# State of New Jersey

**OFFICE OF THE PUBLIC DEFENDER**
**MONMOUTH REGION**
**JOSHUA HOOD, DEPUTY PUBLIC DEFENDER**
**7 BROAD STREET**
**FREEHOLD, NEW JERSEY 07728**
**TEL :732- 308-4320**
**FAX: 732-761-3679**
TheDefenders@OPD.NJ.GOV

**PHIL MURPHY**
*Governor*
**TAHESHA L. WAY**
*Lt. Governor*

**JENNIFER N. SELLITTI**
*Public Defender*
**JOSHUA HOOD**
*Deputy Public Defender*


September 9, 2025

Honorable Marc C. Lemieux, A.J.S.C.
Monmouth County Courthouse
71 Monument Park, 3rd Floor
Freehold, NJ 07728

**Re:** **State v. Paul Caneiro**
Case No. 18-004915 / Indictment No. 19-02-283-I

**Memo Re: 2-Year Speedy Trial Release**

Your Honor:

Mr. Caneiro, the accused, has waited almost 7 full years for a trial in this case.[1] He has waited patiently while State sought an indictment, while the Covid-19 pandemic postponed the administration of justice, while motions and appeals were litigated, and while counsel was changed. All the while, Mr. Caneiro has steadfastly maintained his innocence.

As this Court is familiar, the Criminal Justice System in the State of New Jersey was drastically changed in 2017 when the Criminal Justice Reform Act (CJRA) came into effect.

[1] November 21, 2025 will mark exactly 7 years since his initial arrest. November 29, 2025 will mark 7 years from the date of his subsequent arrest. November 30, 2025 will mark 7 years from the date that Mr. Caneiro consented to his pretrial detention.

Upon arrest, the question was no longer how much bail, but rather, detention or release. Those that are released will have their cases handled in due course as they were pre-2017.

However, very different rules apply to those who have been detained: the State has 90 days to indict detainees and 180 days post-indictment to bring them to trial. N.J.S.A. 2A:162-22a(2)(a). Importantly, these stringent time constraints were implemented to assure the constitutionality of the CJRA and to protect the constitutional rights of the accused. As noted by the United States Supreme Court when the constitutionality of the Federal Bail Reform Act was challenged, the Act does not unconstitutionally punish without conviction because "the maximum length of detention is limited by the Speedy trial Act." United States v. Salerno, 481 U.S. 739 (1987).

In other words, to ensure that detainees are not unfairly, unjustly, or unnecessarily languishing in jail awaiting a trial, the speedy trial provisions of the CJRA demand that if a defendant is not brought to trial timely, then his release will be ordered. Indeed, "the Act limits the length of such detentions to ensure speedy trials, and to mitigate presumed innocent defendants' loss of liberty." State v. D.F.W., 468 N.J. Super. 422, 425-26 (App. Div. 2021). As this Court is also familiar, however, these 90-day and 180-day deadlines can be extended with excludable time that is attributed to either the State, to the Court, or to the defendant himself. See N.J.S.A. 2A:162-22b(1); R. 3:25-4(i); see also D.F.W., supra at 426.

Additionally, in the event the 180-day speedy trial timeline is expired, a court can still continue a defendant's pre-trial detention another 60 days if the State files a Motion within 15 days of the release date and if the court finds that (1) the defendant presents a

"substantial and unjustifiable risk" to public safety; and (2) that the failure to commence trial was not caused by "unreasonable delay by the prosecutor." N.J.S.A. 2A:162-22a(1)(a); R. 3:25-4(c)(2); 3:25-4(c)(4)(B); see also State v. Mackroy-Davis, 251 N.J. 217, 227 (2022); D.F.W., supra at 433-34.

