

Calendar number 2002-558SCR

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE TERM : SECOND DEPARTMENT  
NINTH AND TENTH JUDICIAL DISTRICTS

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

Appellant,

- against -

Stuart Bennett Vorpahl

Defendant-Respondent  
-----X

**RESPONDENT'S ANSWERING BRIEF**

Stuart Bennett Vorpahl  
American Citizen sovereign  
P.O. Box 256  
Amagansett, L.I., New York 11930  
*Propria Persona*

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE TERM:SECOND DEPARTMENT  
NINTH AND TENTH JUDICIAL DISTRICTS

-----X

**THE PEOPLE OF THE STATE OF NEW YORK**

**Appellant,**

**Case# 2002-558SCR**

**- against -**

**Answering brief**

**Stuart Bennett Vorpahl**

**Defendant-Respondent**

-----X

This brief is submitted in answer to the Appellant's June 19th Reply Brief upon my motion received by them on June 17th and made returnable July 5th, 2002 (Respondent's Motion, att A; Appellant's Reply, att. B ).

Appellant asserts that I am moving the court for "Adjudication" of the "Nicolls, Andros and Dongan Patents" [sic]. This is untrue.

I am moving this court for a discretionary modification of the decision and order appealed from upon the record before the court when the order was made. Such a modification is clearly within the discretionary powers of this court (CPLR 5501(d)) and no motion for the requested relief in the local court is requisite for such a motion.

Contrary to the appellant's assertion that my Answering Brief does not quarrel with the People's position regarding the propriety of Justice DeMayo's decision, I note for the court the statement in my response brief served June 17th that:

"Indeed with my case it hasn't been a 90 day time frame, but more than 730 days waiting for a new trial" (Respondent's brief, Att. A, p.4)

In any event, I argue that the dismissal upon speedy trial grounds is moot given Justice DeMayo's opinion evidencing reasonable doubt of State jurisdiction. His opinion effectively renders a remand for trial so purposeless that it approaches malicious prosecution.

I note for the court's consideration that in making the modifications requested establishing that reasonable doubt exists of the State's jurisdiction over the fisheries of Eastern Long Island, the court may hold status quo enforcement of New York State Law upon all other parties until such time as this matter is separately and properly joined for adjudication. We are confident that in possession of such an order that the matter will be quickly joined at Riverhead.

Defendant respondent does pray for the relief requested without prejudice and for such other and further relief as the court deems equitable and just.

Amagansett, L.I., New York  
June 25th, 2002

Stuart Bennett Vorpahl, *Propria persona*  
American Citizen sovereign  
Defendant-Respondent  
P.O. Box 256  
Amagansett, NY 11930

**Att. A - Respondent's Motion**

Calendar no. 2002-558SCR

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE TERM : SECOND DEPARTMENT  
NINTH AND TENTH JUDICIAL DISTRICTS

To be argued by  
Stuart Bennett Vorpahl  
15 minutes

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

Appellant,

-against-

Return date 7/5/2002

Stuart Bennett Vorpahl,

Defendant-Respondent.  
-----X

Brief and Motion of Respondent

SUFFOLK COUNTY, N.Y.  
2002 JUN 17 AM 10:45

*Stuart Bennett Vorpahl*

-----  
Stuart Bennett Vorpahl, Propria Persona  
American Citizen/sovereign  
Suffolk County, New York  
Nonresident/domestic delivery  
c/o P. O. Box 256  
Amagansett, New York 11930 (UUD)  
(631) 324-4179

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE TERM : SECOND DEPARTMENT  
NINTH AND TENTH JUDICIAL DISTRICTS

To be argued by  
Stuart Bennett Vorpahl  
15 minutes

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

Appellant,

-against-

Stuart Bennett Vorpahl,

Defendant-Respondent.  
-----X

This brief and attachments, together with my included supplemental affidavit, answer the brief of appellant District Attorney of Suffolk County made April 22<sup>nd</sup>, 2002, and moves the court for a modification of the decision and order appealed from (att. A.) for dismissal pursuant to CPL 170.30 subd 1(f) and for other relief in the interest of substantial justice.

