

21A384

ATTACHMENT A
Sixth Circuit Panel Opinion
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

ATTACHMENT B

**R. 37, Transcript of Status Conference
Held On September 1, 2021**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff, Case No. 5:20CR621

Akron, Ohio

Wednesday, September 1, 2021
2:51 p.m.

JONATHAN ROUSH,

Defendant.

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE JOHN R. ADAMS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: Carol M. Skutnik
Office of the U.S. Attorney - Cleveland
Carl B. Stokes U.S. Courthouse
801 Superior Avenue, West, Suite 400
Cleveland, Ohio 44113
(216) 622-3600

For the Defendant: Jonathan Roush, pro se
#12801-509
NEOCC
22240 Hubbard Road
Youngstown, Ohio 44505

Standby Counsel: Joseph P. Morse
Law Office of Joseph P. Morse
323 West Lakeside Avenue, Suite 220
Cleveland, Ohio 44113
(216) 241-0520

Court Reporter: Caroline Mahnke, RMR, CRR, CRC
Federal Building & U.S. Courthouse
2 South Main Street, Suite 568
Akron, Ohio 44308
(330) 252-6021

Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

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Wednesday, September 1, 2021

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THE DEPUTY CLERK: This United States District Court is now in session. The Honorable John R. Adams presiding.

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THE COURT: For the record, the Court has before it today Case Number 5:20CR621. The case is United States of America versus Jonathan Roush. We're here today for a status conference.

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Counsel for the government, are you ready to proceed?

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MS. SKUTNIK: Yes, Your Honor. Carol Skutnik on behalf of the United States from the U.S. Attorney's Office. Also present with the government today is Task Force Officer Joanna Nagy-Ungar who is with the Ohio Adult Patrol and the FBI task force.

THE COURT: Thank you.

On behalf of Mr. Roush, who is appearing pro see. I believe that issue has been decided before Judge Boyko.

Mr. Roush, can you hear me?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you consent to proceeding by video today?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Is there a standby counsel? I'm not sure whether standby counsel was appointed. The docket seems to indicate it was.

1 Mr. Morse.

2 MR. MORSE: Yes, Your Honor. On a previous
3 occasion at the pro se hearing I was appointed by Judge
4 Boyko for those purposes. Thank you.

5 THE COURT: All right. Counsel, I think today
6 is -- the goal is to set dates in the case, to set a final
7 pretrial, and set a trial date.

8 So counsel for the government, can you give me a rough
9 idea of what your presentation will be, how long it might
10 take, etcetera?

11 MS. SKUTNIK: Your Honor, the government would
12 anticipate approximately five to six witnesses. We would
13 expect our presentation of evidence to last one to two days.

14 THE COURT: All right. And that's exclusive of
15 jury selection?

16 MS. SKUTNIK: Yes, Your Honor.

17 THE COURT: All right. Mr. Roush, what would you
18 intend to present in your case?

19 I know it's difficult for you at this point to make
20 those decisions, but do you have any idea what type of
21 defense you intend to present?

22 THE DEFENDANT: Your Honor, I'm still evaluating
23 at this time. I just recently received discovery from Ms.
24 Skutnik this past, I believe Friday, Thursday or Friday of
25 last week. So I have not had a chance to thoroughly review

1 the discovery in this case.

2 MS. SKUTNIK: May I be heard on that, Your Honor?

3 THE COURT: Yes, you may.

4 MS. SKUTNIK: Your Honor, I provided full

5 discovery to Mr. Morse in November of 2020. I confirmed
6 with Mr. Morse that he reviewed the entire discovery packet
7 with Mr. Roush on a prior date.

8 Once Mr. Roush was permitted to go pro se, he filed a
9 pro se request for discovery and the government reissued
10 identical discovery to him at CCA.

