

Appendix

Appendix

Order and Memorandum Disposition

Filed June 26, 2023

Ninth Cir. 21-50306, Docket No. 45.....App. 1

Amended Order Continuing Trial Date and Findings Regarding Excludable
Time Periods Pursuant to Speedy Trial Act

Filed April 27, 2021

C.D. Cal. 2:21-cr-00094-VAP, Docket No. 33App. 7

Order (1) Overruling Objection to Order Requiring Mental Examination and
Setting Competency Hearing; and (2) Denying Motion to Dismiss as Moot

Filed May 18, 2021

C.D. Cal. 2:21-cr-00094-VAP, Docket No. 42App. 14

Judgment and Commitment Order

Filed December 15, 2021

C.D. Cal. 2:21-cr-00094-VAP, Docket No. 88App. 19

General Order No. 21-07

United States District Court for the Central District of California

Filed April 15, 2021App. 24

18 U.S.C. § 3161.....App. 29

18 U.S.C. § 3164.....App. 34

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 26 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES KEVIN BALL, AKA King James,

Defendant-Appellant.

No. 21-50306

D.C. No.

2:21-cr-00094-VAP-1

Central District of California,
Los Angeles

ORDER

Before: HURWITZ and R. NELSON, Circuit Judges, and KANE,* District Judge.

The memorandum disposition filed on May 18, 2023 is amended as follows:

On page 3, in the sentence that begins with <The district court considered>, delete <the> in <the key factors>, and delete <the weighty evidence of his guilt;>. On page 3, after <And the fact that> insert <, as Ball argued in his opening brief and to the district court below,>. On page 3, after <grand jury proceedings> insert <by early 2021>. On page 3, after <serious risks and illness.”> insert <Nor did the Central District of California’s resumption of jury trials in June 2021 preclude the district court from reasonably determining, as it did, that “protocols to protect health and safety will limit the number of jury trials that can be conducted simultaneously” going forward. See *United States v. Orozco-Barron*, 67 F.4th 1203, 1212–13 (9th

* The Honorable Yvette Kane, United States District Judge for the Middle District of Pennsylvania, sitting by designation.

Cir. 2023).>.

With this amendment, the panel voted to deny the petition for panel rehearing. Judge Nelson voted to deny the petition for rehearing en banc. Judges Hurwitz and Kane recommended denying it.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and rehearing en banc, Dkt. 44, is **DENIED**. No further petitions for rehearing will be accepted.

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 26 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES KEVIN BALL

Defendant-Appellant.

No. 21-50306

D.C. No. 2:21-cr-00094-VAP-1

AMENDED
MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Submitted May 12, 2023**
Pasadena, California

Before: HURWITZ and R. NELSON, Circuit Judges, and KANE,*** District Judge.

James Ball pleaded guilty to charges of transmitting harassing and threatening interstate communications in violation of 18 U.S.C. § 875(c) but

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Yvette Kane, United States District Judge for the Middle District of Pennsylvania, sitting by designation.

reserved the right to appeal the district court’s denial of his Speedy Trial Act motion to dismiss. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

“We review de novo a district court’s decision to dismiss on Speedy Trial Act grounds and its findings of fact for clear error.” *United States v. Olsen*, 21 F.4th 1036, 1040 (9th Cir. 2022) (per curiam). The Speedy Trial Act’s “ends of justice” provision, at issue here, “allow[s] for the exclusion of time where a district court finds ‘that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.’” *Id.* at 1041 (quoting 18 U.S.C. § 3161(h)(7)(A)). We will reverse an “ends of justice determination . . . only if it is clearly erroneous.” *Id.* at 1040.

The Speedy Trial Act initially required that Ball’s trial begin by May 11, 2021. *See* 18 U.S.C. § 3161(c)(1). But, determining that the ends of justice served by continuing the trial outweighed the best interest of the public and Ball in a speedy trial, *see id.* § 3161(h)(7)(A), the district court reset the trial date from April 27, 2021, to September 14, 2021, and excluded the resulting 140-day period of delay between those dates from the 70-day Speedy Trial Act clock. In doing so, the district court relied principally on pandemic-related court restrictions and related health and safety concerns but also on the month-long unavailability of the victim to testify and defense counsel’s scheduling conflict.

We find no clear error in the district court’s application of the ends-of-

justice exception. The district court considered key factors identified in *Olsen*, including Ball’s pretrial detention; his invocation of his right to a speedy trial; and the pandemic-related impediments to the district court’s ability to safely conduct a trial, protect the health and safety of all trial participants, and implement rigorous safety protocols to further those objectives. *See Olsen*, 21 F.4th at 1046.

Furthermore, the continuance was not open-ended, Ball conceded the seriousness of his offense, and he did not assert that he was particularly susceptible to complications from COVID-19, all circumstances that support the district court’s granting of a continuance and exclusion of time under the ends-of-justice exception. *See id.* And the fact that, as Ball argued in his opening brief and to the district court below, other courts had resumed jury trials and grand jury proceedings by early 2021 did “not mean that they [we]re necessarily holding them safely.” *Id.* at 1047 n.10 (“It is unknown whether jurors, witnesses, court staff, litigants, attorneys, and defendants are being subject to serious risks and illness.”). Nor did the Central District of California’s resumption of jury trials in June 2021 preclude the district court from reasonably determining, as it did, that “protocols to protect health and safety will limit the number of jury trials that can be conducted simultaneously” going forward. *See United States v. Orozco-Barron*, 67 F.4th 1203, 1212–13 (9th Cir. 2023).

