

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
Docket No.: CR-16-4730

STATE OF MAINE
Cumberland, SS. Clerk's Office

MAY 01 2017

STATE OF MAINE,

RECEIVED

Plaintiff,

v.

GREGORY D RODERICK,

Defendant.

ORDER

Gregory Roderick has been charged by an indictment of August 4, 2016 with two counts of Class C Theft by Deception, 17-A M.R.S. § 354 (1)(B)(4). The indictment has been amended to allege that the first count took place from July 31, 2010 through October 2, 2010 while the second took place from October 9, 2010 to December 11, 2010. Both charges relate to claimed fraud in receiving unemployment compensation while employed at two different businesses.

The defendant has moved to dismiss the amended indictment claiming that the indictment was filed after the expiration of the statute of limitations for Class E crimes and that the state was not permitted to aggregate the charges into a Class C charge, with a longer statute of limitations, once the statute of limitations for a misdemeanor had expired.

Count I of the amended indictment is based on a claim that Mr. Roderick fraudulently received unemployment benefits while working at Big Wings, LLC for the weeks ending July 31, 2010 through the week ending October 2, 2010. Each week, if separately charged, and

proven, would constitute a Class E offense, 17-A M.R.S. § 354 (1)(A) and would need to be brought within three years. See 17-A M.R.S § 2(B).

The second count involves a series of claims for the weeks ending October 9, 2010 through December 11, 2010 for work done at Sbarro. Each of those weeks, if brought as separate counts, would also constitute a Class E offense with a three-year statute of limitations.

Pursuant to 17-A M.R.S. § 353 (5)(E), “Amounts of value involved in thefts committed pursuant to one scheme or course of conduct ... may be aggregated to charge a single theft of appropriate class or grade.” Here the state chose to aggregate the Big Wings, LLC and Sbarro based weeks into two separate Class C offenses as the combined amounts exceeded \$1,000.00 for each employer. See 17-A M.R.S. § 354 (1)(B)(4). The statute of limitations for properly brought Class C charges is six (6) years. See 17-A M.R.S § 8 (2)(A).

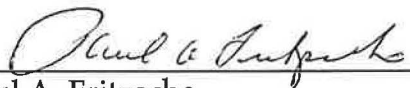
There is no requirement that the aggregation of misdemeanor charges to a felony level occur within three (3) years. This is consistent with the decision of the Legislature to have a longer statute of limitations for more serious, and often more complex, felony charges. The state is free to aggregate the charges and bring the Class C or higher level charges at any time within the longer six (6) year statute of limitation.

State v. Fournier, 617 A. 2d 998 (Me. 1992) does not help the defendant. The combining of charges into the two separate charges based on the place of employment is acceptable. There is nothing in Fournier that would lead to a dismissal of these charges.

The entry is:

Motion to dismiss is denied except for that small portion of Count I of the amended indictment charging conduct prior to August 4, 2010.

Date: May 1, 2017


Paul A. Fritzsche
Justice, Superior Court, Active Retired

STATE OF MAINE

vs

GREGORY D RODERICK
271 SPRING STREET #3
PORTLAND ME 04102

CRIMINAL DOCKET

CUMBERLAND, ss.

Docket No CUMCD-CR-2016-04730

DOCKET RECORD

DOB: 04/09/1983

Attorney: LAWRENCE WINGER
LAW OFFICE OF LAWRENCE C WINGER
75 PEARL STREET, SUITE 460
PORTLAND ME 04101
APPOINTED 11/22/2016

State's Attorney: MEGHAN CONNELLY

Filing Document: INDICTMENT

Major Case Type: FELONY (CLASS A,B,C)

Filing Date: 08/04/2016

Charge(s)

1 THEFT BY DECEPTION 07/31/2010 PORTLAND
Seq 8434 17-A 354(1)(B)(4) Class C

2 THEFT BY DECEPTION 10/09/2010 PORTLAND
Seq 8434 17-A 354(1)(B)(4) Class C

Docket Events:

08/09/2016 FILING DOCUMENT - INDICTMENT FILED ON 08/04/2016

08/09/2016 Charge(s): 1,2

HEARING - ARRAIGNMENT SCHEDULE OTHER COURT ON 08/23/2016 at 08:30 a.m. in Room No. 1