11 So he has had access to discovery since at least
12 December of 2020.

13 THE COURT: Well, be that as it may, given our
14 trial schedule, how long it will take us to present the case
15 to a jury, he's going to have more than adequate time to
16 review the information just between now and trial or between
17 now and pretrial.

18 So Ms. Kestner, could we have a pretrial date.

19 THE DEPUTY CLERK: Yes, Judge. We actually moved
20 the dates over that were previously set in the case. And we
21 currently have a video pretrial set for October 27 at 10:00
22 and the jury trial set for November 1 at 9:00 unless you
23 want to change those dates, Judge.

24 THE COURT: Well, the concern I have is we're
25 going to need an earlier date to make sure that we do a

1 walkthrough and make sure we advise the defendant of the
2 method, manner, and means of picking a jury, et cetera.

3 So we can keep, I suspect, both dates. But we may
4 want to set a date a week or two earlier so that we can get

5 our jury questionnaires out, get everything moving for jury
6 selection.

7 THE DEPUTY CLERK: Judge, that would
8 be -- usually we need four weeks to do that. So if you want
9 to maintain the trial date of November 1, then that would be
10 around October 1, end of September.

11 Can we do September 30 at 11:00 a.m., that's a
12 Thursday, for pretrial?

13 THE COURT: Ms. Skutnik, is that convenient for
14 you?

15 MS. SKUTNIK: It is, Your Honor.

16 THE COURT: Mr. Roush?

17 THE DEFENDANT: Your Honor, currently I have,
18 obviously, open availability for hearings.

19 THE COURT: All right. And counsel, Mr. Morse,
20 are you available at that time?

21 MR. MORSE: Yes, Your Honor.

22 THE COURT: All right. So just by way of
23 information, what we will do is as follows: On the date in
24 question, October -- excuse me, September 30, that will be
25 the last date which I will accept any plea in the case.

1 I'm not suggesting there should be a plea. I'm not
2 suggesting that in any way there should be a plea. But if
3 the government has made an offer to the defendant, make sure
4 you file under seal a copy of the plea agreement. I'll
5 inquire on that date. If Mr. Roush wishes to reject it,
6 that's certainly fine. We'll place it under seal so in the
7 event there is a conviction there can be no complaint that
8 the plea agreement wasn't communicated to the defendant or
9 he wasn't aware of the consequences if the conviction is
10 more severe than his proposed plea agreement.

11 That's the last date I'll accept a plea.

12 Also, Mr. Roush, if you wish to submit any written
13 questions you would like the Court to make part of our
14 written questionnaire, you need to do that within 14 days of
15 today's date. We will be required to send out those written
16 questionnaires to our prospective jurors about four weeks
17 prior to trial.

18 So we have questions. Any questions you would like us
19 to incorporate into our questionnaire, we will do that.

20 We'll try to send Mr. Morse a copy -- and send it to
21 you, too, Mr. Roush perhaps by mail -- a copy of the
22 standard questionnaire we use and will use in this case
23 along with any more specific questions that we deem is
24 appropriate.

25 The purpose of voir dire is not to indoctrinate the

1 jury about your theory of the case. That's to both sides.
2 It's simply to find 12 jurors who can be fair and impartial,
3 set aside any biases, prejudices, any information, opinions
4 they might have and decide the case fairly and impartially.

5 And so we will do that.

6 Once we have the written questionnaires mailed out,
7 once they're returned to the Court -- actually they're
8 e-mailed. Once they're returned to the Court, we'll provide
9 copies to both sides to review for purposes of voir dire.
10 And we will then meet and confer on the 27th, more likely
11 than not, and discuss which jurors we can excuse for cause.

12 Sometimes jurors have personal matters, health
13 matters, scheduling matters, other issues that will allow us
14 to excuse them for cause. And we can do that at our meeting
15 at that time.

16 Voir dire, on the day of trial, will be conducted by
17 me. I will ask the questions. And if there is any
18 questions you would like to ask, any follow-up questions to
19 my questions, then I'll need to approve them. I'll need to
20 make sure that they're appropriate.

