

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

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|---------------------------|---|----------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Criminal Action No. |
| v. |) | 10-00320-12-CR-W-DGK |
| |) | |
| DESHAUN L. CERUTI, |) | |
| |) | |
| Defendant. |) | |

ORDER

Before the court is a motion to reconsider the continuance order entered on March 6, 2012. In support, defendant states in part as follows:

1. Mr. Ceruti is charged with charges related to conspiracy to distribute cocaine, crack cocaine and marijuana by Indictment filed November 8, 2010, along with eighteen co-defendants.

2. He currently is incarcerated while awaiting the trial of this matter.

3. On February 29, 2012, counsel for co-defendant Richardson contacted the other defense attorneys to inform them of his intention to request a continuance, citing client health issues as his main reason for the request; counsel asked if any of the defendants opposed the motion.

4. Defense counsel for Mr. Ceruti informed counsel for co-defendant Richardson that Mr. Ceruti was opposed to the continuance since he is ready for trial and has been incarcerated since his arrest on the Indictment.

5. On March 1, 2012, co-defendant Richardson, filed a Motion to Continue Trial Setting, and listed Mr. Ceruti among three co-defendants who objected to the request.

6. The Court scheduled an Attorney Conference to address this issue.

7. Thereafter, the Court granted co-defendant Richardson's Motion to Continue Trial Setting.

The Court should deny the Motion and set aside the Order with regard to Defendant DeShaun Ceruti. Mr. Ceruti has been in custody since December 16, 2010. Without the current instance, this matter has been continued on one previous occasion since Mr. Ceruti has been involved in the case.

The Speedy Trial Act of 1974 requires that a criminal defendant must be brought to trial within seventy days of his initial appearance date. Mr. Ceruti asserts that the provisions that allow continuance pursuant to 18 U.S.C. § 3161 do not apply and he should be allowed to proceed to trial in a timely manner. He has not consented to the continuance request. He has prepared his defense with his attorney and is ready to begin the trial.

Excluded from the speedy trial calculation is a "reasonable period of delay when the defendant is joined for trial with a co-defendant as to whom the time for trial has not run and no motion for severance has been granted." 18 U.S.C. § 3161(h)(6). Under this provision, time excludable as to one defendant is excludable to all co-defendants. United States v. Fuller, 942 F.2d 454, 457 (8th Cir. 1991). Unlike some periods of delay automatically excluded by the Act, delay caused by joinder with a co-defendant must be reasonable. Henderson v. United States, 476 U.S. 321, 327 (1986). In assessing the reasonableness of delay attributed to co-defendants, courts should be guided by the policies supporting the enactment of section 3161(h)(6):

The legislative history of this section demonstrates a strong Congressional preference for joint trials and an intention that delays attributable to the joinder of defendants be liberally excluded. Further, the purpose of this section is to insure that the Speedy Trial Act does not alter the present rules governing severance of co-defendants by forcing the government to prosecute the defendants separately or be subject to a speedy trial dismissal motion.

United States v. Monroe, 833 F.2d 95, 100 (6th Cir. 1987)

(citations omitted). In other words, Congress expressly favored the goals of efficiency and economy resulting from multi-defendant trials despite the loss of speed that would result. Id.

In United States v. Fogarty, 692 F.2d 542, 546 (8th Cir. 1982), the court discussed the impact of the Speedy Trial Act on multiple-defendant cases:

The Act specifically addresses the application of exclusions to multiple defendant cases such as this one. Section 3161(h)(7) provides that a court shall exclude:

A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

We agree with the D.C. Circuit's view that "[this provision] is crucial in a case involving multiple defendants because it provides that an exclusion applicable to one defendant applies to all codefendants." United States v. Edwards, 627 F.2d 460, 461 (D.C. Cir.), cert. denied, 449 U.S. 872 (1980); accord, United States v. Manbeck, 514 F. Supp. 152, 154-55 (D.D.C. 1981). Applying this provision here, we note that: (1) Fogarty's severance motion was never granted and he was to be tried along with his coconspirator/codefendants; (2) the January 6, 1981 trial date was clearly timely as to Fogarty's codefendants who successfully sought continuances; (3) the district court properly determined that the delay resulting from the granting of the continuance motions was reasonable.

The court held that, because Fogarty was not severed from his co-defendants who successfully sought continuances which were reasonable, the delay attributed to those continuances applied to Fogarty as well, and his speedy trial rights were not violated. Id. at 547.

In this case, because defendant's motion to sever has been denied, the continuance was granted at the request of a co-defendant, and the delay resulting from the continuance was found reasonable, it is

ORDERED that defendant's motion to reconsider the continuance order and trial setting is denied.

/s/ Robert E. Larsen
ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
March 13, 2012