

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – CRIMINAL TERM, PART 41

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

- against-

Decision and Order
on Defendant's
Omnibus Motion

JOSEPH MAKHANI,

Indictment No. 73324-23

Defendant.

-----X

Michele Rodney, J.

Defendant was indicted on charges of criminal possession of stolen property in the first degree (Penal Law § 165.54), and scheme to defraud in the first degree (Penal Law § 190.65[1][b]), in a case brought by the Office of the Attorney General (OAG). Defendant has filed an omnibus motion seeking dismissal of the indictment as time-barred under the statute of limitations, a *Singer* hearing and dismissal of the indictment for pre-indictment delay, reduction of counts one and two of the indictment, striking of the People's certificate of compliance, and other relief. The People filed a response, consenting to a court review of the grand jury minutes and addressing defendant's other claims.

Defendant's motion is decided as follows:

The Prosecution is Not Barred by the Statute of Limitations.

Defendant first claims that the court should dismiss the indictment because the five-year statute of limitations has run on each count in the indictment. Defendant argues that this court should adopt other states' position that for possession of stolen property counts, the statute of limitations begins to run from the time the defendant comes into possession of the property he is accused of possessing. In response, the People note that New York adheres to the continuing-offense doctrine, and that possession of stolen property is a continuing offense, meaning the statute of limitations begins to run with the termination of the defendant's crimes.

Defendant's motion to dismiss on statute-of-limitations grounds is denied. With some exceptions not relevant here, "a prosecution for [a] felony must be commenced within five years after the commission thereof." CPL § 30.10(2)(b). "Where . . . a crime by its nature as defined in the Penal Law may be committed either by one act or by multiple acts and can be characterized as a continuing offense over time, the indictment may charge the continuing offense in a single count." *People v. First Meridian Planning Corp.*, 86 NY2d 608, 615-616 (1995). "[T]he statute of limitations of a continuous crime is governed by the termination and not the starting date of the offense." *People v. Eastern Ambulance Service, Inc.*, 106 AD2d 867, 868 (4th Dept 1984); *see also People v. Perry*, 114 AD3d 1282, 1283 (4th Dept 2014). Scheme to defraud in the first degree is a continuous crime because it can, "by its very nature, be committed by multiple acts." *People v. First Meridian Planning Corp.*, 86 NY2d at 616. Criminal possession of stolen property is also a continuing crime, because the crime continues as long as the possession of the property continues. *People v. Lawson*, 64 Misc3d 200 (Criminal Court, Richmond Cty 2019). As the *Lawson* court notes, the Court of Appeals has found other possessory crimes – such as criminal possession of a weapon and criminal possession of stolen property – to be continuing crimes for non-statute of limitations purposes, and criminal possession of stolen property relies on the same definition of possession.

Here, defendant is charged with criminally possessing the properties at issue for a period of years, in one instance ending on December 16, 2018, and in the other ending on

June 29, 2023, and with a scheme to defraud that is alleged to have ended on June 29, 2023. Therefore, the July 11, 2023, indictment fell within the five-year statute of limitations, and this prosecution is timely. The court declines defendant's invitation to follow certain other states and run the statute of limitations from the date of the initial possession.

The court also rejects defendant's argument that the statute of limitations has run because defendant obtained legal title to the properties at issue in 2014. The People presented evidence to the grand jury that the default judgments granting defendant title were procured by fraud and deceit. Further, the People – who were not parties to the litigation that resulted in those default judgments – are not bound by that determination.

Any Delay in Prosecution was Not Unreasonable and Did Not Deprive Defendant of Due Process.

Defendant next contends that the court should grant a *Singer* hearing and then dismiss the indictment due to what he calls the People's unreasonable delay in bringing the case. The thefts of the properties at issue here both occurred in 2012, OAG's investigation began in 2015, and they obtained a referral to prosecute the case – later determined to be invalid – in 2016. Therefore, defendant argues, OAG's failure to secure a valid indictment until 2023 constitutes an unreasonable delay that violated defendant's due process rights. In response, the People argue that the complex, long-term nature of the investigation and their good faith in deferring the commencement of the prosecution did not deprive defendant of due process.

Defendant's motion to dismiss the indictment on the grounds that his statutory and constitutional rights to a speedy trial and prompt prosecution have been violated is denied. "By statute and constitutional law, New York guarantees criminal defendants the right to a speedy trial and prompt prosecution." *People v. Regan*, 39 NY3d 459, 464 (2023). Constitutional speedy trial claims are analyzed using the five factors outlined in *People v. Taranovich*, 37 NY2d 442 (1975). See *People v. Wiggins*, 31 NY3d 1, 9 (2018). Those five factors are: the extent of the delay; the reason for the delay; the nature of the underlying charge; whether or not there has been an extended period of incarceration; and whether or