Respondent concurs with the facts presented in the Appellant's brief.

Acknowledging the good work of the office of the District Attorney and not in any way disparaging said office in the papers presented, respondent finds that the issue brought by appellant, in focusing on alleged procedural faults in the trial court's dismissal on CPL 30.30 grounds to be, in the end, frivolous given the expressed opinion of reasonable doubt of state jurisdiction in Justice DeMayo's decision and order. To whit:

***"It may very well be that the "Dongan Patent" does not require freeholders of the Towns of Southampton and Easthampton to have commercial licenses issued by the State, however, that issue need not be determined."*** DeMayo decision, 1/31/02, Att. A.

The appellant did not move to strike or otherwise quash Justice DeMayo's opinion in the order appealed from. This uncontested opinion, therefore, entered in the decision and order appealed from, is prima facie evidence both that reasonable doubt exists as to the State's claim of jurisdiction and even that a possibility of success exists in a civil action.

The appellant, however, asks for relief, at page 9 of his brief, that

“the Order of January 31<sup>st</sup>, 2002, which dismissed the accusatory instruments herein on the ground that the People had failed to mark the matters ready for trial within 90 days should be reversed and the matter remanded to the court below for a “full development of the issues and an adequate opportunity for the people to contest the specific grounds for dismissal.” Appellant's brief, p. 9, Quotations in original, emphasis added.

The People on May 16, 2000 had the opportunity to “full development of the issues.....”, instead the People denied me the right to defend myself at my jury trial. I wasn't even allowed to mention the words “Dongan Patent”.

The court must consider that, given the above-cited opinion of Justice DeMayo, the relief requested is pointless and will cause me further unjust hardship.

Can a jury convict me when presented with Justice DeMayo's opinion that there is reasonable doubt of State jurisdiction in the record before it?

Furthermore, can a judgment be entered against me that would in any way impair the legal, equitable or Constitutional rights of the large body of unjoined interested parties? (This would include all those persons who wish to fish, hawk, hunt or fowl on Long Island).

This litigation has been hard on me. I suffer from a serious heart condition, am confused by a legal process which includes official improprieties and inanities, have significant complaints about my experiences before the East Hampton justice court of Mr. Roger Walker, and have been drained and harmed by over 3 years of legal proceedings.

A 30-30 motion is very straight forward. After 90 days a defendant is entitled to a dismissal, and no judge should have to act as a mother hen to the District Attorney's Office. Indeed with my case it hasn't been a 90 day time frame, but more than 730 days waiting for a new trial through no fault of my own. With regard to the last paragraph of the Appellant's Brief, I have no idea why my court appointed attorney, James M. O'Shea, Esq., submitted no motions to the Southampton Town Justice Court after I had several meetings with him in November 2001. I am anxious about further proceedings to the detriment of my personal and financial health. (See Exhibit 1 of my enclosed affidavit).

The above facts and appertaining law militate for relief in the interest of substantial justice.

Furthermore, I believe that Appellant is in error and that Justice DeMayo was moved to dismiss by the Ficalora affidavit (Att. C), not the motion decided by the East Hampton justice court May 18<sup>th</sup>, 1999, (See: Appellant's Brief, Exh. B) one year prior to its declared mistrial of May 16<sup>th</sup>, 2000.

In any event, this matter was remanded by the decision and order of the honorable Gary J. Weber of the County Court, with a change of venue to Southampton acknowledging the importance of the Dongan Patent to my case:

"it would appear that this case concerns, at least in part, a consideration of the Dongan Patent, which is a major part of the history and heritage which is shared by both East Hampton and Southampton Townships." And that "[The Southampton court] shall ... conduct such action to judgment or other final disposition." (See: Appellant's exhibit A, Hon. Weber, J.C.C. decision and order, June 21, 2001).