Accounting for the 140-day period of delay that the district court excluded

from the 70-day clock under the ends-of-justice exception, no more than 56 days of chargeable time elapsed from the filing of the indictment on March 2, 2021, to September 14, 2021, and Ball does not challenge the district court's decision to further continue the trial from September 14 to 28, 2021. Accordingly, Ball has failed to establish any violation of his statutory rights under the Speedy Trial Act.¹

AFFIRMED.

¹ Ball also reserved the right to appeal the district court's sua sponte ordering of a competency hearing under 18 U.S.C. § 4241(a). On appeal, Ball argues that because the district court erred in ordering the hearing, it wrongly excluded resulting periods of delay from the 70-day Speedy Trial Act clock. We need not reach this argument based on our conclusion that the district court did not clearly err in excluding the longer, overlapping period of delay due to pandemic-related restrictions and concerns under the Act's ends-of-justice exception.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES KEVIN BALL,

Defendant.

No. CR 21-00094-VAP

ORDER CONTINUING TRIAL DATE AND
FINDINGS REGARDING EXCLUDABLE
TIME PERIODS PURSUANT TO SPEEDY
TRIAL ACT

[PROPOSED] TRIAL DATE: [09-14-21]
[PROPOSED] S.C. DATE: [09-06-21]

Having considered the United States of America's Amended Ex Parte Application for Speedy Trial Act Findings of Excludable Delay, as well as the Central District of California's General Orders, the Chief Judge's Orders, and the Amended Expiration of Continuity of Operations Plan Notice, the Court hereby FINDS AS FOLLOWS:

1. The Indictment in this case was filed on March 2, 2021. Defendant first appeared before a judicial officer of the court in which the charges in this case were pending on February 17, 2021. The Speedy Trial Act, 18 U.S.C. § 3161, originally required that the trial commence on or before May 11, 2021. However, the Judicial Council of the Ninth Circuit has declared an emergency in the Central District of California, that clock--in this case--is extended to 180 days, to August 29, 2021. In re Approval of

1 Judicial Emergency in the Central Dist. of Cal., 955 F.3d 1140, 1141
2 (9th Cir. 2020); see also 18 U.S.C. § 3174.

3 2. On March 15, 2021, the Court set a trial date of April 27,
4 2021, and a status conference date of April 19, 2021.

5 3. Defendant is detained pending trial. The parties estimate
6 that the trial in this matter will last approximately three days.

7 4. Defendant is charged with a violations of 18 U.S.C.
8 § 2261A(2), (B): Stalking; and 18 U.S.C. § 875(c): Transmitting
9 Threatening Communications in Interstate Commerce. The government
10 has produced discovery to the defense, including dozens of pages of
11 reports, copies of messages, and materials from a search of
12 defendant's digital device.

13 5. In March 2020, following the President's declaration of a
14 national emergency in response to COVID-19, the Court entered a
15 General Order suspending jury selection and jury trials. C.D. Cal.
16 General Order No. 20-02 (Mar. 13, 2020).

17 6. The suspension of jury trials was one of the many health
18 and safety restrictions adopted in response to COVID-19. During the
19 pandemic, the Court has imposed limitations on access to Court
20 facilities, suspended grand jury proceedings, and maximized the use
21 of video-teleconference and telephonic hearings. See, e.g., C.D.
22 Cal. General Order No. 20-03 (Mar. 13, 2020); C.D. Cal. Order of the
23 Chief Judge No. 20-042 (Mar. 19, 2020); C.D. Cal. Order of the Chief
24 Judge No. 20-043 (Mar. 29, 2020); C.D. Cal. Order of the Chief Judge
25 No. 20-044 (Mar. 31, 2020); C.D. Cal. General Order No. 20-08 (May
26 28, 2020); C.D. Cal. General Order No. 20-09 (Aug. 6, 2020); C.D.
27 Cal. Order of the Chief Judge No. 20-179 (Dec. 7, 2020); C.D. Cal.
28 Order of the Chief Judge No. 21-002 (Jan. 6, 2021); C.D. Cal. Order

1 of the Chief Judge No. 21-031 (Mar. 16, 2021); C.D. Cal. General
2 Order No. 21-03 (Mar. 19, 2021).

3 7. The Court's orders were based on the California Governor's
4 declaration of a public-health emergency in response to COVID-19 and
5 the Centers for Disease Control's guidance to reduce exposure to the
6 virus and slow its spread. See, e.g., General Order 20-02, at 1;
7 Chief Judge Order 20-042, at 1-2; General Order 20-09, at 1. Local
8 conditions necessitated an especially robust response. California
9 has reported over 3.5 million COVID-19 cases and approximately
10 60,000 deaths. See <https://covid19.ca.gov/state-dashboard/>. The
11 Central District of California has been one of the hardest hit areas
12 in the nation, with over 2 million reported cases and approximately
13 40,000 deaths. See [https://www.nytimes.com/interactive/2021/us/](https://www.nytimes.com/interactive/2021/us/california-covid-cases.html)
14 [california-covid-cases.html](https://www.nytimes.com/interactive/2021/us/california-covid-cases.html). State and local orders at various
15 times during the pandemic have required residents to stay home,
16 prohibited travel, closed businesses, and suspended in-person
17 schooling. See, e.g., California Executive Order N-33-20 (Mar. 19,
18 2020); Safer at Home, Public Order Under City of Los Angeles
19 Emergency Authority (Mar. 19, 2020); California Regional Stay at
20 Home Order 12/03/2020 (Dec. 3, 2020); Blueprint for a Safer Economy,
21 <https://covid19.ca.gov/safer-economy/>. At the height of the
22 pandemic, ICU availability in the Central District of California
23 dropped to 0.0%. Chief Judge Order 21-002, at 1.

