nature and extent of differences between the superseded and superseding indictments" with a focus on "the degree to which the superseding indictment is based on information that was available at the time of the original indictment or that could have been obtained through reasonably diligent efforts at the time of the original indictment")), as well as the Appellate Division's single published opinion addressing the issue of superseding indictments. State v. D.F.W., 468 N.J. Super. 422 (2021). Despite these plain violations, the Appellate Division declined to entertain even reviewing the issue. Sanctioning the orders in this case not only renders the time limits illusory for Mr. Mackroy-Davis, but sends a message to trial courts that the CJRA's deadlines are meaningless. Continued interpretation of the CJRA in this manner risks a constitutional crisis, necessitating this Court's intervention.

This Court has yet to hear a case interpreting the excludable time provisions of the CJRA. After two years of

stalled trials, with thousands of people detained awaiting their day in court, the time to address this issue is now. The backlog will only get worse unless the time limits of the CJRA are given meaning by this Court. As it stands now, trials are few and far between, and prosecutors have little to no incentive to make reasonable plea offers. In short, people are languishing and justice for all is being denied. This does not mean that courts cannot grant excludable time under the statute: but it does require them to heed the limits imposed by the statute and Court Rules. The ACLU and OPD therefore support Mr. Mackroy-Davis's motion for leave to appeal as an opportunity for this Court to affirm the importance of the CJRA time limits and provide much needed guidance for interpretation of the excludable time periods.

CONCLUSION

The Court should grant leave to appeal and reverse the excludable time order.

Respectfully submitted,

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