### **Motion for modification and dismissal**

Although not presented in the legal form of a motion, I think that Justice DeMayo was move to dismiss the case by the November 20, 2001, affidavit of Robert A. Ficalora (Exh. C) and

my Memorandum (Exh. B). Those documents provide the substance for the instant motion for modification of Justice DeMayo's decision and order to, among other things, effect dismissal pursuant to CPL 170.30 subd. 1(f).

I believe that the decision entered by the Hon. Thomas J. DeMayo does fail to protect me from further prosecution, harassment and estoppels by policing authorities. Keeping in mind my sovereignty status, I do, therefore, move this court for modification of said decision and order, for relief pursuant to CPL 170.30 subd.. 1(f), and to allow me to catch and sell fish unfettered by unreasonable State statutes until such time as the jurisdiction established by the "tenure and effect" of the charter granted by Governor Thomas Dongan to the Town of Easthampton is determined by our courts.


I have been burdened by court proceedings and the imposition of laws that I assert are both in violation of established law and are unconstitutional. I have been unable to fish for three years. Furthermore, it is most difficult to obey those laws and rules made without my lawful right under the Patents of participation and consent, especially those that have the unconscionable "kill and release" effect upon the fishery resources, i.e., regulations which mandate the tremendous waste of a natural resource.

I am also effectively barred from enjoying my life-long pursuit of happiness by what has been termed in the fishing community as "the Vorpahl law" requiring commercial fishermen to show a state fishing license before we can sell or pack for shipment to New York City at any fish-packing house.

The court may modify the order appealed from to the effect that "there exists some other jurisdictional or legal impediment to conviction of the defendant for the offence charged" (CPL 170.30 subd. 1(f)). Doing so would protect me from further arrest and prosecution. I do, therefore, move that the court modify said decision and order with language sufficient to allow me an

unfettered right to catch and sell fish at my discretion (in general conformity with the true and workable conservation laws as existed prior to 1983) in lieu of current state statutes that serve only to discourage our fisheries contrary to our Towns' patents and the King's royal order #954 of 1730 (my Memorandum, Exh B. p. 306 (exh. 67)).

I do pray for the relief requested without prejudice, and for such other and further relief as the court deems equitable and just.

  
Stuart Bennett Vorpahl, Propria Persona  
American Citizen/sovereign  
Suffolk County, New York  
Nonresident/domestic delivery  
c/o P. O. Box 256  
Amagansett, New York 11930 UUD  
(631) 324-4179

# **EXHIBIT A**

JUSTICE COURT:TOWN OF SOUTHAMPTON  
SUFFOLK COUNTY NEW YORK: CRIMINAL PART

x-----

People of the State of New York,

-against-

Decision  
01991384-

Stuart B. Vorpahl,

Defendant

x-----

Defendant has moved to dismiss the charges of not having a commercial fishing license and taking lobsters without a permit. The defendant has raised various grounds for dismissal including the Department of Environmental Conservation does not have jurisdiction by virtue of the "Dongan Patent" It very well may be that the "Dongan Patent" does not require freeholders of the Towns of Southampton and Easthampton to have commercial licenses issued by the state, however that issue need not be determined. The case was first tried by jury on 5-16-00 and resulted in a mistrial. The decision of Justice Weber transferring the case to Southampton Justice Court is dated 6-22-01. The last file entry from Easthampton 7-19-01. October 10<sup>th</sup> is the first file entry for Southampton. More than 90 days have elapsed since the case was transferred to Southampton without the People marking the case as Ready. Therefore the charges are dismissed pursuant to CPL 30.30 and under the State Constitutional provisions relating to speedy trial. The incidents go back to August 1998. As misdemeanors the delay in trying the matters is too great and prejudices the defendant. This decision is the order of the Court.