To further ensure fairness, however, the CJRA included a very strict time constraint regarding the maximum time that a defendant can be detained without a trial. A defendant shall be released if he is not brought to trial within 2 years and the prosecutor is not ready "to proceed to voir dire or to opening argument, or the hearing of any motions that had been reserved for the time of trial." N.J.S.A. 2A:162-22(a)(2)(a); R. 3:25-4(d)(1),(3); see also Mackroy-Davis, 251 N.J. at 227. Unlike the 180-day clock which begins upon indictment, "the two-year clock starts running from the date of detention." D.F.W., supra at 440 (citing N.J.S.A. 2A:162-22(a)(2)(a) and R. 3:25-4(d)(1)). Only excludable time attributed to the defendant can count toward extending the two-year cap. N.J.S.A. 2A:162-22(a)(2)(a); R. 3:25-4(d)(1); Mackroy-Davis, 251 N.J. at 227, 233; D.F.W., supra at 426. That is, excludable time attributable to the State or to the Court can only move the 90-day and 180-day timelines, never the 2-year timeline. D.F.W., supra at 440 ("[T]he two-year clock counts days in detention after subtracting excludable time only if attributable to defendant, unlike the 180-day clock, which subtracts all excludable time[.]") (emphasis added).

Critically, unlike the 180-day time clock, the 2-year time clock does **not** consider whether the defendant is a 'substantial and unjustifiable danger' or whether the State's delay

was 'unreasonable.' See D.F.W., 368 N.J. Super. at 440-41.[2] Rather, the only question is whether the State is ready to proceed to trial. See id. at 427 ("As for the two-year clock, the statute's plain language conditions release on the prosecutor's non-readiness."). In short, "the two-year clock triggers release only if the prosecutor is not ready to start trial." Ibid.

As stated, the "CJRA contains a two-year cap." Mackroy-Davis, 251 N.J. at 227. This "two year limit is a protective measure to guard against unduly prolonged detention." In re Pretrial Detainess, 245 N.J. 218, 232 (2021). It states:

> "[A]n eligible defendant **shall** be released from jail . . . after a release hearing if, two years after the court's issuance of the pretrial detention order for the eligible defendant, excluding any delays attributable to the eligible defendant, the prosecutor is not ready to proceed to voir dire or to opening argument, or to the hearing of any motions that had been reserved for the time of trial."

N.J.S.A. 2A:162-22(a)(2)(a) (emphasis added); see also R. 3:25-4(d)(1). In other words, if the State is not ready to proceed to trial after two years, the defendant **must be released**. Mackroy-Davis, 251 N.J. at 227; D.F.W., 468 N.J. Super. at 427. "To repeat, if a defendant is detained beyond the statute's two-year cap, not counting delays attributable to the defendant, that defendant is entitled to be released pending trial if the prosecutor is not ready to proceed." Mackroy-Davis, 251 N.J. at 233. (Emphasis added). Unlike with the 180-day speedy trial timeline, which permits consideration of whether the defendant poses a

[2] The State appears to conflate these two standards by arguing that the 2-year clock should be extended because the defendant poses 'a substantial and unjustifiable risk' and that the delay was not 'unreasonable delay' caused by the State. (Sb5-6). However, these factors do not apply to the 2-year time clock.

substantial and unjustifiable danger, and whether the State caused an 'unreasonable' delay, "the two-year clock includes no such caveat; release is **mandated** albeit with conditions." D.F.W., 368 N.J. Super. at 440-41. (Emphasis added).

In Mackroy-Davis, supra, our Supreme Court was faced with the question of what happens when the State is ready to proceed to trial, however is unable to do so based on circumstances caused by the Covid-19 pandemic. As the Court explained, the CJRA "statute is silent about what happens if the parties are ready but there are not enough courtrooms or judges to try the case." Id. at 222, 235. The Court further noted, "we recognize there are not enough available courtrooms today to address the substantial number of pending criminal cases because of COVID-19[.]" Id. at 236. The Court's focus clearly dealt with situations where the State was ready, however, the court was 'not available' to try the case. Id. at 235.

Thus, in order to "address that dilemma," the Court ruled that a prosecutor's "statement of readiness can effectively extend the two-year cap, and a defendant's pretrial detention, if the court is not able to proceed" due to Covid-19 related conditions. Ibid. In Mackroy-Davis, for example, the conditions were that the court "was unable 'to move cases more than one at a time' because of the backlog of cases and the unavailability of courtrooms." Ibid. The Court also provided additional guidance to lower courts and vicinages to navigate the complex issues caused by the Covid-19 pandemic. Id. at 235-237. This included holding hearings to address trial readiness and court availability, which were later termed "Mackroy-Davis hearings." See ibid.

