

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

<b>UNITED STATES OF AMERICA</b>	:	<b>CRIMINAL ACTION</b>
	:	
v.	:	
	:	
<b>JOHN FELDER</b>	:	
a/k/a "Bo"	:	<b>NO. 06-079-01</b>

GENE E.K. PRATTER, J.

JANUARY 17, 2007

**MEMORANDUM AND ORDER**

The Government indicted John Felder with 11 counts of distributing or possessing with intent to distribute differing quantities of three different controlled substances, namely cocaine base, marijuana and heroin. He is also charged with two counts of possessing a total of three firearms in furtherance of drug trafficking and two counts of being a felon in possession of firearms.

Among his pre-trial motions, Mr. Felder claims that his Federal Rule of Criminal Procedure 5(a)(1)(A) right to a prompt appearance before a Magistrate Judge was violated because there were 78 days between the date when a warrant was lodged as a detainer at SCI Somerset (January 24, 2006) and his initial appearance on April 12, 2006 before Magistrate Judge Wells. Therefore, Mr. Felder moves to dismiss the indictment on that basis. The Government opposes Mr. Felder's Motion.

Federal Rule of Criminal Procedure 5(a)(1)(A) provides:

A person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge, or before a state or local judicial officer as Rule 5(c) provides, unless a statute provides otherwise

Analytically, Defendant's Rule 5(a)(1)(A) argument is premised upon equating the

lodging of a detainer with an “arrest.” In Moody v. Daggett, 429 U.S. 78, 81 n.2 (1976), the Supreme Court described a detainer as an “internal administrative mechanism to assure that an inmate subject to an unexpired term of confinement will not be released from custody until the jurisdiction asserting a . . . violation has had an opportunity to act in this case by taking the inmate into custody . . . .”

Merely lodging a detainer against Mr. Felder at a time when he was already in custody at SCI Somerset - - - and not facing imminent release - - - did not actually implicate his liberty. The detainer did not in and by itself intrude upon Mr. Felder’s liberty; it only notified the SCI Somerset officials that another jurisdiction sought notification in advance of any release of Mr. Felder by SCI Somerset so that a full-fledged warrant could be executed in a timely and efficient manner. While a detainer conceivably could operate to deprive someone of their liberty if the detainee would otherwise be released but for the lodging of the detainer, the lodging of a detainer in and of itself is not an “arrest” at the moment it is lodged, and it was not an arrest in this case.<sup>1</sup>

Rule 5(a)(1)(A) is not implicated here, but if it was, Mr. Felder’s request for dismissal of the indictment is still without merit inasmuch he experienced no cognizable prejudice and no

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<sup>1</sup> Courts have reached the same result in analogous contexts. See, e.g., United States ex rel. Caruso v. United States Bd. of Parole, 570 F.2d 1150, 1154-55 (3d Cir. 1978) (holding that federal parolee, convicted and imprisoned by state authorities while on parole, was not entitled to immediate revocation hearing on a federal parole violator warrant on ground that the existence of federal detainer denied parolee access to state prison program and lengthened time he must spend in state prison because state parole authorities would look unfavorably upon his lack of participation in such program; harm foreseen was far too uncertain and inchoate to rise to level of deprivation of liberty interest); United States v. Fromal, 725 F. Supp. 856, 859 (E. D. Pa. 1989) (Federal Rule of Criminal Procedure 48(b) relating to unnecessary delay in presenting charge to grand jury was inapplicable because delay in bringing defendant to trial did not occur after any “arrest” on federal charge where defendant was being held in county prison on state charges, although there was a detainer against him).

evidence was gathered against him as a result of the alleged “delay” in his initial federal appearance. Suppression of evidence or evaluation of resulting prejudice can be appropriate responses to a Rule 5(a) violation.<sup>2</sup> However, Mr. Felder has presented the Court with no basis to invoke such remedies, other than to make general allegations that the alleged delay somehow prejudiced his defense. Such general allegations are not sufficient. See, e.g., United States v. Bibb, 194 Fed. App. 619, 623, 2006 WL 2442037, at \*3 (11th Cir. 2006). In particular, Mr. Felder does not seek to suppress any incriminating statements or other evidence obtained as a result of the alleged “delay” in his initial federal appearance.

Accordingly, the Court concludes that no Rule 5(a)(1)(A) violation has occurred and that, in any event, no disadvantage has befallen Mr. Felder as a result of the timing of his initial appearance before the federal magistrate. Mr. Felder’s Motion to Dismiss the Indictment will be denied pursuant to the accompanying order.

BY THE COURT:

S/Gene E.K. Pratter  
GENE E.K. PRATTER  
United States District Judge

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<sup>2</sup> Since the provisions of Federal Rule Civil Procedure 5(a) are procedural, not substantive, the sanction imposed by federal courts for failure to comply with Rule 5(a) is suppression of evidence obtained during the period of unnecessary delay rather than dismissal of the indictment. United States v. Dyer, 325 F.3d 464, 470 n.2 (3d Cir. 2003). Mr. Felder argues that if there is no evidence to suppress, the length of the delay is outrageously lengthy, and the defendant likely would not have been incarcerated but for the Rule 5(a) violation, the Court may dismiss the charges. See United States v. Melendez, 55 F. Supp. 2d 104, 109 (D.P.R. 1999). While dismissal may be appropriate under certain circumstances, those circumstances certainly are not presented in the instant case.

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<b>JOHN FELDER</b>	:	
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**ORDER**

AND NOW, this 17<sup>th</sup> day of January, 2007, upon consideration of the Defendant's Motion to Dismiss the Indictment Pursuant to Rule 5(a)(1)(A) of the Federal Rules of Criminal Procedure (Docket No. 59), and the Government's response thereto (Docket No. 73), it is hereby ORDERED that the Motion is DENIED.

BY THE COURT:

S/Gene E.K. Pratter  
GENE E.K. PRATTER  
United States District Judge