

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

THE PEOPLE OF THE VIRGIN ISLANDS **Plaintiff**)
)
 Vs.)
)
TASHIMO SCATLIFFE **Defendant**)

CASE NO. ST-15-CR-0000389

ACTION FOR: 14 V.I.C. 1783

**NOTICE OF ENTRY OF
OPINION & ORDER**

TO: VIRGIN ISLANDS POLICE DEPARTMENT- RECORDS DEPARTMENT
QUINCY MCRAE, ESQ., AAG
KWAME MOTILEWA, ESQ., OPD.
JUDGES, MAGISTRATES, LAW CLERKS, IT
ESTRELLA H. GEORGE, ACTING CLERK OF THE COURT

Please take notice that on July 14, 2016 a(n) OPINION & ORDER dated July 13, 2016 was entered by the Clerk in the above-entitled matter.

Dated: July 14, 2016

Estrella H. George
ACTING CLERK OF THE SUPERIOR
COURT



CAMEIL A. CLARKE
COURT CLERK II

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	
	)	CASE NO. ST-15-CR-389
vs.	)	
	)	
TASHIMO SCATLIFFE,	)	
	)	
Defendant.	)	
_____	)	

OPINION AND ORDER

On November 4, 2015, the People filed a one count Information charging Defendant with “mutilation of records” in violation of 14 V.I.C. § 1783, alleging that, in applying for employment at Pueblo Supermarket, Defendant (who has at least four previous Virgin Islands criminal convictions) presented a Virgin Islands Police Department Criminal History form that had been altered to falsely reflect a lack of a criminal record. At his arraignment on November 5, 2015, Defendant pled not guilty and requested a speedy jury trial. When Defendant failed to appear at the discovery conference conducted on December 16, 2016, the Court waived his appearance upon being advised by Defendant’s counsel that Defendant was in federal custody. At the February 22, 2016, motions hearing the Court was further advised that Defendant was being housed in Puerto Rico while serving time on a federal conviction. During the pretrial conference held on April 5, 2016, the Court advised the parties that, if needed, the Court would issue an order directing that Defendant be produced by federal authorities for trial.

On April 22, 2016, three days before the scheduled jury selection, Defendant filed an Informational Motion to which was attached an email from Ms. Aixa M. Perez from the Metropolitan Detention Center in Guaynabo, Puerto Rico, advising that Defendant was not being

housed in that facility. On the same date, the People filed a Motion for Continuance or in the Alternative for Administrative Dismissal with Statute of Limitations Told, seeking a two week continuance so that Defendant could be advised by his counsel of the People's plea offer. Alternatively, the Motion requested that the Court administratively dismiss the case and toll the statute of limitations "due to the defendant's incarceration outside the Virgin Islands on a federal conviction". On the same date the Defendant also filed an Opposition to Motion for Continuance and Defence's [sic] Motion to Dismiss with Prejudice, opposing the continuance and asserting that, because the People were aware of Defendant's incarceration in the federal prison system, the People were obligated to procure the presence of Defendant for trial.

Because the parties had suggested that the case might be disposed of by plea, the Court then scheduled a change of plea hearing for May 6, 2016, to give the People an opportunity to produce Defendant. At the change of plea hearing the People advised the Court that the Office of the Attorney General would not be returning Defendant to the Virgin Islands and orally moved to administratively dismiss the case without prejudice and toll the statute of limitations. The defense orally opposed the motion and again moved to dismiss the matter with prejudice because Defendant's federal sentence is 10 years and the lengthy delay would visit prejudice on Defendant. The Court took the motions under advisement and now issues this written decision.

The determination of whether to prosecute a criminal case and what charges to bring generally rests in the prosecutor's discretion.¹ From a constitutional perspective, the prosecution's discretion is virtually unfettered and unreviewable.² This Court does not have the

¹ *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978).

² *Wayte v. United States*, 470 U.S. 598, 607 (1985); *United States v. Armstrong*, 517 U.S. 456, 463 (1996).

authority to “to require the government to explain how it arrived at its decision to prosecute or not to prosecute or to evaluate or approve the prosecutor’s determination.”³ As another judge of this Court has stated in a different context, “The question of whether this case should be dismissed in the interest of justice or whether the prosecution should be pursued at all is best answered by the People...”⁴

The Virgin Islands Supreme Court observed in *Phillip v. People*,⁵

...Rule 48 of the Federal Rules of Criminal Procedure...provides in relevant part:
The government may, with leave of court, dismiss and indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant’s consent.

