

March 12, 2024

The Honorable Juan M. Merchan
New York State Supreme Court, Criminal Term, Part 59

Dear Justice Merchan,

This Court should reject defendant's request for leave to file a motion to vacate this Court's March 8, 2024, Order on the Filing of Future Motions. In the alternative, the Court could consider defendant's proposed motion on the merits and deny it for the reasons stated below.

First, the Order is well within this Court's lawful authority to issue. CPL 255.20(1)-(2) require "[a]ll pre-trial motions" to be (1) "included within the same set of motion papers" "whenever practicable," and (2) "served or filed within forty-five days after arraignment and before commencement of trial, or within such additional time as the court may fix." "The time restrictions fixed by CPL 255.20 are not casual"; instead, they reflect "the strong public policy to further orderly trial procedures and preserve scarce trial resources." *People v. Davidson*, 98 N.Y.2d 738, 739 (2002) (quotation marks omitted). Indeed, the Legislature adopted CPL 255.50's procedures to avoid the precise situation currently presented by defendant's barrage of last-minute motions: "to avoid the proliferation experienced under prior procedure in which a defendant could bombard the courts and Judges with dilatory tactics continuing right up to the eve of trial." *People v. Lawrence*, 64 N.Y.2d 200, 204-05 (1984).¹ Defendant's flurry of recent filings illustrates the need for docket-management measures to prevent violations of both the CPL and the Court's clear and considered scheduling orders.

Second, this Court also has authority to require the parties to submit pre-motion letters seeking leave to file out of time. Defendant has already conceded that he can have no objection to "the Court seeking previews of incoming motions as a docket-management measure" Mar. 8, 2024 Ltr. at 1 n.1. The statute supports such a procedure. This Court may resolve motions filed outside of CPL 255.20's requirements "in its discretion" "in the interest of justice, and for good cause shown." CPL 255.20(3). Absent a valid reason for the late filing, motions "may be summarily denied." *Id.* And even with a valid reason, there is no obligation for this Court to resolve late motions *before* trial. *Id.* The Order establishes a reasonable procedure for a party to identify "good cause" and to provide other information to aid this Court's exercise of its discretion. If a party fails to do so in a pre-motion letter, then there is no legal entitlement to file the motion. *See People v. Jackson*, 48 A.D.3d 891, 893 (3d Dep't 2008).

Defendant's claim that the Sixth Amendment "forbids" the Order is premature and incorrect. The Order does not deny defendant the right to file any motion. And defendant provides no reason to believe that the Order bars him from providing an adequate preview of the basis for any motion and the good cause for filing out of time. Where good cause exists and the Court determines to issue a pretrial ruling in the interest of justice, the Court will permit filing; otherwise, the Court has full authority to forestall defendant's ongoing bombardment.

¹ The cases cited by defendant are inapposite: the trial courts there shortened or disregarded statutory time frames or similar procedural requirements. *See Veloz v. Rothwax*, 65 N.Y.2d 902, 903 (1985); *People v. Mezon*, 80 N.Y.2d 155, 159 (1992). Here, by contrast, it is defendant who seeks to file motions beyond the time restrictions under the statute.

Respectfully Submitted,

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