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ATTORNEYS FOR DEFENDANT

In The District Court For the District of Wyoming

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
NATHANIEL SOLON)
)
Defendant.)

Case No. 07-CR-32-B

MOTION TO DISMISS

COMES NOW Defendant, Nathaniel Solon, through his undersigned counsel, and moves the Court pursuant to 18 U.S.C. § 3162(a)(2) to dismiss the indictment against him.

Defendant contends that the time periods relevant for the Court’s consideration are primarily under 18 U.S.C. § 3161(i) and 18 U.S.C. § 3161(h)(1)(J).

Defendant has moved the Court to withdraw his previously entered guilty plea. Therefore, 18 U.S.C. § 3161(i) would apply.

If the 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limitation specified in section 3161 because the defendant had entered a plea of guilty or nolo contendere subsequently withdrawn to any or all charges in an indictment or information, the defendant shall be deemed indicted with respect to all charges therein contained within the meaning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.

Defendant contends that the above time period should have begun to run under 18 U.S.C. § 3161(h)(1)(J) which reads as follows:

delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court.

The Court took the matter of the Defendant withdrawing his guilty plea under advisement at a hearing on April 16, 2008, therefore, with that 30 day period and the 70 day period for commencing trial under 18 U.S.C. § 3161(c)(1), Defendant moves the Court to dismiss the charges against him.

Defendant acknowledges he has filed a Waiver of Speedy Trial on March 12, 2007. Considering the time frame when that motion was filed together with the Defendant's request to withdraw his guilty plea, as well as the ruling of the United States Supreme Court in *Zedner v. U.S.* 547 U.S. 489 (2006), Defendant asserts that dismissal is appropriate. Defendant further asks the dismissal be with prejudice.

RESPECTFULLY SUBMITTED this _____ day of July, 2008.

By: _____ /S/
Thomas R. Smith
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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion, as well as a proposed Order, was served this _____ day of July, 2008, by U.S. Mail, addressed to:

James C. Anderson
U.S. Attorney's Office
PO Box 668
Cheyenne, WY 82003-0668

Honorable Clarence A. Brimmer
United States District Court
2120 Capitol Avenue
Cheyenne, WY 82001

_____/S/_____
Cheryl Deere

