

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	
TAMMY WATKINS and	:	NO. 02-120-1
ANISSA PEOPLES.	:	NO. 02-120-2

MEMORANDUM AND ORDER

Schiller, J.

May 5, 2004

Defendants Tammy Watkins and Anissa Peoples are each charged with one count of importation of cocaine. Presently before the Court is Defendants' motion to dismiss the indictment pursuant to Rule 48(b) of the Federal Rules of Criminal Procedure. For the reasons set out below, the Court dismisses the indictment without prejudice.

On July 20, 2001, a complaint was filed in this Court charging each Defendant with one count of conspiracy to import cocaine.¹ Over the course of the next seven months, the Government negligently allowed the Speedy Trial Act deadline for indictment to lapse twice: once for one day; once for forty days. At the end of the forty-day period, a grand jury returned an indictment against both Defendants for conspiracy and the substantive offense of importation of cocaine. On March 12, 2002, this Court dismissed all charges against Defendant Peoples with prejudice under the Speedy Trial Act, *United States v. Watkins*, 2002 WL 32351114, *1 (E.D. Pa. Mar. 12, 2002), and on April 19, 2002 dismissed with prejudice the indictment against Defendant Watkins as well, *United States v. Watkins*, 200 F. Supp. 2d 489 (E.D. Pa. 2002). On August 6, 2003, the Third Circuit

¹ The full factual background of this case is set out in this Court's opinion of April 19, 2002, *United States v. Watkins*, 200 F. Supp. 2d 489 (E.D. Pa. 2002), and the Third Circuit opinion of August 6, 2003, *United States v. Watkins*, 339 F.3d 167 (3d Cir. 2003).

reinstated the importation indictments, holding that the Speedy Trial Act violations were committed vis-a-vis the conspiracy charges only, and therefore the Act had not been violated as to the importation charges. *See United States v. Watkins*, 339 F.3d 167 (3d Cir. 2003).

Defendants now move to dismiss the importation charges under Rule 48(b). This Rule provides that “[t]he court may dismiss an indictment, information, or complaint if unnecessary delay occurs in: (1) presenting a charge to a grand jury; (2) filing an information against a defendant; or (3) bringing a defendant to trial.” FED. R. CRIM. P. 48(b). As the Third Circuit has explained, Rule 48(b) is a codification of a court’s “inherent power to dismiss a case simply for want of prosecution” and applies to situations in which the Speedy Trial Act has not necessarily been violated. *United States v. Dreyer*, 533 F.2d 112, 113 n.1 (3d Cir. 1976); *see also Watkins*, 339 F.3d at 180 (Nygaard, J., concurring) (noting that Rule 48(b) provides “authority to dismiss indictments . . . independent[] from the Speedy Trial Rule”); *United States v. Zabady*, 546 F. Supp. 35, 38 (M.D. Pa. 1982) (“The rule imposes a stricter standard of tolerable delay than does the [S]ixth [A]mendment.”). Dismissals under Rule 48(b) may be either with or without prejudice. *See United States v. Goodson*, 204 F.3d 508, 515 (4th Cir. 2000) (reversing dismissal with prejudice and ordering dismissal without prejudice). The district court’s decision to grant or deny a Rule 48(b) motion is discretionary.² *Gov’t of Virgin Islands v. Lee*, 775 F.2d 514, 526 (3d Cir. 1985).

Defendants argue that the indictment should be dismissed with prejudice because the Government twice violated the Speedy Trial Act without providing a sufficient explanation of the cause of these violations. The Government responds that the total delay in this case amounted to

² Although the Fourth Circuit has noted that motions to dismiss without prejudice are subject to “more relaxed standards,” *Goodson*, 204 F.3d at 515, this Court is not aware of any caselaw that has delineated these standards.

only forty-one days and that dismissal with prejudice is unwarranted for such a minor postponement, especially in the absence of serious prejudice to Defendants. The Court agrees with the Government that the length and nature of the delays in this case do not warrant the severe remedy of dismissal with prejudice. Nonetheless, the Court reiterates its prior finding that the procedural delays were unwarranted and caused Defendants some prejudice, *see Watkins*, 2002 WL 32351114, and notes that at least two circuit courts have found dismissal without prejudice to be appropriate in similar contexts. *See United States v. Yuan Qing Jiang*, 214 F.3d 1099, 1103 (9th Cir. 2000) (ordering district court to dismiss indictment without prejudice where delays subjected defendants to extra three weeks in jail); *Goodson*, 204 F.3d at 516 (ordering district court to dismiss indictment without prejudice where defendant “suffered no demonstrable prejudice or threat of prejudice” from delay); *cf. Watkins*, 339 F.3d at 180 (Nygaard, J., concurring) (noting potential application of Rule 48(b) to cases such as *Watkins*); *Zabady*, 546 F. Supp. at 40 (dismissing indictment without prejudice where defendant timely asserted right to speedy trial and substantial delay was due to government’s failure to prepare for trial). Thus, this Court holds, in accord with the above-cited cases, that where the Government twice delays a criminal prosecution in violation of its statutory obligations, albeit in a manner that does not warrant dismissal under the Speedy Trial Act, these delays may constitute sufficient cause to render dismissal without prejudice under Rule 48(b) appropriate. Accordingly, the Court exercises its discretion to dismiss the importation indictment without prejudice. An appropriate Order follows.

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ORDER

AND NOW, this 5th day of **May, 2004**, upon consideration of Defendant Tammy Watkins's Motion to Dismiss the Indictment for Failure to Prosecute (Document No. 49), Defendant Anissa Peoples's Motion to Dismiss the Indictment for Failure to Prosecute (Document No. 50), and the Government's response thereto, it is hereby **ORDERED** as follows:

1. Defendants' motions to dismiss the indictment with prejudice are **GRANTED in part** and **DENIED in part**.
2. The indictment (Document No. 25) is **DISMISSED without prejudice**.

BY THE COURT:

Berle M. Schiller, J.