

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:05CR43
(Judge Keeley)

TONY BRAHAM a/k/a "Tick"
a/k/a "Philly,

Defendant.

ORDER AFFIRMING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION AND
DENYING DEFENDANT'S MOTION TO DISMISS FOR LACK OF SPEEDY TRIAL

On April 3, 2007, the defendant, Tony Braham (Braham), by counsel John Pizzuti, filed a motion to dismiss the indictment for lack of a speedy trial. (Doc. No. 338.) In his motion, Braham challenged the Court's prior speedy trial findings under the Speedy Trial Act, 18 U.S.C. § 3161, *et. seq.*, Zedner v. U.S., --- U.S. ---, 126 S.Ct. 1976, 164 L.Ed.2d 749 (2006), and his Sixth Amendment right to a speedy trial. This Court referred Braham's motion to United States Magistrate Judge John S. Kaull, who, on May 22, 2007, issued a Report and Recommendation ("R&R") that found the Court had properly calculated the speedy trial time applicable to this case and that Braham's right to a speedy trial had not been violated. The R&R recommended that Braham's motion to dismiss should be denied. (Doc. No. 380.)

ORDER AFFIRMING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION AND DENYING DEFENDANT'S MOTION TO DISMISS FOR LACK OF SPEEDY TRIAL

On June 1, 2007, Braham objected to the magistrate judge's R&R. (Doc. No. 392). In his objections, Braham did not challenge the record with regard to the Court's calculations of the speedy trial time, and he made no specific objection to Magistrate Judge Kaul's recommended findings under the Speedy Trial Act, 18 USC § 3161. Instead, Braham argued that he was prejudiced by his former appointed counsel's ineffective assistance and that the approximately nineteen (19) month delay allegedly resulting from his former counsel's failure to file a speedy trial act motion or motion to sever on his behalf violated his Sixth Amendment right to a speedy trial.

On July 5, 2007, the Court held a final pretrial conference during which it took up Braham's motion to dismiss and conducted a de novo review of the magistrate judge's recommendations. For the reasons stated on the record of that conference, the reasons set forth in this Court's prior Orders making speedy trial findings, and the records of the hearings relevant to those Orders, the Court found no violation of the Speedy Trial Act in this case. Furthermore, pursuant to the standards set forth in Barker v. Wingo, 407 U.S. 514 (1972), and Doggett v. United States, 505 U.S. 647 (1992), the Court found that Braham has not been prejudiced by

ORDER AFFIRMING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION AND
DENYING DEFENDANT'S MOTION TO DISMISS FOR LACK OF SPEEDY TRIAL

the challenged postaccusation delay in this case and that his Sixth Amendment rights to a speedy trial have not been violated.

Accordingly, the Court **AFFIRMS** the Magistrate Judge's R&R (doc. no. 380) and **DENIES** Braham's motion to dismiss for lack of a speedy trial (doc. no. 338).

The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: July 11, 2007.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE