IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

GOVERNMENT OF THE VIRGIN ISLANDS, Plaintiff	CRIMINAL NO. 572/1983
vs.	BURGLARY THIRD
ARTHUR PEMBERTON, Defendant	

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

This matter came before this Court on defendant's Motion to Dismiss the charges against him on the ground that his constitutional right to a speedy trial under the Sixth Amendment of the U.S. Constitution has been violated. The Government of the Virgin Islands opposed defendant's motion and a hearing on the motion was scheduled for March 22, 1985. The Court postponed hearing and ruling on the motion until the parties filed briefs supporting their respective arguments. Oral arguments on the motion were heard on April 9, 1985. For the reasons stated below, defendant's Motion to Dismiss shall be granted.

II. FACTS

The record indicates that the incident for which the defendant stands charged occurred on November 28, 1983.

Defendant was arrested on November 28, 1983 and bail was set at $100,000 with no ten percent provision. On November 29, 1983, a motion for reduction of bail was filed on defendant's behalf. A hearing was held and defendant was released on bail. On December 1, 1983 an information was filed by the Office of the Attorney General of the Virgin Islands charging defendant with burglary in the third degree. Defendant was advised of his rights on January 5, 1984 and on January 18, 1984 he entered a plea of not guilty, made a demand for jury trial and was continued on bail. Thereafter, nothing was done in the processing of this case until March 14, 1985, when counsel for the defendant filed a motion to dismiss, alleging a denial of a speedy trial, guaranteed under the Sixth Amendment of the United States Constitution.

III. DISCUSSION

In analyzing the claim of constitutional violation, this Court must be guided by the "balancing test" set forth by the Supreme Court in Barker v. Wingo, 407 U.S. 514 (1972). The Court in Barker articulated four factors which must be considered in determining if there has been a violation of a defendant's right to a speedy trial. These factors are:

1. the length of the delay, which must be found to be "presumptively prejudicial" to warrant further inquiry;

2. the reason for the delay;

3. the defendant's assertion of his right to speedy trial; and

4. the prejudice to the defendant resulting delay.

Id. at 530.

A. Length of Delay and Reason for the Delay

Before any inquiry can be made as to a constitutional violation, this Court must first determine whether the length of the delay in this case is presumptively prejudicial. Whether this presumption of prejudice arises depends wholly on the circumstances of the individual case. For example, the court in Barker stated that "the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." Id. at 530.

In this case, 16 months elapsed from the arrest of the defendant to the filing of the motion to dismiss, and 14 months since the last court proceeding (the arraignment). In this jurisdiction a delay of 14 months is definitely unusual and in this Court's opinion, triggers further analysis. See, Government of the Virgin Islands v. Quetel, Crim. No. F40-1980, Mem. Op., Terr. Ct., Division of St. Thomas and St. John, February 26, 1982 ("in this jurisdiction a delay of nine months is unusual....").

The record reveals that there is no justification for the delay of fourteen months. The reason for the delay appears to be the failure of the Territorial Court to schedule the case for trial. Such fault cannot be attributable to nor held against the defendant. Although the delay cannot be directly attributed to the Office of the Attorney General, the Government must still bear the final responsibility:

> A more neutral reason such as negligence or overcrowded courts should be weighed less heavily [against the Government] but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the Government rather than with the defendant.

Barker, 407 U.S. at 531.

B. Defendant's Assertion of Right to Speedy Trial

The record indicates that the defendant did not assert his right to a speedy trial until fourteen months after his last court appearance. Defendant argues that his failure to assert his speedy trial right earlier was due to the fact that he mistakenly believed that no information had been filed by the Government, and that as a result it is "contrary to common sense" to suggest that he must affirmatively seek out charges against himself. In addition, defendant claims that had it not been for his Motion to Dismiss, this case would still in the "the nether limbo world" in which it existed prior to the filing of the motion. Although the arguments of the defendant have some merit, Barker teaches that "the defendant's assertion of a speedy trial right is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." Id. at 532. This Court finds that this particular factor must be weighed against the defendant.

C. Prejudice to the Defendant

The last factor to be considered is whether or not there was prejudice to the defendant occasioned by the delay. Although the defendant has not come forward and suggested concrete factors showing prejudice, (for example, unavailability of witnesses) nevertheless, this Court is of the opinion that the thrust and philosophy of Barker compels a finding of prejudice. In Moore v. Arizona, 414 U.S. 25, 94 S.Ct. 188 (1973) the Supreme Court, citing Barker, specifically rejected the notion that an affirmative demonstration of prejudice was necessary to prove a denial of a speedy trial. The Court also found that prejudice to a defendant is not limited to the possible prejudice to his defense in the particular case:

> [inordinate delay] wholly aside from possible prejudice to a defense on the merits, may "seriously interfere with the defendant's liberty, whether he is free on bail or not

> and ... may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in his, his family and his friends' (cite omitted). These factors are more serious for some than for others, but they are inevitably present in every case to some extent, for every defendant will be either incarcerated pending trial or on bail subject to substantial restrictions on his liberty.

Id.. at 27, citing Barker v. Wingo 407 U.S. at 537 (White, J., concurring).

In U.S. v. McDonald, 456 U.S.1 (1982) the Supreme Court articulated the idea that:

> the speedy trial guarantee is designed to minimize a possibility of lengthy incarceration prior to trial, to reduce the lesser, but nonetheless substantial impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges.

Id. at 8. This same idea was adopted by the Third Circuit in U.S. v. Dreyer, 533 F.2d 112 (1976). The Court in Dreyer explicitly stated that the speedy trial guarantee has generally been regarded as a shield against personal prejudice to a defendant, even though some courts appear to "express more solicitude toward this sort of prejudice than toward impairment of a defense." Id. at 115. In his motion, the defendant alleges that his "family life has been seriously disrupted, his liberty seriously jeopardized, and that he has been forced to live under a cloud of anxiety, suspicion and hostility for the last 16 months." These are the same personal prejudices the speedy trial guarantee is designed to protect against. This Court concludes that the defendant has been prejudiced by a delay of 14 months.

In balancing the four factors set forth in Barker v. Wingo, this Court finds that the defendant, Arthur Pemberton, has been denied his right to a speedy trial.

Accordingly, the charges filed against the defendant are hereby dismissed with prejudice.

DATED: June 6th 1985

Raymond L. Finch, Judge