

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: PART 32

-----X

THE PEOPLE OF THE STATE OF NEW YORK :

-against- : DECISION and ORDER

RAFAEL CINTRON, Ind. 2338/2014

Defendant. :

-----X

JUSTICE GREGORY CARRO:

On May 5, 2015, this defendant was convicted after a bench trial, of criminal facilitation in the fourth degree, and sentenced to time served (McLaughlin, J.). On appeal, defendant argued, among other issues, that his speedy trial motion was improperly denied by the court. The Appellate Division has held the appeal in abeyance, finding that the record as to the speedy trial motion was “unclear” as to whether the People “satisfied their burden in response” to the defendant’s affidavit, which “sufficiently satisfied his initial burden,” and remanding for further proceedings before this court. *People v. Cintron*, 155 AD3d 502, 503 (1st Dep’t 2017). Defendant, through counsel, has filed an affirmation in support of his motion to dismiss the indictment, and the People have filed an affirmation in response.

Defendant prepared a pro se speedy trial motion in April, 2015, which his trial counsel adopted and filed on April 13, 2015. The court gave the People two weeks to respond, and adjourned the case until May 5, 2015. On May 5, defense counsel noted that there was an outstanding speedy trial motion that “the People responded to today.” The Appellate Division apparently relied on this remark in concluding that “the record indicates that the People responded to the motion.” However, the parties now agree that no response was ever filed. *See* Defendant’s Affirmation ¶ 9, citing the People’s Appellate Brief (the “People’s response is not included in the Judgment Roll and could not be located in the court file”), and a January 24, 2018 email from the assigned assistant district attorney to counsel (stating that she “cannot find a People’s response,” so for “all intents and purposes it is safe to assume that whether or not one was done, one was never filed or examined by the court”); *see also* People’s Affirmation in

Response ¶ 5 (xi) (conceding the People’s “failure to respond”).<sup>1</sup>

Where a defendant moves to dismiss the indictment on speedy trial grounds, and includes sworn allegations that there has been unexcused delay exceeding the statutory maximum, the motion must be granted summarily unless the People controvert the factual basis for the motion. *People v. Santos*, 68 NY2d 859, 861 (1986). Once a defendant has met his burden, the “burden of showing that time should be excluded falls upon the People.” *Id.* Where the People’s response shows that there is a factual dispute, there must be a hearing. *Id.*

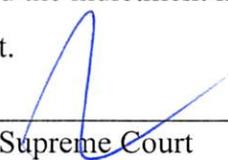
Here, the Appellate Division found that the defendant’s affidavit “sufficiently satisfied his initial burden.” The court also believed that the People *had* filed a response, but that the record was unclear as to “whether the People satisfied their burden in response, or merely raised issues of fact requiring a hearing,” citing *Santos*. The Appellate Division also found that the trial court improperly denied defendant’s motion “without reviewing the People’s submissions,” and improperly relied on its own notes and recollection in doing so.

As it is now clear that the People did *not* file a response, they neither satisfied their burden in response, nor raised a factual dispute requiring a hearing. *See Santos*, 68 NY2d at 861. While the People have now filed an affirmation in response, alleging that they should be charged with only 102 days of speedy trial time, this court will not consider that response, as the Appellate Division remanded only for this court to determine if their *initial* alleged response satisfied their burden or required a hearing. *See also People v. Mace*, 206 AD2d 296, 297 (1st Dep’t 1994) (People should not be afforded a “second bite of the apple” on appeal where they did not meet their burden below of proving that time should be excluded).

Accordingly, the defendant’s motion is granted and the indictment is dismissed.

This constitutes the decision and order of the court.

Dated: April 4, 2018

  
\_\_\_\_\_  
Justice, Supreme Court

---

<sup>1</sup>*See also* Defendant’s Affirmation ¶ 10, and Memorandum of Law ¶ 5 (telephone call from defense counsel stating that he doubts any response was filed).