24 8. The Federal Bureau of Prisons ("BOP") also adopted
25 aggressive procedures to protect federal inmates and combat the
26 spread of COVID-19. The BOP's response has included facility
27 lockdowns, quarantine and isolation measures, restrictions on inmate
28 movement and visitation, and a nationwide vaccination campaign.

1 9. Given these facts, the Central District suspended jury
2 trials to protect public health, reduce the size of public
3 gatherings, and avoid unnecessary travel. See General Order 20-09,
4 at 1. Now, based on improving conditions and data trends documented
5 in accordance with California's Blueprint for a Safer Economy, the
6 Central District has entered the final phase (Phase 3) of its phased
7 reopening plan. In the Southern Division, jury trials will resume
8 on May 10, 2021. C.D. Cal. General Order No. 21-07, at 3 ¶ 3(a)
9 (Apr. 15, 2021). In the Western and Eastern Divisions, jury trials
10 will resume on June 7, 2021. See id., at 3 ¶ 3(b).

11 10. The resumption of jury trials, however, will necessitate
12 rigorous safety protocols "to protect the health and safety of all
13 trial participants." Id. at 2-3 ¶ 4. The Central District has
14 developed and announced detailed measures covering a range of
15 subjects, including courtroom ventilation and cleaning, masks and
16 face shields, physical distancing, venireperson seating, courtroom
17 layout options, sidebar proceedings, and juror deliberations.
18 [https://www.cacd.uscourts.gov/sites/default/files/documents/Conducti](https://www.cacd.uscourts.gov/sites/default/files/documents/Conducting%20Jury%20Trials%20During%20the%20COVID-19%20Pandemic.pdf)
19 [ng%20Jury%20Trials%20During%20the%20COVID-19%20Pandemic.pdf](https://www.cacd.uscourts.gov/sites/default/files/documents/Conducting%20Jury%20Trials%20During%20the%20COVID-19%20Pandemic.pdf).
20 Implementation of those protocols to protect health and safety will
21 limit the number of jury trials that can be conducted
22 simultaneously. General Order 21-07, at 2-3 ¶ 4.

23 11. Given the grave public-health concerns, the need to limit
24 the number of jury trials that can occur simultaneously in order to
25 maintain social distancing and protect all trial participants, and
26 the facts set forth in the government's Ex Parte Application (which
27 the Court incorporates fully by reference), the ends of justice
28 served by the continuance outweigh the best interest of the public

1 and defendant in a speedy trial. Failure to grant a continuance
2 would put parties, witnesses, jurors, venirepersons, counsel, and
3 Court personnel at unnecessary risk and would likely make a
4 continuation of the proceeding impossible or result in a miscarriage
5 of justice, particularly given the need for a complete and
6 continuously serving jury.

7 12. Due to the restrictions imposed by current public-health
8 concerns it is also unreasonable to expect adequate preparation for
9 pretrial proceedings or for the trial itself within the Speedy Trial
10 Act time limits. Thus, denial of a continuance is likely to deny
11 all counsel reasonable time necessary for effective preparation,
12 taking into account the exercise of due diligence.

13 13. Moreover, on April 21, 2021, based on defendant's behavior
14 and statements at the April 19, 2021 pretrial conference, this Court
15 issued a sua sponte order committing defendant to the custody of the
16 Attorney General so that a psychological examination could be
17 performed on him to assess his competency to stand trial.

18 (Dkt. 27.) The Court ordered the BOP to provide an examination
19 report to defense counsel and government counsel by June 7, 2021.

20 (Id. at 3.) The Court further set a competency hearing for June 21,
21 2021, at 9:00 a.m. (Id. at 4.)

22 14. The continuance is not based on congestion of the Court's
23 calendar, lack of diligent preparation on the part of the government
24 or the defense, or failure on the part of counsel for the government
25 to obtain available witnesses.

26 15. Moreover, the victim in this case is not available to come
27 to Los Angeles, California, to testify for the entire month of July
28 2021.

1 16. Defendant objects to any continuance of the trial date in
2 this matter. However, defendant's counsel, Deputy Federal Defender
3 Carel Ale, indicated that, if a continuance was granted, she has a
4 trial conflict on August 10, 2021, but would be available to begin
5 trial on September 14, 2021.

6 Accordingly, the Court finds that there are facts that support
7 a continuance of the trial date in this matter, and there is good
8 cause for a finding of excludable time pursuant to the Speedy Trial
9 Act, 18 U.S.C. § 3161.

10 THEREFORE, FOR GOOD CAUSE SHOWN:

11 1. The trial in this matter is continued from April 27, 2021,
12 to September 14, 2021. The briefing schedule for defendant's motion
13 to dismiss on Speedy Trial grounds is as follows: (i) motion to
14 dismiss due April 26, 2021; (ii) opposition due May 10, 2021; and
15 (iii) reply due May 17, 2021. The parties respectfully request a
16 hearing on the motion to dismiss on May 24, 2021 at 9:00 a.m. For
17 all other motions, the briefing schedule is as follows: (i) motions
18 due July 23, 2021; (ii) oppositions due August 6, 2021; and (iii)
19 replies due August 13, 2021. The parties respectfully request a
20 hearing date and pretrial conference on September 6, 2021.

21 2. The time period of April 27, 2021, to September 14, 2021,
22 inclusive, is excluded in computing the time within which the trial
23 must commence, pursuant to 18 U.S.C. §§ 3161(h)(4), (h)(7)(A),
24 (h)(7)(B)(i), and (h)(7)(B)(iv).

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3. Nothing in this Order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excluded from the period within which trial must commence. Moreover, the same provisions and/or other provisions of the Speedy Trial Act may in the future authorize the exclusion of additional time periods from the period within which trial must commence.

IT IS SO ORDERED.