21 And we can discuss that at a later time as we confer
22 for our two -- at our two conferences.

23 So obviously that's how we're going to proceed.

24 And Mr. Roush, you've already been through the
25 process. I take it you still wish to represent yourself?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. Well, I want to just
3 reiterate something I'm sure you've been told before.

4 You are at a distinct disadvantage, particularly in a
5 case of this nature, trying to represent yourself.

6 So I leave it to you. You've been through the inquiry
7 with Judge Boyko. He's inquired. And there has been a
8 finding that you can represent yourself. So you may.

9 I'm just telling you now, I can't give you any special
10 consideration, meaning I can't tell you what the law
11 requires. I can't do any of those things.

12 Maybe Mr. Morse can help you in some respects. But as
13 far as you trying the case, you need to comply with all the
14 rules that everyone else is required to follow. The rules
15 of civil procedure, rules of evidence, all the rules that I
16 will put in place or have put in place for trials will apply
17 to you. There will be no conduct that's outside what is
18 permitted by attorneys practicing in this Court.

19 Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: That is what will be required.

22 Before we go further, anything else then the
23 government would like me to address before we adjourn the
24 hearing?

25 MS. SKUTNIK: Your Honor, Mr. Roush has a pending

1 motion that he filed pro se while he was still represented
2 in front of Judge Boyko. Judge Boyko refused to address the
3 motion before recusing himself. That motion is outstanding.
4 And it relates to Mr. Roush's request for immediate release
5 from detention.

6 THE COURT: I'm aware, counsel.

7 Mr. Roush, do you wish to be heard further?

8 THE DEFENDANT: I'm sorry, Your Honor. You broke
9 up a little bit there.

10 THE COURT: I said, do you wish to be heard any
11 further regarding your motion for immediate release?

12 THE DEFENDANT: Yes, Your Honor.

13 I do hereby request that the Judge issue a ruling on
14 this motion as it does pertain to release. The motion has
15 been fully briefed since the 13th of July. And it's been
16 pending since then with no ruling by the Court.

17 THE COURT: You've had a detention hearing, I
18 take it?

19 THE DEFENDANT: Yes, I did, Your Honor.

20 THE COURT: All right. So you don't get two
21 bites at the apple. The motion is denied.

22 Once a detention order has gone on, once there has
23 been a detention hearing, the law does not require or permit
24 a further hearing on release for bond -- or doesn't require
25 the Court to consider another motion for bond.

1 So the motion is denied. We don't need to write on,
2 it. It's clear. And again, that issue has been decided
3 previously as it relates to detention.

4 So you'll be detained. There may still be a parole
5 holder in any event, if I'm not mistaken.

6 MS. SKUTNIK: There is, Your Honor?

7 THE COURT: Is that the case?

8 I'm sorry?

9 MS. SKUTNIK: There is, Your Honor.

10 THE COURT: All right. So there is still a
11 parole holder, so the matter is moot in any event.

12 So he'll be detained.

13 We will see you, unless something else comes up,
14 counsel, we will see you on the 30th of September.

15 MR. MORSE: Your Honor.

16 THE COURT: Yes.

17 MR. MORSE: I apologize for the interruption. I
18 misspoke regarding one thing, one additional request.

19 Relative to the September 30 date, I had looked
20 inappropriately. I am scheduled for a suppression hearing
21 down in Guernsey County. Would standby counsel be able to
22 appear electronically from that location?

23 THE COURT: Yes, you may.

24 MR. MORSE: Thank you very much, Judge.

25 THE COURT: We won't be doing things in person

1 until the 27th of October simply because of the COVID issues
2 and what have you.

3 So we'll do the pretrial conference the 27th in person
4 so we have sort of a walkthrough, so everyone knows where
5 they're going to be sitting, what they're going to be
6 wearing in terms of masks and all the safety protocols that
7 are required.