Pursuant to this Rule, the trial court may deny a motion to dismiss, or may grant the dismissal but with prejudice only, to protect a defendant from harassment by a prosecutor acting in bad faith, to protect “the public interest in the fair administration of criminal justice and...to preserve the integrity of the courts...[Consequently, a] court is generally required to grant a prosecutor’s Rule 48(a) motion to dismiss unless dismissal is ‘clearly contrary to manifest public interest.’”⁶

Nothing presented by Defendant establishes that the People have engaged in selective prosecution or that the People are pursuing this case in bad faith, in a vindictive manner, or for other improper purposes. While the delay necessitated for completion of Defendant’s federal sentence may be lengthy, it remains to be seen whether the People will actually seek to refile this charge. Nor has Defendant demonstrated that the fair administration of criminal justice or the integrity of the Court would be endangered by dismissal without prejudice. Under the

³ *In re Richards*, 40 V.I. 161, 173, 181 (D.V.I. 1999) (“Under the substantive common law of the Virgin Islands which governs dismissal of criminal cases in the [Superior] Court, the Virgin Islands Department of Justice has the sole discretion to determine when to initiate, continue, and terminate the prosecution of criminal cases.”)

⁴ *People v. Richardson*, 52 V.I. 211, 230 (Super.Ct. 2009).

⁵ 58 V.I. 569 (V.I. 2013).

⁶ (Citing *United States v. Carrigan*, 778 F.2d 1454, 1463 (10th Cir. 1985) (collecting cases); see also *Rinaldi v. United States*, 434 U.S. 22, 30 (1977) (indicating that the “salient issue” is whether the government is acting in good faith)).

circumstances, the Court will not interfere with the People's discretionary prosecutorial decision to dismiss this case without prejudice.

Moreover, it does not appear that the Court must reach the issue of whether the statute of limitation should be tolled. While Defendant is charged with "mutilation" of records in conformity with the heading of the statute, the Information alleges facts that establish the "falsification" of a public record in violation of 14 V.I.C. § 1783, which provides, "Whoever, not being such an officer as is referred to in section 1782 of this title, commits any of the acts specified in that section, shall be fined not more than \$1,000 or imprisoned no more than 5 years, or both." Section 1782 reads:

Whoever, being an officer having the custody of any record, map, or book or any paper or proceeding of any court, filed or deposited in any public office or placed in his hands for any purpose –

(1) steals, willfully destroys, mutilates, defaces, alters, falsifies, removes or secretes the whole or any part of such record, map, book, paper or proceeding; or

(2) permits any other person so to do –

shall be fined not more than \$2,000 or imprisoned not more than 10 years, or both, and shall be disqualified from holding any public office.

Importantly, 5 V.I.C. § 3541, which sets the periods of limitations for criminal offenses, clearly states:

(a) A criminal action shall be commenced within the following periods:

(1) For murder, felony child abuse, felony child neglect, any felony sexual offense perpetrated against a victim, embezzlement of public moneys, and **the falsification of public records, there is no limitation of the time within which a prosecution shall be commenced.** (emphasis added).

And, the Virgin Islands Supreme Court has specifically recognized that the Virgin Islands Legislature exempted falsification of public records in violation of 14 V.I.C. §§ 1782 and 1783 from the three year felony statute of limitations.⁷

Thus, it appears that violations of 14 V.I.C. § 1783 may be prosecuted at the discretion of the People. In any event, if the Defendant is subsequently prosecuted and wishes to challenge the prosecution based on the statute of limitations, Defendant is free to do so in the subsequent proceedings. For the purpose of deciding the motion before the Court, the Court need not determine at this stage whether a subsequent prosecution is barred. Consequently, it is

ORDERED that the People's Motion to Dismiss without Prejudice is GRANTED to the extent it seeks to dismiss this case without prejudice; and it is

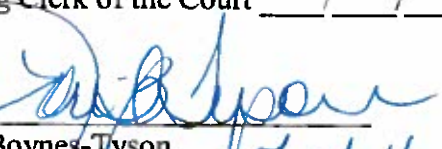
ORDERED that the Information is DISMISSED WITHOUT PREJUDICE; and it is

ORDERED that this file shall be CLOSED; and it is

ORDERED that copies of this Order be shall directed to counsel of record and the IT Division of the Superior Court.

DATED: July 13, 2016.

ATTEST: Estrella H. George
Acting Clerk of the Court

by: 
Lori Boynes-Tyson
Court Clerk Supervisor 7/14/16


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS

CERTIFIED A TRUE COPY
DATE: 7-14-16
ESTRELLA H. GEORGE
Acting Clerk of the Court
By: 
Court Clerk II

⁷ *Miller v. People*, 54 V.I. 398, 401-06 (V.I. 2010).