April 27, 2021
DATE

Virginia A. Phillips
HONORABLE VIRGINIA A. PHILLIPS
UNITED STATES DISTRICT JUDGE

United States District Court
Central District of California

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

United States of America,

Plaintiff,

v.

James Kevin Ball, a.k.a. King
James

Defendant.

2:21-cr-00094-VAP-1

**Order (1) Overruling Objection to
Order Requiring Mental
Examination and Setting
Competency Hearing; and (2)
Denying Motion to Dismiss as
Moot**

On April 21, 2021, the Court issued an Order Requiring Mental Examination and Setting Competency Hearing. In the April 21, 2021 Order, the Court explained, due to the erratic behavior displayed by Defendant James Kevin Ball, a.k.a. King James ("Defendant") at the April 19, 2021 pretrial conference, the Court sua sponte ordered Defendant to be evaluated by a mental health professional and set a competency hearing on June 21, 2021.

On April 26, 2021, Defendant filed an "Objection to Order Requiring Mental Examination and Setting Competency Hearing" (hereinafter "Objection"). In the Objection, defense counsel contends "Mr. Ball does not meet the standard for a mental health evaluation or hearing" based specifically on counsel's observations of Defendant during their interactions. Counsel states she is "aware of her role in assessing a client's ability to

1 comprehend the proceedings and does not believe that Mr. Ball is unable to
2 understand the charges or assist in his defense in a manner that rises to the
3 level of mental incompetence” (Obj. at 3; Ale Decl. ¶¶ 2-3.) She also
4 contends Defendant’s conduct during the pretrial conference did “not
5 indicate that Mr. Ball is not able to understand th[e] charges against him or
6 aid in his own defense.” (Obj. at 3.) Moreover, Defendant argues “[t]he
7 Court’s order for a competency evaluation [] interferes with Mr. Ball’s Sixth
8 Amendment [r]ight to a speedy trial. Given the lack of evidence of
9 incompetency, Mr. Ball’s Speedy Trial rights weigh strongly against ordering
10 a competency evaluation and hearing.” (Id. at 4.)

11
12 Also on April 26, 2021, Defendant filed a “Motion to Dismiss for
13 Speedy Trial Violation” (“Motion”). Defendant acknowledges “any period of
14 delay resulting from the Court’s order [requiring Defendant’s mental
15 evaluation] is excludable time [under the Speedy Trial Act]” but explains he
16 “filed an objection to the Court’s April 21, 2021 Order and files this Motion to
17 Dismiss should the Court sustain the objection.” (Mot. at n.1.) The
18 Government filed Opposition to the Motion on May 4, 2021. Defendant filed
19 a Reply to the Opposition on May 17, 2021.

20
21 Having considered the Objection and the papers filed in support of,
22 and in opposition to the Motion, the Court finds these matters appropriate
23 for resolution without a hearing pursuant to Local Rule 7-15 and VACATES
24 the hearing set on May 24, 2021 at 9:00 a.m.

1 The Court first addresses Defendant's Objection. Defense counsel
2 maintains she is in the best position to have observed Defendant and
3 evaluated whether he understands these proceedings and is able to
4 participate in his defense. See United States v. Garza, 751 F.3d 1130, 1134
5 (9th Cir. 2014), Medina v. Cal., 505 U.S. 437, 450 (1992). Counsel asserts
6 she has met with Defendant "twice by video conference and [] five to seven
7 times by telephone, and during those interactions, and during those
8 interactions Defendant "responded linearly" and "demonstrated an
9 understanding of the charges against him, the mechanics of the trial
10 process, and the roles of the parties in the process." (Ale Decl. ¶¶ 2, 3.)
11 The Court's concerns about Defendant's mental competence are not
12 assuaged by defense counsel's observations, however.

13
14 As the Court stated in the April 21, 2021 Order, Defendant displayed
15 erratic behavior repeatedly and consistently during the pretrial conference.
16 He engaged in multiple unintelligible outbursts and attempted to
17 communicate directly with the Court, even after the Court explained to him
18 that he should communicate through his attorney. This behavior caused the
19 Court to question whether, inter alia, Defendant understood the nature and
20 consequences of these proceedings against him. See 18 U.S.C. § 4241(a).

21
22 Having presided over many criminal proceedings, including cases
23 where the Court ordered the defendant to be evaluated for mental
24 competence, the Court found Defendant's behavior at the pretrial
25 conference so aberrant that it caused the Court to have serious doubts
26 about Defendant's mental competency. See United States v. Dreyer, 705

1 F.3d 951, 964 (9th Cir. 2013); Mikhel v. Kadamovas, 889 F.3d 1003, 1037
2 (9th Cir. 2018). The Court did not order Defendant's mental evaluation
3 lightly and did so to protect Defendant's right to due process. See United
4 States v. Marks, 530 F.3d 799, 814 (9th Cir. 2008); Garza, 751 F.3d at 1134.
5 Counsel's attestation as to Defendant's competency, although admittedly
6 not based on any medical records or evaluations by mental health
7 professionals, is informative and the Court has considered it among one of
8 the many factors to consider in deciding whether to sustain Defendant's
9 Objection. See Dreyer, 705 F.3d at 964 ("Among the factors to consider
10 when evaluating whether . . . to order a competency hearing sua sponte, are
11 the defendant's irrational behavior, his demeanor at trial, and any prior
12 medical opinion on competence[;] however, none of these factors is
13 determinative, and even one of these factors standing alone may, in some
14 circumstances, be sufficient.") (citations, quotation marks, and alterations
15 omitted). The Court concludes, however, there is insufficient evidence
16 before it to allay the Court's serious concerns about Defendant's mental
17 competency based on his erratic behavior displayed at the pretrial
18 conference. The Court remains persuaded that it was consistent with its
19 sua sponte duty to order Defendant's competency evaluation based on his
20 egregious outbursts during the pretrial conference. See id.; Mikhel v.
21 Kadamovas, 889 F.3d at 1037.