8 So the 27th will be in person. The 30th will not.

9 MR. MORSE: Thank you, Your Honor, very much.

10 THE COURT: Any other questions anybody might
11 have?

12 Anyone else have any questions?

13 MS. SKUTNIK: Nothing from the government, Judge.

14 THE DEFENDANT: Your Honor, if I may, in
15 regards --

16 THE COURT: Go ahead.

17 THE DEFENDANT: Your Honor, in regards to the
18 release motion, I would like to make note on the record that
19 the motion for release was not based on the factors under
20 3142, the Bail Reform Act. It was under a separate
21 provision under the Speedy Trial Act of 3164 which requires
22 release of a defendant if the defendant's Speedy Trial
23 Act rights have been violated.

24 THE COURT: Well, sir, I'm not sure if you've
25 read the general orders that the Court has put up regarding

1 speedy trial during the course of the pandemic. The chief
2 judge has issued two or three general orders that would make
3 your motion not well-taken as it relates to speedy trial.

4 So candidly, I'm not overly concerned about it at all
5 because, again, the orders have been issued by the Court.
6 If you want to take a look at those general orders, or if
7 your counsel hasn't shared them with you -- you're your own
8 attorney -- you'll learn, I think, that your speedy trial
9 motion is not well-taken.

10 So as I've indicated, I'm not overly concerned about
11 it because of the Court's general orders.

12 You'll remain detained.

13 | Thank you very much. That will be the Court's order.

14 (MS. SKUTNIK: Thank you, Judge.

15 THE COURT: You're welcome.

16 (Proceedings concluded at 3:06 p.m.)

C E R T I F I C A T E

20 I certify that the forgoing is a correct
21 transcript from the record of proceedings in the
22 above-entitled matter.

24 S/Caroline Mahnke 9/21/2021

25 Caroline Mahnke, RMR, CRR, CRC Date

ATTACHMENT C

E-Mail, May 13, 2021

From: Heather Sherer
To: Skutnik, Carol M. (USAohn); jpm_imorse-law.com
Subject: 20-cr-00621-CAB United States of America v. Jonathan Roush
Date: Thursday, May 13, 2021 1:16:13 PM

Counselors:

Per defense counsel, this defendant looks like he wants to go to trial. I wanted to give you some dates so we can get it on the calendar. We have trials scheduled non-stop through the middle of October, so that is the earliest we have available. Can you let me know if any of these dates and times work for you? Also, do have any idea how long you would need for the trial. Any cases where the trial is taking more than 5 days are being put on hold.

Trial

11/1

11/8

11/15

Final Pretrial

10/25 10:00 or 11:00

10/26 10:00 or 11:00

10/27 10:00 or 11:00

10/28 10:00 or 11:00

10/29 10:00 or 11:00

Heather R. Sherer, Courtroom Deputy
to the Honorable Christopher A. Boyko
Senior United States District Judge
U.S. District Court, Northern District of Ohio
801 West Superior Avenue, Cleveland, Ohio 44113
216-357-7151 / 216-357-7153

ATTACHMENT D
R. 22, Marginal Entry Order
September 8, 2021

Recd

FILED

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
v.)
Jonathan C. Roush) EMERGENCY MOTION FOR
Defendant,) IMMEDIATE RELEASE
) PURSUANT TO 18 USCS 3164 (c)
) {Hearing Requested}

FILED

JUN 23 2021

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

EMERGENCY MOTION FOR

IMMEDIATE RELEASE

PURSUANT TO 18 USCS 3164 (c)

{Hearing Requested}

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.
In the event of a variance between O.E. 21

SAFETY RECOMMENDATIONS

U.S. DISTRICT COURT 9/8/21

✓ Jonathan Roush

Defendant, Pro Se

N.E.O.C.C. #12891509

2240 Hubbard Road

Youngstown, Ohio 4450