

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No: 21-cr-10270-MLW
	)	
ATICHA JITTAPHOL,	)	
Defendant	)	

GOVERNMENT’S MEMORANDUM REGARDING SPEEDY TRIAL ACT

At the final status conference on May 26, 2022, the Court ordered the parties to meet and confer regarding the number of non-excludable days remaining under the Speedy Trial Act (STA), 18 U.S.C. §3161, *et seq.*, and, if they did not agree, to file memoranda setting forth their respective positions. In her filing dated June 2, 2022 (D.107), the defendant, Aticha Jittaphol, contends that the 70-day speedy trial clock began to run on May 2, 2022, the day she filed her Notice of Withdrawal of Guilty Plea. D.85. That contention runs counter to the plain text of the statute and relevant case law and is plainly incorrect. For the reasons set forth below, the government maintains that the speedy trial clock began to run anew on May 10, 2022, the day the Court entered an order making the defendant’s plea withdrawal final. D.90.

Procedural History

On September 13, 2021, the government filed an Information charging the defendant with one count of making false statements, in violation of 18 U.S.C. §1001(a)(2) (D.1), and that same day filed a signed plea agreement entered under Fed. R. Crim. P. 11(c)(1)(C), providing for a sentence of probation. D.4, D.7 (amended plea agreement filed with Court-ordered revision to appeal waiver provision). The defendant had her initial appearance on

October 26, 2022 (D.8), and the Court excluded the time from that date through the date of the next hearing in the interests of justice, 18 U.S.C. §3161(h)(7)(A). D.15, 97.

The next hearing was held on January 20, 2022. At that hearing, the parties offered their proposed plea agreement, which the Court took under consideration. D.27, 30. At the next hearing on March 8, 2022, the Court accepted the defendant's guilty plea but deferred acceptance of the plea agreement until the date of sentencing. D.53. The time from the January 20 hearing to the March 8 hearing was excludable under 18 U.S.C. §3161(h)(1)(G) (Court's consideration of plea agreement). No non-excludable days elapsed between the defendant's arraignment and guilty plea.

On April 18, 2022, the Court entered a Memorandum and Order revoking the defendant's pretrial release, rejecting the parties' plea agreement, and directing the defendant to inform the Court by May 2, 2022 whether she wished to withdraw her guilty plea. D.79. On May 2, the defendant filed a Notice of Withdrawal of Guilty Plea (D.85), which the Court made final on May 10, 2022. D.90.

No order of excludable delay was entered in connection with the defendant's May 2 notice of intent to withdraw her plea or the Court's May 10, 2022 order finalizing the withdrawal.

The case was referred to the Magistrate Court for a status conference on May 18, 2022, and a final status conference was held on May 26, 2022. By order dated May 26, 2022, the Court excluded the time from May 18, 2022 through May 26, 2022 in the interests of justice pursuant to 18 U.S.C. §3161(h)(7)(A). D.101.

Speedy Trial Act Calculation

Application of the STA to this case is straightforward. Section 3161(i) states that:

If trial did not commence within the time limitation specified in section 3161 because the defendant had entered a plea of guilty or nolo contendere subsequently withdrawn to any or all charges in an indictment or information, the defendant shall be deemed indicted with respect to all charges therein contained within the meaning of section 3161, *on the day the order permitting withdrawal of the plea becomes final*.