22
23 Accordingly, the Court OVERRULES the Objection.

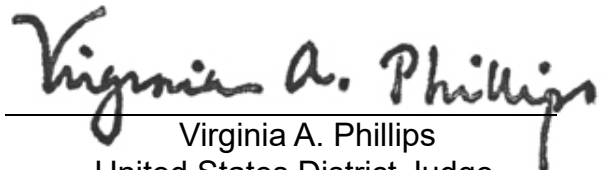
24
25 Finally, the Court DENIES AS MOOT the Motion to Dismiss, given
26 Defendant's explanation that he submitted the Motion for consideration only

United States District Court
Central District of California

1 if the Court sustained his Objection to his mental competency evaluation
2 and hearing. (See Mot. at n.1.) In any event, the Court notes many of
3 Defendant's arguments have been rejected by the Ninth Circuit in United
4 States v. Olsen, No. 20-50329, 2021 WL 1589359 (9th Cir. Apr. 23, 2021).
5 Moreover, as Defendant acknowledges, the delay caused by the evaluation
6 of Defendant's competency is excluded in computing the time within which
7 the trial must commence in this action pursuant to the Speedy Trial Act.
8 See 18 U.S.C. § 3161(h)(1)(A).
9

10 **IT IS SO ORDERED.**

11
12 Dated: 5/18/21
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15 Virginia A. Phillips
16 United States District Judge
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**United States District Court
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No. LACR 21-00094-VAP-1Defendant James Kevin BallSocial Security No. 9 8 7 4Ball, James Kevin, Jr.; Bau, James Kevin;
akas: King James

(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
12	13	2021

COUNSELCarel Ale, DFPD and Adithya Mani, DFPD

(Name of Counsel)

PLEA
☒ **GUILTY**, and the court being satisfied that there is a factual basis for the plea. ☐ **NOLO
CONTENDERE** ☐ **NOT
GUILTY**
FINDINGThere being a finding/verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of:

Transmitting Threatening Communications in Interstate Commerce, in violation of 18 U.S.C. § 875(c), as charged in Count 3 of the Indictment.

**JUDGMENT
AND PROB/
COMM
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that:

It is ordered that the defendant shall pay to the United States a special assessment of \$100, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

Pursuant to Guideline § 5E1.2(a), all fines are waived as the Court finds that the defendant has established that he is unable to pay and is not likely to become able to pay any fine.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, James Kevin Ball, Jr, is hereby committed on Count 3 of the Indictment to the custody of the Bureau of Prisons for a term of **sixty (60) months**.

The Court recommends that the Bureau of Prisons conduct a mental health evaluation of the defendant and provide all necessary treatment.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **three (3) years** under the following terms and conditions:

1. During Defendant's term of imprisonment and while on supervised release, the defendant shall not contact any of the victims listed in the attachment to this Judgment or any of the victims' family members, employees or agents, by any means, including in person, by mail or electronic means, by writing or telephone, or via third parties.

USA vs. **James Kevin Ball**

Docket No.: **LACR 21-00094-VAP**

2. The defendant shall comply with the rules and regulations of the United States Probation & Pretrial Services Office and Second Amended General Order 20-04.
3. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from custody and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the Probation Officer.
4. The defendant shall participate in an outpatient substance abuse treatment and counseling program that includes urinalysis, breath or sweat patch testing, as directed by the Probation Officer. The defendant shall abstain from using alcohol and illicit drugs, and from abusing prescription medications during the period of supervision.
5. As directed by the Probation Officer, the defendant shall pay all or part of the costs of the Court-ordered treatment to the aftercare contractors during the period of community supervision. The defendant shall provide payment and proof of payment as directed by the Probation Officer. If the defendant has no ability to pay, no payment shall be required.
6. The defendant shall participate in mental health treatment, which may include evaluation and counseling, until discharged from the program by the treatment provider, with the approval of the Probation Officer.
7. During the period of community supervision, the defendant shall pay the special assessment in accordance with this judgment's orders pertaining to such payment.
8. The defendant shall cooperate in the collection of a DNA sample from the defendant.
9. The defendant shall submit the defendant's person, property, house, residence, vehicle, papers, computers, cell phones, other electronic communications or data storage devices or media, email accounts, social media accounts, cloud storage accounts, or other areas under the defendant's control, to a search conducted by a United States Probation Officer or law enforcement officer. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search pursuant to this condition will be conducted at a reasonable time and in a reasonable manner upon reasonable suspicion that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation.

The Court authorizes the Probation & Pretrial Services Office to disclose the Presentence Report to the substance abuse treatment provider to facilitate the defendant's treatment for narcotic addiction or drug dependency. Further redisclosure of the Presentence Report by the treatment provider is prohibited without the consent of the sentencing judge.

The Court recommends that the defendant be designated to Terminal Island FCI.

The Court recommends that the defendant be considered for participation in the Bureau of Prison's 500-hour Residential Drug Abuse Program (RDAP).

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USA vs. **James Kevin Ball**Docket No.: **LACR 21-00094-VAP**

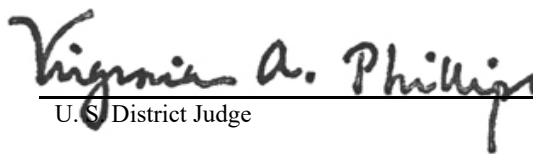
Defendant is advised of his right to appeal.

In the interest of justice and upon government's motion, all remaining counts are ordered dismissed.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

December 15, 2021

Date



U. S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

December 15, 2021

Filed Date

By /s/ Christine Chung

Deputy Clerk

The defendant must comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant must not commit another federal, state, or local crime;
2. The defendant must report to the probation office in the federal judicial district of residence within 72 hours of imposition of a sentence of probation or release from imprisonment, unless otherwise directed by the probation officer;
3. The defendant must report to the probation office as instructed by the court or probation officer;
4. The defendant must not knowingly leave the judicial district without first receiving the permission of the court or probation officer;
5. The defendant must answer truthfully the inquiries of the probation officer, unless legitimately asserting his or her Fifth Amendment right against self-incrimination as to new criminal conduct;
6. The defendant must reside at a location approved by the probation officer and must notify the probation officer at least 10 days before any anticipated change or within 72 hours of an unanticipated change in residence or persons living in defendant's residence;
7. The defendant must permit the probation officer to contact him or her at any time at home or elsewhere and must permit confiscation of any contraband prohibited by law or the terms of supervision and observed in plain view by the probation officer;
8. The defendant must work at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons and must notify the probation officer at least ten days before any change in employment or within 72 hours of an unanticipated change;
9. The defendant must not knowingly associate with any persons engaged in criminal activity and must not knowingly associate with any person convicted of a felony unless granted permission to do so by the probation officer. This condition will not apply to intimate family members, unless the court has completed an individualized review and has determined that the restriction is necessary for protection of the community or rehabilitation;
10. The defendant must refrain from excessive use of alcohol and must not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
11. The defendant must notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. For felony cases, the defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon;
13. The defendant must not act or enter into any agreement with a law enforcement agency to act as an informant or source without the permission of the court;
14. The defendant must follow the instructions of the probation officer to implement the orders of the court, afford adequate deterrence from criminal conduct, protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

USA vs. **James Kevin Ball**Docket No.: **LACR 21-00094-VAP**

☐ The defendant must also comply with the following special conditions (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant must pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment under 18 U.S.C. § 3612(f)(1). Payments may be subject to penalties for default and delinquency under 18 U.S.C. § 3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed before April 24, 1996. Assessments, restitution, fines, penalties, and costs must be paid by certified check or money order made payable to "Clerk, U.S. District Court." Each certified check or money order must include the case name and number. Payments must be delivered to:

United States District Court, Central District of California
Attn: Fiscal Department
255 East Temple Street, Room 1178
Los Angeles, CA 90012

or such other address as the Court may in future direct.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant must pay the balance as directed by the United States Attorney's Office. 18 U.S.C. § 3613.

The defendant must notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence address until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. § 3612(b)(1)(F).

The defendant must notify the Court (through the Probation Office) and the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. § 3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution under 18 U.S.C. § 3664(k). See also 18 U.S.C. § 3572(d)(3) and for probation 18 U.S.C. § 3563(a)(7).

Payments will be applied in the following order:

1. Special assessments under 18 U.S.C. § 3013;
2. Restitution, in this sequence (under 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid):
 - Non-federal victims (individual and corporate),
 - Providers of compensation to non-federal victims,
 - The United States as victim;
3. Fine;
4. Community restitution, under 18 U.S.C. § 3663(c); and
5. Other penalties and costs.

CONDITIONS OF PROBATION AND SUPERVISED RELEASE PERTAINING TO FINANCIAL SANCTIONS

As directed by the Probation Officer, the defendant must provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant must not apply for any loan or open any line of credit without prior approval of the Probation Officer.

When supervision begins, and at any time thereafter upon request of the Probation Officer, the defendant must produce to the Probation and Pretrial Services Office records of all bank or investments accounts to which the defendant has access, including any business or trust accounts. Thereafter, for the term of supervision, the defendant must notify and receive approval of the Probation Office in advance of opening a new account or modifying or closing an existing one, including adding or deleting signatories; changing the account number or name, address, or other identifying information affiliated with the account; or any other modification. If the Probation Office approves the new account, modification or closing, the defendant must give the Probation Officer all related account records within 10 days of opening, modifying or closing the account. The defendant must not direct or ask anyone else to open or maintain any account on the defendant's behalf.

The defendant must not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

USA vs. **James Kevin Ball**

Docket No.: **LACR 21-00094-VAP**

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____
Defendant noted on appeal on _____
Defendant released on _____
Mandate issued on _____
Defendant's appeal determined on _____
Defendant delivered on _____ to _____
at _____
the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____
Deputy Marshal

Date

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

By _____
Deputy Clerk

Filed Date

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

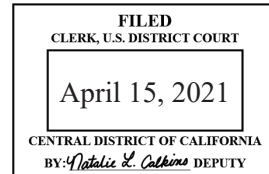
These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
Defendant

Date

U. S. Probation Officer/Designated Witness

Date



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE:	}	GENERAL ORDER NO. 21-07
CORONAVIRUS PUBLIC	}	(Supersedes General Order No. 21-
EMERGENCY	}	06, General Order No. 21-03, and
ORDER CONCERNING PHASED	}	Order of the Chief Judge No. 20-078)
REOPENING OF THE COURT	}	

WHEREAS, the Court has adopted the Plan for Phased Resumption of Operations (“Reopening Plan”), which consists of three phases: Phase 1 (return of certain staff to the courthouses to prepare for limited in-court hearings); Phase 2 (reopening courthouses for limited in-court hearings); and Phase 3 (resumption of jury trials);

WHEREAS, the Court has adopted gating criteria designed to assess local COVID-19 exposure risks based on 14-day trends of facility exposure, community spread, and community restrictions;

