

APPENDIX A
Panel Opinion,
Court of Appeals for the Sixth Circuit
Appeal No.: 21-3820
December 7, 2021

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,)
)
 v.)
)
 JONATHAN C. ROUSH,)
)
 Defendant-Appellant.)

FILED
Dec 07, 2021
DEBORAH S. HUNT, Clerk

O R D E R

Before: MOORE, GILMAN, and KETHLEDGE, Circuit Judges.

Defendant Jonathan C. Roush, proceeding pro se, appeals a district court order denying his motion for release pending trial based on violations of the Speedy Trial Act, 18 U.S.C. § 3164. He also moves for release pending appeal, to exclude the district court's post-denial order memorializing its computation of his countable period of detention, and has twice moved to expedite consideration of his motion for release. The government opposes reversal, opposes Roush's release, and opposes exclusion of the district court document. Roush replies. Neither party requests oral argument. The facts and legal arguments are adequately presented on the briefs; thus, we unanimously agree that oral argument is not necessary. Fed. R. App. P. 34(a)(2)(C).

Where the district court has denied a Speedy Trial Act claim, we review the district court's legal rulings de novo and its factual findings for clear error. *United States v. Sobh*, 571 F.3d 600, 602 (6th Cir. 2009). “[W]e review the district court's decision to grant an ends-of-

justice continuance under an abuse-of-discretion standard.” *United States v. White*, 920 F.3d 1109, 1112 (6th Cir. 2019) (quoting *United States v. Williams*, 753 F.3d 626, 635 (6th Cir. 2014)). And “[a] defendant must prove actual prejudice to obtain a reversal on appeal of the trial judge’s decision to grant a continuance.” *United States v. Strickland*, 342 F. App’x 103, 110 (6th Cir. 2009) (citing *United States v. Monger*, 879 F.2d 218, 221 (6th Cir. 1989)).

“The Speedy Trial Act provides that the trial of a defendant detained pending trial ‘shall commence not later than ninety days following the beginning of such continuous detention.’” *United States v. Monk*, 12 F. App’x 325, 326 (6th Cir. 2001) (quoting 18 U.S.C. § 3164(b)). And “[n]o detainee . . . shall be held in custody pending trial after the expiration of such ninety-day period required for the commencement of his trial.” 18 U.S.C. § 3164(c). However, the calculation of the 90-day period takes into account certain excludable periods of delay under 18 U.S.C. § 3161(h). 18 U.S.C. § 3164(b). Excluded from the 90-day period is “[a]ny period of delay resulting from a continuance granted by any judge on his own motion . . . if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A); *see also United States v. Richardson*, 681 F.3d 736, 738 (6th Cir. 2012). “But the [Speedy Trial] Act also warns that a delay resulting from an ends-of-justice continuance will not be excludable from the [90-day] period ‘unless the court sets forth, in the record of the case, either orally or in writing, its reasons’” for such findings. *Richardson*, 681 F.3d 736 at 738–39 (quoting 18 U.S.C. § 3161(h)(7)(A)). Although “the Act is clear that the findings must be made, if only in the judge’s mind, before granting the continuance . . . , the Act is ambiguous on precisely when those findings must be ‘se[t] forth, in the record of the case.’” *Zedner v. United States*, 547 U.S. 489, 506–07 (2006) (citation omitted). The Supreme Court has held that

“at the very least the Act implies that those findings must be put on the record by the time a district court rules on a defendant’s motion to dismiss under [18 U.S.C.] § 3162(a)(2).” *Id.* at 507.

At Roush’s September 1, 2021, status conference, the district court denied his motion for release based on the district court’s General Orders regarding defendants’ speedy trial rights during the pandemic. Although this discussion was brief, it does not show an abuse of the district court’s discretion. The district court orally set forth its reasons for finding that its General Orders pertaining to the pandemic—which were expressly issued as ends-of-justice continuances excludable from speedy trial calculations—applied to Roush’s case. These orders were properly applied, because the district court was managing cases in light of the COVID-19 pandemic. “And so long as the court based its continuance on permissible factors under the Speedy Trial Act, and did not invent after-the-fact findings to justify an ends-of-justice continuance that cannot fairly be said, upon review of the record, to have served as its basis for granting the continuance, its action was proper.” *United States v. Patton*, 651 F. App’x 423, 426 (6th Cir. 2016) (quoting *United States v. Brown*, 819 F.3d 800, 814 (6th Cir. 2016)) (cleaned up). Here, the district court clearly, albeit briefly, articulated its reason for granting the continuances set forth in the general orders: the ongoing pandemic. The district court did not abuse its discretion in finding that the ends of justice served by postponing or limiting jury trials during the pandemic under the General Orders outweighed Roush’s right to a speedy trial. And Roush cannot show that the denial of his motion resulted in actual prejudice, especially because he has since sought another continuance, pushing his trial to February 2022. As the district court stated at Roush’s status conference and further explained in its September 17, 2021 order, Roush has

not been detained for 90 days of non-excludable time. Accordingly, there is no basis upon which he should be released.

The district court's order is **AFFIRMED**. The remaining motions are **DENIED AS MOOT**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX C

Marginal Entry Order Memorializing

Oral Ruling

N.D. Ohio Case No.: 5:20-CR-00621

R. 22, Order

September 8, 2021

Recd
FILED

**IN THE UNITED STATES DISTRICT COURTS
FOR THE NORTHERN DISTRICT OF OHIO**

JUN 23 2021

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

United States of America

) Case No.: 5:20-CR-00621

Plaintiff,

) Senior Judge Christopher A. Boyko

FILED

v.

) **EMERGENCY MOTION FOR**

Jonathan C. Roush

) **IMMEDIATE RELEASE**

Defendant,

) **PURSUANT TO 18 USCS 3164 (c)**

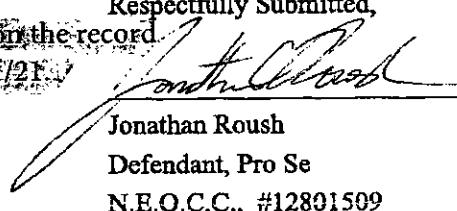
) **{Hearing Requested}**

JUN 23 2021
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
YOUNGSTOWN

Defendant, *pro se*, moves this Honorable Court to Grant an Order to set a date for a hearing for the immediate release of Defendant from detention, pursuant to 18 USCS 3164 (c), subject to the proposed conditions of release set forth in the attached memorandum.

Respectfully Submitted,

~~Motion denied for the reasons set forth on the record
during the status conference held on 9/7/21.~~
s/ John R. Adams
U.S. District Judge (9/8/21)


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Defendant, Pro Se
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**Additional material
from this filing is
available in the
Clerk's Office.**