18 U.S.C. §3161(i) (emphasis added). In this case, the Court rejected the parties' Rule 11(c)(1)(C) plea agreement on April 18, 2022, and properly informed the defendant of her right to withdraw her plea, as required by Rule 11(c)(5). On May 2, the defendant noticed her intent to withdraw her plea, and on May 10, the Court ordered her plea withdrawn. For STA purposes, a defendant who withdraws her guilty plea is deemed indicted with respect to all charges, and the 70-day trial clock began to run anew, "on the day the order permitting withdrawal of the plea becomes final." 18 U.S.C. §3161(i). Here, the operative day is May 10, 2022, when the Court entered its order stating that the defendant's plea was withdrawn. D.90. *See United States v. Solorzano-Rivera*, 368 F.3d 1073, 1077-79 (9th Cir. 2004) ("Solorzano moved to withdraw the plea on January 8, 2003, and the court granted his motion on January 21, 2003 . . . Consequently, under §3161(i), Solorzano was deemed indicted on January 21, 2003, the date on which the order permitting his plea withdrawal became final."); *United States v. Phillips*, 2017 WL 3129135, at *4 (S.D. Ohio July 24, 2017) ("Despite Defendant's unilateral conclusions to the contrary, his written notice to withdraw his plea did not serve to *actually* withdraw his plea. A defendant's notice of intent to change his plea is treated as a 'motion requiring a hearing, [and thus] excludes the time from the filing through the conclusion of the plea hearing.' *Coviello v. United States*, 287 F. App'x 503, 508 (6th Cir. 2008) (emphasis

added). And, pursuant to 18 U.S.C. §3161(i), the speedy trial clock remains tolled until ‘the day the order permitting withdrawal of the plea becomes final,’ at which point speedy trial time begins anew, as if the defendant had just been indicted.”).

The defendant seeks to avoid the consequences of §3161(i) by claiming it does not apply to her case or, apparently, to any case involving a guilty plea entered under Fed. R. Crim. P. 11(c)(1)(C). The defendant argues that because the Court has no discretion to deny a defendant’s request to withdraw her plea after the Court has rejected the binding “C” plea agreement, there is no need for the court to hold a hearing or issue a written order permitting the withdrawal; thus, the operative date for STA purposes is the date the defendant “exercises [her] unilateral right” to withdraw her plea. D.107 at page 3. The defendant’s argument suffers from two fatal flaws.

First, §3161(i) of the STA operates to reset the 70-day trial clock in all situations where a defendant withdraws a previously entered guilty plea. Nothing in the statutory text purports to distinguish between pleas entered or plea agreements rejected under the various subsections of Rule 11(c), let alone provide different reset rules for each. To the contrary, the text very clearly states that the STA trial clock resets “on the day the order permitting withdrawal of the plea becomes final.” This unambiguous language provides clear guidance as to when the trial clock resets after a defendant requests to withdraw her plea, whether because “the court rejects a plea agreement under Rule 11(c)(5)” or “the defendant can show a fair and just reason for requesting the withdrawal.” Fed. R. Crim. P. 11(d)(2).

Second, even if Rule 11 does not afford the Court discretion to deny a defendant’s request to withdraw her plea after it rejects a plea agreement under Rule 11(c)(5), the withdrawal process is not, as the defendant suggests, “unilateral.” The Court still must

acknowledge and finalize the withdrawal to move the case forward procedurally. The defendant acknowledges as much, positing that the Court must, in some way, “recognize[] the legitimacy of the plea withdrawal.” D.107 at page 5. That is precisely the “order” contemplated by §3161(i), which recognizes that undoing a guilty plea requires an act of finality by the court that is commensurate with accepting a guilty plea, at least for purposes of resetting the STA clock.

Here, the Court entered an order finalizing the withdrawal of the defendant’s guilty plea on May 10, 2022, and under §3161(i), that is the date the 70-day trial clock began to run anew. Accordingly, as of the date of this filing, the government submits that only 18 non-excludable days have elapsed—May 11 through May 17 (7 days) and May 27 through today, June 6 (11 days)—leaving 52 days to commence trial.

Respectfully submitted,

RACHAEL S. ROLLINS
United States Attorney

By: /s/ Kelly Begg Lawrence
KELLY BEGG LAWRENCE
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the Court’s Electronic Court Filing (ECF) system on June 6, 2022, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Kelly Begg Lawrence
Kelly Begg Lawrence
Assistant U.S. Attorney