WHEREAS, per the gating criteria, local COVID-19 exposure risks in the Central District of California are decreasing, such that the transition of all divisions to Phase 3 of the Court’s Reopening Plan is appropriate at this time; and

1 WHEREAS, the Centers for Disease Control and Prevention and other public
2 health authorities continue to advise taking precautions to slow the spread of COVID-
3 19, including recommending that people practice physical distancing and wear masks
4 in public settings and when around people who do not live in their household;

5 Upon majority vote of the District Judges of the Court, the Court orders as
6 follows:

- 7 1. All divisions in the Central District of California are in Phase 3 of the
8 Court's Reopening Plan.
- 9 2. In-court hearings are permitted in all matters at the discretion of the
10 assigned judge.
 - 11 a. Hearings by video or telephonic conference may continue to
12 be held in civil matters at the discretion of the assigned
13 judge.
 - 14 b. Hearings by video or telephonic conference may continue to
15 be held in certain criminal matters as set forth in Order of the
16 Chief Judge No. 20-043, unless the findings and
17 authorizations in the Order are subsequently terminated.
- 18 3. Jury trials are permitted in civil and criminal cases.
 - 19 a. Southern Division: Since jury summonses were issued
20 starting on March 22, 2021, jury trials will commence on
21 May 10, 2021.
 - 22 b. Eastern and Western Divisions: Jury summonses will be
23 issued starting on April 19, 2021, and jury trials will
24 commence on June 7, 2021.
- 25 4. Due to the constraints on space and resources imposed by COVID-19
26 safety protocols, a limited number of jury trials will be permitted to
27

1 proceed at a time. The Court's COVID-19 safety protocols are necessary
2 to protect the health and safety of all trial participants. As a result, the
3 Court finds that any delays in conducting criminal jury trials that are
4 attributable to the limitations caused by the Court's COVID-19 safety
5 protocols serve the ends of justice and outweigh the interests of the public
6 and the defendants in a speedy trial.

- 7
- 8 5. The United States Courthouses in the Central District of California are
9 open to individuals with court business and subject to all posted
10 restrictions.
- 11 6. All individuals seeking entry to, or occupying, the United States
12 Courthouses or Probation and Pretrial Services Offices in the Central
13 District of California must wear masks in all spaces, except under certain
14 circumstances during in-court proceedings as noted below.
- 15 a. The mask must completely conceal the individual's nose and
16 mouth at all times.
- 17 b. Court employees who are alone in a non-public, private
18 office or workspace, which permits at least six feet of
19 physical distance from others, may temporarily remove their
20 masks.
- 21 b. The United States Marshal, his Deputies, and the Court
22 Security Officers shall enforce this Order and deny entry to
23 individuals not wearing masks. Individuals who are denied
24 entry will be asked to contact the office or courtroom to be
25 visited to explore alternatives to entering the building.
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7. All individuals occupying the United States Courthouses or Probation and Pretrial Services Offices in the Central District of California must practice physical distancing in all spaces.
 - a. To practice physical distancing, individuals must stay at least six feet from other people.
 - b. Exceptions to this physical distancing requirement may be permitted for individuals who reside in the same household and counsel under certain circumstances during in-court proceedings as noted below.
 - c. The United States Marshal, his Deputies, and the Court Security Officers shall enforce this Order and instruct individuals not practicing physical distancing in accordance with this Order to leave the building. Individuals who are instructed to leave will be asked to contact the office or courtroom to be visited to explore alternatives.
 8. To protect public health and safety, the following protocols are adopted for all in-court proceedings:
 - a. Everyone in the courtroom must wear a mask. The removal of masks is authorized only as necessary for testifying witnesses, jurors while being questioned individually, and in-court identifications, if permitted by the judge. An individual who is permitted to remove or lower his or her mask will be required to wear a face shield and/or speak from behind a plexiglass barrier and maintain appropriate physical distancing while the individual is not wearing a mask.

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- b. In-court proceedings must be conducted in a manner that allows for all participants to practice physical distancing. An exception may be permitted for counsel who choose not to physically distance from each other or their clients.
- c. In addition to these protocols, see [this document](#) for suggested practices for conducting jury trials during the COVID-19 pandemic.

9. Judges will determine when their chambers staff will return to work at the Courthouses during each phase of reopening. The District Court Executive/Clerk of Court will determine when and which Clerk’s Office and Probation and Pretrial Services Office staff will return to the Courthouses during each phase of reopening.

This Order shall take effect on April 19, 2021.

IT IS SO ORDERED.



CHIEF UNITED STATES DISTRICT JUDGE

Date of Approval by the Court: April 14, 2021

Date of Filing by the Clerk: April 15, 2021

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part II. Criminal Procedure
Chapter 208. Speedy Trial (Refs & Annos)

18 U.S.C.A. § 3161

§ 3161. Time limits and exclusions

Effective: October 13, 2008

Currentness

(a) In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short-term trial calendar at a place within the judicial district, so as to assure a speedy trial.

(b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges. If an individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days.

(c)(1) In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate judge on a complaint, the trial shall commence within seventy days from the date of such consent.

(2) Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.

(d)(1) If any indictment or information is dismissed upon motion of the defendant, or any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, and thereafter a complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode, or an information or indictment is filed charging such defendant with the same offense or an offense based on the same conduct or arising from the same criminal episode, the provisions of subsections (b) and (c) of this section shall be applicable with respect to such subsequent complaint, indictment, or information, as the case may be.

(2) If the defendant is to be tried upon an indictment or information dismissed by a trial court and reinstated following an appeal, the trial shall commence within seventy days from the date the action occasioning the trial becomes final, except that the court retrying the case may extend the period for trial not to exceed one hundred and eighty days from the date the action occasioning the trial becomes final if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.