To be clear, however, a 2-year speedy trial release hearing and what is referred to as a 'Mackroy-Davis hearing' are not the same. In Mackroy-Davis, the Court made clear that, "this appeal addresses the need for additional time to commence trial ***because of the COVID-19 pandemic***, not more generalized arguments about routine scheduling matters unrelated to a public health crisis." Id. at 236. (Emphasis added). Within that context, the Court explained, "a statement of readiness can effectively extend the two-year cap, and a defendant's pretrial detention, if the court is not able to proceed." Mackroy-Davis, 251 N.J. at 235. (Emphasis added). That is, "If the prosecutor is genuinely ready to proceed, but the court cannot accommodate the prosecutor **because of the global pandemic**, defendant is not entitled to release under the two-year clock." D.F.W., 468 N.J. Super. at 417. (Emphasis added). Again, Covid-19 issues occur "when the parties announce they are ready to proceed on the two-year cap date but no courtroom or judge will be available at that time." Mackroy-Davis, 251 N.J. at 236.

Here, the Covid-19 has played no part in whether this case was able to proceed to trial on September 8, 2025, the scheduled trial date. Rather, the only reason that this case did not proceed to trial is because the State chose to pursue an appeal with the Supreme Court – after the Appellate Division had already affirmed this Court's suppression order. In fact, as the State concedes, "the State has chosen not to file a motion to withdraw its appeal" and instead is proceeding with the appeal. (Sb2). While it is the State's right to do so, it is neither the pandemic's, nor this Court's, nor the defendant's fault that this matter did not proceed to trial. And, as the defense has stated, it was ready to proceed to trial as scheduled. Therefore,

unlike Mackroy-Davis and D.F.W, the instant matter does not require making any exceptions "[i]n response to an extraordinary public health crisis[.]" D.F.W., supra at 445.

Thus, to be sure, the delay in this trial – which will cause the trial to be more than 7 years past the Order of Pretrial Detention – is due to the State's decision to pursue an appeal. Importantly, whether the State's delay is "intentional" or "nefarious" is irrelevant and of no moment. The two-year release assessment does not take into consideration whether the delay was caused with bad intention. In fact, unlike the 90-day and 180-day clocks, the two-year clock does not even require that the delay be "unreasonable." Rather, it simply requires that the delay be caused by (attributed to) the State.

Here, the State faced two choices: proceed to trial as scheduled on September 8, 2025 **or** pursue an appeal to the Supreme Court notwithstanding the trial court and App. Div. orders of suppression. Thus, the issue here is simple: because the State chose to pursue the appeal, over the alternative of proceeding to trial, the State is no longer ready to proceed to trial. See Mackroy Davis, 251 N.J. at 234 (suggesting that the State's 'readiness' can change as circumstances change by stating that "if a trial date is postponed after the statement of readiness, the trial court can revisit the issue and ask the State to declare once again whether it is ready to proceed"). In this case, even if the State was previously trial ready, the circumstances changed once the State decided that it would not be ready unless and until the Supreme Court decided its appeal. Of course, the State's decision to pursue the appeal rather than proceed to trial on 9/8/25 is its prerogative. However, that decision comes with a clear corollary: the defendant must now be released.

In an unreported case, State v. Hulse, 2023 WL 2439551, the State appealed a trial court's suppression order. In the midst of its filings, the State evidently brought to the Appellate Court's attention that the defendant's 2-year release date was approaching and requested that the Appellate Court expedite its ruling. The Appellate Court, unfazed, addressed this request in a footnote:

> For the first time in its March 6, 2023 correspondence, the Passaic County Prosecutor's Office advised this court that defendants Harold Hood and Jeffrey Hulse were approaching the two-year maximum release date under N.J.S.A. 2A:162-22(a)(2)(a). Prior to that date, we were never informed of defendants' release dates. Citing the Supreme Court's decision in State v. Mackroy-Davis, 251 N.J. 217, 241-42 (2022), the State suggested our decision was due "within 5 days" of receiving the filed appellate briefs and transcripts. The State's contention is misplaced. The State did not "mo[ve] for leave to appeal an order about speedy trial calculations" as did the defendant in Mackroy-Davis. See id. at 241. Accordingly, the timeframe outlined by the Court in that decision is inapplicable here.