Dated: 1-31-02

S/\_\_\_\_\_  
Thomas J. DeMayo, Town Justice

**EXHIBITS B & C**  
**(Two bound Volumes)**

**Att. B - State's Reply upon motion**

Calendar No. 2002-558SCR

To Be Argued By  
RONALD E. LIPETZ  
15 Minutes

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE TERM : SECOND DEPARTMENT  
NINTH AND TENTH JUDICIAL DISTRICTS

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

Appellant,

- against -

STUART B. VORPAHL,

Defendant-Respondent.  
-----X

**APPELLANT'S REPLY BRIEF**

THOMAS J. SPOTA  
District Attorney of Suffolk County  
Criminal Courts Building  
200 Center Drive  
Riverhead, New York 11901  
(631) 852-2466

RONALD E. LIPETZ  
Assistant District Attorney  
Of Counsel

## TABLE OF CONTENTS

|   | <b>Page</b> |
|---|-------------|
| Introduction -  | 1           |
| Point One -<br>THE ISSUE OF THE NICOLLS, ANDROS AND<br>DONGAN PATENTS IS ONE THAT IS NOT<br>PROPERLY BEFORE THIS COURT FOR<br>ADJUDICATION AT THIS PARTICULAR TIME. | 1.          |
| Conclusion -  | 3           |

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE TERM : SECOND DEPARTMENT  
NINTH AND TENTH JUDICIAL DISTRICTS

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

Appellant,

- against -

Calendar No.  
2002-558SCR

STUART B. VORPAHL,

Defendant-Respondent.

-----X

INTRODUCTION

This Reply Brief is respectfully submitted in opposition to Mr. Vorpahl's undated Answering Brief which was received by the People on June 17, 2002.

POINT ONE

THE ISSUE OF THE NICOLLS, ANDROS AND DONGAN PATENTS IS ONE THAT IS NOT PROPERLY BEFORE THIS COURT FOR ADJUDICATION AT THIS PARTICULAR TIME.

In his memorandum decision, dated January 31, 2002, the Honorable Thomas J. DeMayo of the Justice Court of the Town of Southampton, sua sponte, dismissed the Environmental Conversation Law charges that were pending against defendant on speedy trial grounds in that more than 90 days had elapsed since the case had been transferred to the Justice Court of the Town of Southampton and the People had failed to mark the case ready for trial.

In our primary Brief to this Court, dated April 22, 2002, we argued that by failing to comply with the procedural requirements of Criminal Procedure Law, sections 210.45 and 170.45, Justice DeMayo improperly dismissed the charges pending against defendant and, therefore, said charges should be reinstated.

Defendant in his Answering Brief does not quarrel with the People's position, but instead seeks an outright dismissal of the charges under Criminal Procedure Law, section 170.30, subd. 1(f) on the basis of the Nicolls, Andros and Dongan Patents --- arguing that because of the Patents, there exists a jurisdictional or legal impediment to his conviction in the Southampton Justice Court. We disagree and disagree strongly.

While defendant moved (unsuccessfully) to have the charges against him dismissed on the basis of the Patents while the case was pending in the Justice Court of the Town of East Hampton, no such motion was ever made after the case was transferred to the Justice Court of the Town of Southampton by the County Court of Suffolk County (Weber, J.). Hence, defendant's argument is not properly before this Court for adjudication at this particular time. Under the very wording of Criminal Procedure Law, section 170.30, subd. 1(f), a motion to dismiss an accusatory instrument because there allegedly exists a jurisdictional or legal impediment to conviction must be made in the "local criminal court" (Justice Court of the Town of Southampton) and not in an appellate court. Since no motion to dismiss was ever made by defendant in the Justice Court of Southampton on the basis of the Patents, the issue may not be raised for the first time here by Mr. Vorpahl.

CONCLUSION

THE ORDER OF JUSTICE DeMAYO, DATED JANUARY 31, 2002, WHICH DISMISSED THE ACCUSATORY INSTRUMENTS ON SPEEDY TRIAL GROUNDS SHOULD BE REVERSED; THE ACCUSATORY INSTRUMENTS REINSTATED; AND THE MATTERS REMITTED TO THE COURT BELOW FOR FURTHER PROCEEDINGS.

DATED: Riverhead, New York  
June 19, 2002

Respectfully submitted,

THOMAS J. SPOTA  
District Attorney of Suffolk County

RONALD E. LIPETZ  
Assistant District Attorney  
Of Counsel