(e) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.

(f) Notwithstanding the provisions of subsection (b) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(a) of this chapter the time limit imposed with respect to the period between arrest and indictment by subsection (b) of this section shall be sixty days, for the second such twelve-month period such time limit shall be forty-five days and for the third such period such time limit shall be thirty-five days.

(g) Notwithstanding the provisions of subsection (c) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(b) of this chapter, the time limit with respect to the period between arraignment and trial imposed by subsection (c) of this section shall be one hundred and eighty days, for the second such twelve-month period such time limit shall be one hundred and twenty days, and for the third such period such time limit with respect to the period between arraignment and trial shall be eighty days.

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to--

(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

(B) delay resulting from trial with respect to other charges against the defendant;

(C) delay resulting from any interlocutory appeal;

(D) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

(E) delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district under the Federal Rules of Criminal Procedure;

(F) delay resulting from transportation of any defendant from another district, or to and from places of examination or hospitalization, except that any time consumed in excess of ten days from the date an order of removal or an order directing such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable;

(G) delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the attorney for the Government; and

(H) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court.

(2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(3)(A) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness.

(B) For purposes of subparagraph (A) of this paragraph, a defendant or an essential witness shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. For purposes of such subparagraph, a defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.

(4) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

(5) If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(6) 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.

(7)(A) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, 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. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

(i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

(ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.

(iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in section 3161(b), or because the facts upon which the grand jury must base its determination are unusual or complex.

(iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

(C) No continuance under subparagraph (A) of this paragraph shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.

(8) Any period of delay, not to exceed one year, ordered by a district court upon an application of a party and a finding by a preponderance of the evidence that an official request, as defined in section 3292 of this title, has been made for evidence of any such offense and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.

(i) If trial did not commence within the time limitation specified in section 3161 because the defendant had entered a plea of guilty or nolo contendere subsequently withdrawn to any or all charges in an indictment or information, the defendant shall be deemed indicted with respect to all charges therein contained within the meaning of section 3161, on the day the order permitting withdrawal of the plea becomes final.

(j)(1) If the attorney for the Government knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly--

(A) undertake to obtain the presence of the prisoner for trial; or

(B) cause a detainer to be filed with the person having custody of the prisoner and request him to so advise the prisoner and to advise the prisoner of his right to demand trial.

(2) If the person having custody of such prisoner receives a detainer, he shall promptly advise the prisoner of the charge and of the prisoner's right to demand trial. If at any time thereafter the prisoner informs the person having custody that he does

demand trial, such person shall cause notice to that effect to be sent promptly to the attorney for the Government who caused the detainer to be filed.

(3) Upon receipt of such notice, the attorney for the Government shall promptly seek to obtain the presence of the prisoner for trial.

(4) When the person having custody of the prisoner receives from the attorney for the Government a properly supported request for temporary custody of such prisoner for trial, the prisoner shall be made available to that attorney for the Government (subject, in cases of interjurisdictional transfer, to any right of the prisoner to contest the legality of his delivery).

(k)(1) If the defendant is absent (as defined by subsection (h)(3)) on the day set for trial, and the defendant's subsequent appearance before the court on a bench warrant or other process or surrender to the court occurs more than 21 days after the day set for trial, the defendant shall be deemed to have first appeared before a judicial officer of the court in which the information or indictment is pending within the meaning of subsection (c) on the date of the defendant's subsequent appearance before the court.

(2) If the defendant is absent (as defined by subsection (h)(3)) on the day set for trial, and the defendant's subsequent appearance before the court on a bench warrant or other process or surrender to the court occurs not more than 21 days after the day set for trial, the time limit required by subsection (c), as extended by subsection (h), shall be further extended by 21 days.

CREDIT(S)

(Added Pub.L. 93-619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2076; amended Pub.L. 96-43, §§ 2 to 5, Aug. 2, 1979, 93 Stat. 327, 328; Pub.L. 98-473, Title II, § 1219, Oct. 12, 1984, 98 Stat. 2167; Pub.L. 100-690, Title VI, § 6476, Nov. 18, 1988, 102 Stat. 4380; Pub.L. 101-650, Title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub.L. 110-406, § 13, Oct. 13, 2008, 122 Stat. 4294.)

18 U.S.C.A. § 3161, 18 USCA § 3161

Current through P.L.118-13. Some statute sections may be more current, see credits for details.

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part II. Criminal Procedure
Chapter 208. Speedy Trial (Refs & Annos)

18 U.S.C.A. § 3164

§ 3164. Persons detained or designated as being of high risk

Currentness

(a) The trial or other disposition of cases involving--

(1) a detained person who is being held in detention solely because he is awaiting trial, and

(2) a released person who is awaiting trial and has been designated by the attorney for the Government as being of high risk, shall be accorded priority.

(b) The trial of any person described in subsection (a)(1) or (a)(2) of this section shall commence not later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitation specified in this section.

(c) Failure to commence trial of a detainee as specified in subsection (b), through no fault of the accused or his counsel, or failure to commence trial of a designated releasee as specified in subsection (b), through no fault of the attorney for the Government, shall result in the automatic review by the court of the conditions of release. No detainee, as defined in subsection (a), shall be held in custody pending trial after the expiration of such ninety-day period required for the commencement of his trial. A designated releasee, as defined in subsection (a), who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under this title to insure that he shall appear at trial as required.

CREDIT(S)

(Added Pub.L. 93-619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2081; amended Pub.L. 96-43, § 7, Aug. 2, 1979, 93 Stat. 329.)

18 U.S.C.A. § 3164, 18 USCA § 3164

Current through P.L.118-13. Some statute sections may be more current, see credits for details.