

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D74618  
Y/htr

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - May 7, 2024

ANGELA G. IANNACCI, J.P.  
PAUL WOOTEN  
DEBORAH A. DOWLING  
JANICE A. TAYLOR, JJ.

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2024-03063

DECISION & JUDGMENT

The People, etc., ex rel. Mara Timourian, etc.,  
on behalf of Rakim Paulin, petitioner, v Kirk  
Imperati, etc., respondent.

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Ulster County Public Defender, Poughkeepsie, NY (Mara Timourian pro se of  
counsel), for petitioner.

Anthony P. Parisi, District Attorney, Poughkeepsie, NY (Anna Katharina Diehn of  
counsel), for respondent.

Writ of habeas corpus in the nature of an application to release Rakim Paulin upon  
his own recognizance or to set reasonable bail pursuant to CPL 30.30(2)(a) upon Dutchess County  
Indictment No. 78(1)/2023.

ADJUDGED that the writ is sustained, without costs or disbursements, and the matter  
is remitted to the County Court, Dutchess County, to set reasonable bail or to release Rakim Paulin  
on his own recognizance, and to fix such other terms and conditions upon the release of Rakim  
Paulin as may seem to it to be just and proper.

“Where, as here, a defendant is being held in custody on a felony, the defendant is  
subject to release if the People are not ready for trial within ‘ninety days from the commencement  
of his or her commitment’” (*People ex rel. Hereth v Franchi*, 214 AD3d 932, 933, quoting CPL  
30.30[2][a]; see *People ex rel. Chakwin v Warden, N.Y. City Correctional Facility, Rikers Is.*, 63  
NY2d 120, 125). “When making a motion pursuant to CPL 30.30(2)(a) to be released on bail or his  
or her own recognizance, a defendant who has been committed to the custody of the sheriff has the  
initial burden of demonstrating, by sworn allegations of fact, that there has been an inexcusable delay  
beyond the time set forth in the statute. Once a defendant has alleged that more than the statutorily  
prescribed time has elapsed without a declaration of readiness by the People, the People bear the

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burden of establishing sufficient excludable delay” (*People ex rel. Nieves v Molina*, 207 AD3d 797, 798 [citation omitted]; see *People ex rel. Lazzaro v Molina*, 221 AD3d 849, 850; *People ex rel. Ferro v Brann*, 197 AD3d 787, 787). The People also bear the burden of “ensur[ing], in the first instance, that the record of the proceedings . . . is sufficiently clear to enable the court considering the . . . CPL 30.30 motion to make an informed decision as to whether the People should be charged with any delay” (*People ex rel. Nieves v Molina*, 207 AD3d at 798 [internal quotation marks omitted]; see *People ex rel. Lazzaro v Molina*, 221 AD3d at 850).

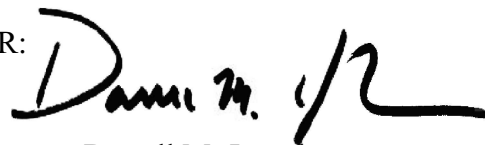
“After the People identify the exclusions on which they intend to rely[,] . . . the defense must identify any legal or factual impediments to the use of these exclusions” (*People v Henderson*, 120 AD3d 1258, 1258, *aff’d* 28 NY3d 63 [internal quotation marks omitted]; see *People ex rel. Fast v Molina*, 219 AD3d 1384, 1385). “When reviewing an application for release pursuant to CPL 30.30(2)(a), ‘[i]f, upon oral argument, a time period is in dispute, the court must promptly conduct a hearing in which the people must prove that the time period is excludable’” (*People ex rel. Hereth v Franchi*, 214 AD3d at 933, quoting CPL 30.30[8]; see *People v Brown*, 28 NY3d 392, 408-409; *People ex rel. Robertson v New York State Div. of Parole*, 67 NY2d 197, 201-202).

Here, Rakim Paulin met his initial burden of establishing that there was an inexcusable delay of more than 90 days after his commitment (see CPL 30.30[2][a]). In opposition, the People failed to set forth any exclusions on which they intended to rely. Accordingly, the burden never shifted back to Rakim Paulin to identify any legal or factual impediments to the use of any exclusions. Contrary to the People’s contention, a hearing pursuant to CPL 30.30(8) was not warranted under the circumstances. Accordingly, CPL 30.30(2)(a) requires that Rakim Paulin be released on bail which he is capable of meeting, or upon his own recognizance, and upon such other conditions as may seem just and proper (see *People ex rel. Lazzaro v Molina*, 221 AD3d at 851; *People ex rel. Nieves v Molina*, 207 AD3d at 798).

In light of our determination, we need not reach the petitioner’s remaining contention.

IANNACCI, J.P., WOOTEN, DOWLING and TAYLOR, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Darrell M. Joseph", followed by a large, stylized flourish or checkmark.

Darrell M. Joseph  
Clerk of the Court