Hulse, supra at FN 3. The Appellate Court's response suggests that it was irrelevant that the defendants' 2-year release dates were approaching. Impliedly, and as argued herein, because the State elected to pursue the appeal notwithstanding the approaching release date, that was the State's problem, not the court's. This held true even though the Appellate Court reversed the trial court's order in part. See id. at *7.

In a similar vein, in State v. Washington, 453 N.J. Super. 164, 204-05 (App. Div. 2018), the Appellate Court explained that once the App. Div. granted the State's motion for leave to appeal, and an appeal was taken, the trial court retained jurisdiction "to issue an order excluding the time from the grant of leave to appeal until the disposition of the appeal." Ibid. Here, this Court did exactly that: once the State's appeal was taken by the Supreme

Court, this Court issued an excludable time order, attributed to the State.[3] (Exhibit). The issue, however, is that that order – because it is not attributed to the defendant – does not move the 2-year clock. As it stands, Mr. Caneiro "shall" be released on September 14, 2025 because the State's appeal is pending, and as such, the State is not ready to proceed to trial.

Moreover, the Washington Court explained that "The State has not asked us to stay defendant's release, and we do not stay his release at the time and in the manner provided by law." Id. at 205. Similarly, here, the State neither notified the Supreme Court as part of its appeal that the defendant's 2-year release date was soon approaching and nor did the State make any application to the Supreme Court to stay the defendant's release. As the Washington Court submits, this responsibility rests with the State. Because the State has made no such efforts to prevent the defendant's release, this Court is confined to follow the law, which requires that the defendant "shall be released." See In Re Pretrial Detainees, 245 N.J. at 232 (citing 2A:162-22(a)(2)(a)).

Accordingly, pursuant to the CJRA, and because Mr. Caneiro's trial is not starting on or before his two-year speedy trial release date, Mr. Caneiro must be released. It is worth reminding that we are not talking about charges being dismissed. Rather, "the CJRA, and section 26 in particular, make clear the Legislature was concerned about lengthy pretrial delays for detained defendants" and thus release rather than dismissal is the remedy. Mackroy-Davis, 251 N.J. at 235.

[3] The attached ETO states that the excludable time is "not" attributed to the defendant; however, the Court stated on the record on 9/5/25 that the excludable time was being attributed to the State for its appeal.

At bottom, "defendants in criminal cases have a right to a speedy trial and a corresponding right not to be held in jail pretrial for lengthy periods of time." Mackroy-Davis, 251 N.J. at 221. Surely, 7 years is *beyond* lengthy. And, because the most recent postponement of trial is due to the State's election to pursue an appeal rather than to proceed to trial, the delay is attributed to them. As a consequence, Mr. Caneiro's two-year speedy trial deadline has expired without a trial. Therefore, he must be released, albeit with release conditions. In this regard, it is worth reminding that Mr. Caneiro is presently 58 years old, has PSA scores of 1-1 with no prior criminal history whatsoever, and that he has ample family and community support.

Finally, in the alternative, the defendant requests that this Court issue a bail for Mr. Caneiro. See R. 2:9-4, which states, that pending appeal, "bail may be allowed by the trial court[.]" Moreover, the general release provisions of the CJRA always permit the Court to impose a monetary bail upon a reconsideration of a defendant's detention status. See N.J.S.A. 2A:162-12 through 22. Accordingly, at the very least, given the unique circumstances of this case, and the defendant's inability to receive a trial after 7 long years, a bail should be issued in the interests of justice.

Respectfully Submitted,

*/s/ Monika Mastellone*

Monika Mastellone, Esq. 122942014

CC: AP Christopher Decker; AP Nicole Wallace