PORSC

08/09/2016 Charge(s): 1,2

HEARING - ARRAIGNMENT NOTICE SENT ON 08/09/2016

JIM PAUL TURCOTTE , ASSISTANT CLERK

08/23/2016 Charge(s): 1,2

HEARING - ARRAIGNMENT FTA ON 08/23/2016

08/25/2016 WARRANT - \$2,000.00 FOR FAILURE TO APPEAR ORDERED ON 08/23/2016

LANCE WALKER , JUSTICE

4TH TUESDAY OF THE MONTH AT 8:30AM.

08/25/2016 WARRANT - \$2,000.00 FOR FAILURE TO APPEAR ISSUED ON 08/25/2016

4TH TUESDAY OF THE MONTH AT 8:30AM.

09/01/2016 Charge(s): 1,2

HEARING - ARRAIGNMENT RET UNDELIVERABLE ON 09/01/2016

JIM PAUL TURCOTTE , ASSISTANT CLERK

NO SUCH NUMBER

10/14/2016 WARRANT - FOR FAILURE TO APPEAR EXECUTED BY AGENCY ON 10/14/2016 at 10:40 a.m.

10/17/2016 Charge(s): 1,2

HEARING - ARRAIGNMENT SCHEDULE OTHER COURT ON 11/22/2016 at 08:30 a.m. in Room No. 1

PORSC

10/17/2016 BAIL BOND - \$2,000.00 CASH BAIL BOND FILED ON 10/17/2016

Bail Receipt Type: CR

Bail Amt: \$2,000

Receipt Type: CK

Date Bailed: 10/14/2016

Prvdr Name: MARK MALONEY

Rtrn Name: MARK MALONEY
3RD PARTY DOB 3-7-53

409
BAIL DISBURSEMENT ON 04/05/2017
Check No. 32709 Check Amount: 1,500.00
Paid To: MARK MALONEY
FORWARDED TO BAIL PROVIDER

11/22/2016 Charge(s): 1,2
HEARING - ARRAIGNMENT HELD ON 11/22/2016
MARIA WOODMAN , JUDGE
DA: TRACY GORHAM
Defendant Present in Court
DEFENDANT INFORMED OF CHARGES. FTR1

11/22/2016 Charge(s): 1,2
PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 11/22/2016
MARIA WOODMAN , JUDGE

11/22/2016 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE SCHEDULED FOR 01/26/2017 at 02:00 p.m. in Room No. 7

11/22/2016 Charge(s): 1,2
TRIAL - JURY TRIAL SCHEDULED FOR 04/24/2017 at 08:30 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL

11/22/2016 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 11/22/2016
MARIA WOODMAN , JUDGE
COPY TO PARTIES/COUNSEL

11/22/2016 Party(s): GREGORY D RODERICK
ATTORNEY - APPOINTED ORDERED ON 11/22/2016

Attorney: LAWRENCE WINGER

12/09/2016 Charge(s): 1,2
TRIAL - JURY TRIAL NOT HELD ON 12/07/2016

12/28/2016 LETTER - FROM PARTY FILED ON 12/28/2016

Attorney: LAWRENCE WINGER
CHANGE OF ADDRESS FROM ATTORNEY. NEW ADDRESS 75 PEARL STREET SUITE 460 PORTLAND ME.

01/26/2017 Charge(s): 1,2
HEARING - DISPOSITIONAL CONFERENCE HELD ON 01/26/2017
NANCY MILLS , JUSTICE
Attorney: LAWRENCE WINGER
DA: MEGHAN CONNELLY
CONF HELD, OFFER MADE. CASE UNRESOLVED. MOTION TO DISMISS FILED. HEARING TO BE SET FOR 3-14

01/26/2017 MOTION - MOTION TO DISMISS FILED BY DEFENDANT ON 01/26/2017

Attorney: LAWRENCE WINGER

01/26/2017 HEARING - MOTION TO DISMISS SCHEDULED FOR 03/14/2017 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

