

IN THE GENERAL SESSIONS COURT FOR ██████████ COUNTY, TENNESSEE

STATE OF TENNESSEE

v.

)
) Case numbers:
) ██████████
)
)

MOTION TO DISMISS
(Statute of Limitations)

Defendant, ██████████, by and through undersigned counsel and pursuant to Rule 12 of the Tennessee Rules of Criminal Procedure, requests this Honorable Court to dismiss the citations filed in this case for the State's failure to commence prosecution of the Defendant within the applicable statute of limitations. As grounds for this Motion, the Defendant states as follows:

1. Defendant appears in this court for two misdemeanor citations issued on February 23, 2009.

2. The statute of limitations for misdemeanors is governed by T.C.A. § 40-2-102. This statute provides that prosecution for misdemeanors "shall be commenced within twelve (12) months next after the offense has been committed."

3. T.C.A. § 40-2-104 states "A prosecution is commenced, within the meaning of this chapter, by finding an indictment or presentment, the issuing of a warrant, the issuing of a juvenile petition alleging a delinquent act, binding over the offender, by the filing of an information as provided for in chapter 3 of this title, or by making an appearance in person or through counsel in general sessions or any municipal court for the purpose of continuing the matter or any other appearance in either court for any purpose involving the offense.

4. The Court of Criminal Appeals has held that issuance of a citation does not

constitute commencement of prosecution required to satisfy the statute of limitations. “Just as a warrantless custodial arrest does not, alone, commence a prosecution, for purposes of determining if a prosecution is commenced within the limitations period, a citation issued in lieu of an arrest is not the result of an independent probable cause determination and, therefore, does not mark the beginning of the prosecution.” State v. McCloud, 310 S.W.3d 851

5. In the present case, no action was taken to commence this action within the required one year period as required by T.C.A. 40-2-104.

6. The prosecution having not been commenced with the statute of limitations, as a matter-of-law, requires dismissal of the citations in this case.

WHEREFORE, the Defendant respectfully requests this Honorable Court dismiss these matters.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been forwarded to the following by U.S. mail.

Office of the District Attorney General



Russell F. Thomas