

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
0\_\_\_\_CR\_\_\_\_\_

STATE OF NORTH CAROLINA )  
 )  
 V )  
 )  
\_\_\_\_\_)  
Defendant )

MOTION TO DISMISS

NOW COMES the Defendant, by his undersigned counsel, respectfully moves the court to dismiss this action pursuant to GS § 15A-954(a)(4); and, as grounds therefore, shows the following:

1. G.S. § 15A-533(b) requires all persons charged with a non-capital crime to have conditions of pretrial release set pursuant to G.S. § 15A-534.
2. G.S. § 15A-534.1 requires that a judge set the conditions for pretrial release for any person charged with specified acts defined as acts of domestic violence.
3. Defendant was arrested for the offense of \_\_\_\_\_ G.S. § \_\_\_\_\_.
4. This matter was determined to involve an act of domestic violence and the magistrate held the matter over for a judge to set the conditions of pretrial release pursuant to G.S. § 15A-534.1.
5. Defendant was committed to Mecklenburg County Jail at \_\_\_\_\_ on \_\_\_\_\_.
6. The magistrate ordered the defendant’s release “not authorized” and he was to be produced in Courtroom 2202 at 9:00 A.M. (‘C’ Session) on \_\_\_\_\_.
7. Our Supreme Court held in *State V. Thompson*, 349 N.C. 483 (1998), that failure to adhere with the statutory scheme for consideration of pretrial detention unreasonably violated defendant’s Procedural Due Process rights without serving any legitimate government interest.
8. Our Supreme Court also held in *Thompson* that dismissal is the appropriate remedy when the defendant is unreasonably deprived of his right to a timely post-deprivation hearing to set the conditions of his pretrial release.
9. Our Supreme Court also held in *Thompson* that subsection (b) of G.S. § 15A-534.1 “reflects the General Assembly’s regulatory purpose by authorizing magistrates to detain an arrestee for up to forty-eight hours while attempting to secure **the first available judge** to hold a pretrial-release hearing.” (Emphasis added.) *Id.* At 492.
10. As a result of successful *Thompson* motions, Domestic Violence first appearances were moved to the morning session of court in Courtroom 2202 effective 16 February 2004.
11. Under the current system, any defendant arrested before 4:00 A.M. will have their first appearance the same morning, during the ‘A’ Session of Courtroom 2202, on the ‘C’ Docket, at 9:00 A.M.

12. The 4:00 A.M. cutoff time reflects a delay period of five hours before the scheduled court appearance. This five hour lead-time is required largely because of the unavailability of staff prior to 8:00 A.M. to prepare the docket and necessary paperwork.
13. During normal business hours for court personnel, the necessary lead-time could arguably be shorter. At a minimum, the lead-time should be no longer than is required to make the morning docket.
14. Defendant was arrested at least \_\_\_\_\_ hours and \_\_\_\_\_ before the 'B' Session of court is scheduled to begin.
15. On the afternoon, 'B' Session, of \_\_\_\_\_, 6 Criminal District Courtrooms were in operation and conducting various hearings, trials, and other administrative court dates.
16. Defendant was unreasonably deprived of his right to have a reasonable appearance bond set in a reasonable time by the failure to schedule him in court "until well into the afternoon, while available judges spent several hours conducting other business..." Quoting *Thompson* at 498.
17. In the case at hand, the delay is even more egregious as the defendant was not allowed to be seen by a judge in the 'B' Session of court. Thus, he was required to spend an additional night in custody without any conditions of bond having been set. Instead of a four and a half-hour delay, as cited in *Thompson* and previous violations in Mecklenburg County, the defendant was delayed for nineteen and a half hours.
18. Defendant has been deprived of his Procedural Due Process rights as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and the Law of the Land provisions of Article 1, § 19 of the North Carolina Constitution.

WHEREFORE, defendant respectfully prays that this Court enter an Order dismissing  
0 \_\_\_\_ CR \_\_\_\_\_.

Respectfully submitted, this the \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Timothy Scott Emry  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Motion to Dismiss has been duly served upon Deborah Jackson, Assistant District Attorney, 700 East Trade Street, Second Floor, Charlotte, NC 28202 by delivery in person.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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Timothy Scott Emry  
Assistant Public Defender