01/26/2017 Charge(s): 1,2
TRIAL - JURY TRIAL SCHEDULED FOR 04/24/2017 at 08:30 a.m. in Room No. 11

NOTICE TO PARTIES/COUNSEL

02/08/2017 OTHER FILING - OTHER DOCUMENT FILED ON 02/08/2017

Attorney: LAWRENCE WINGER

DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

03/10/2017 HEARING - MOTION TO DISMISS NOTICE SENT ON 03/10/2017

03/15/2017 HEARING - MOTION TO DISMISS CONTINUED ON 03/15/2017

INCLEMENT WEATHER

03/15/2017 HEARING - MOTION TO DISMISS SCHEDULED FOR 04/11/2017 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

03/15/2017 HEARING - MOTION TO DISMISS NOTICE SENT ON 03/15/2017

03/22/2017 MOTION - MOTION TO AMEND BAIL FILED BY DEFENDANT ON 03/21/2017

03/22/2017 HEARING - MOTION TO AMEND BAIL SCHEDULED FOR 03/28/2017 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

03/22/2017 HEARING - MOTION TO AMEND BAIL NOTICE SENT ON 03/22/2017

03/24/2017 HEARING - MOTION TO AMEND BAIL CONTINUED ON 03/24/2017

NO COURT ON 3-28-17. ATTORNEY NOTIFIED VIA PHONE.

03/24/2017 HEARING - MOTION TO AMEND BAIL SCHEDULED FOR 04/04/2017 at 01:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL

03/24/2017 HEARING - MOTION TO AMEND BAIL NOTICE SENT ON 03/24/2017

04/05/2017 HEARING - MOTION TO AMEND BAIL HELD ON 04/04/2017

JED FRENCH , JUDGE

DA: JONATHAN SAHRBECK

FTR 1

04/05/2017 MOTION - MOTION TO AMEND BAIL GRANTED ON 04/04/2017

JED FRENCH , JUDGE

COPY TO PARTIES/COUNSEL

BAIL REDUCED TO \$500

04/05/2017 BAIL BOND - \$500.00 CASH BAIL BOND AMENDED ON 04/04/2017

JED FRENCH , JUDGE

Attorney: LAWRENCE WINGER

DA: JONATHAN SAHRBECK

FTR 1

Date Bailed: 10/14/2016

409

3RD PARTY DOB 3-7-53

BAIL DISBURSEMENT ON

04/05/2017

Check No. 32709

Check Amount: 1,500.00

Paid To: MARK MALONEY

FORWARDED TO BAIL PROVIDER

04/12/2017 Charge(s): 1,2

TRIAL - JURY TRIAL NOT HELD ON 04/11/2017

04/12/2017 HEARING - MOTION TO DISMISS HELD ON 04/11/2017 in Room No. 1

PAUL A FRITZSCHE , JUSTICE

Attorney: LAWRENCE WINGER

DA: BRENDAN O'BRIEN

STATE WITH SUBMIT ORDER BY THE 25TH, DEF HAS 2 DAYS TO SUBMIT
NEW TRIAL DATE IN JUNE

REPLY TO J. FRITZSCHE

04/12/2017 TRIAL - JURY TRIAL SCHEDULED FOR 06/12/2017 in Room No. 11

NOTICE TO PARTIES/COUNSEL

04/26/2017 OTHER FILING - OTHER DOCUMENT FILED ON 04/24/2017

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

04/27/2017 OTHER FILING - OTHER DOCUMENT FILED ON 04/27/2017

Attorney: LAWRENCE WINGER

DEFENDANT'S REPLY MEMORANDUM

05/03/2017 MOTION - MOTION TO DISMISS DENIED ON 05/01/2017

PAUL A FRITZSCHE , JUSTICE

COPY TO PARTIES/COUNSEL

PLEASE SEE ORDER IN FILE

05/03/2017 Charge(s): 1,2

ORDER - COURT ORDER FILED ON 05/01/2017

PAUL A FRITZSCHE , JUSTICE

ORDER ON DEFENDANT'S MOTION TO DISMISS

05/03/2017 Charge(s): 1,2

ORDER - COURT ORDER ENTERED ON 05/01/2017

A TRUE COPY

ATTEST: _____

Clerk