

No. 18-

In the
Supreme Court of the United States



DAVID LEE SANDERS,
Petitioner,
vs.
STATE OF ALABAMA.
Respondent.

**On Petition for a Writ of Certiorari to the
Alabama Supreme Court**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a criminal defendant who pleads guilty pursuant to a negotiated plea agreement and serves a five-year, split sentence, which is subsequently reversed because the plea agreement was illegal, is entitled to include the time from his original arrest until his re-sentencing—over six years—for purposes of determining whether his constitutional right to a speedy trial was violated?
2. Whether the trial court erred to reversal in denying the defendant's motion to dismiss the indictment against him because it erroneously excluded the time between his original arrest and the reversal of his sentence in determining whether his constitutional right to a speedy trial was violated?

PARTIES TO THE PROCEEDINGS

Petitioner (Defendant below) is David Lee Sanders.

Respondent is the State of Alabama.

RULE 29.6 STATEMENT

Petitioner David Lee Sanders is an individual with no corporate affiliation, no parent corporation, and no publicly held corporation owning 10% or more of its stock.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the decision of the Alabama Supreme Court which denied his petition for a writ of certiorari to the Alabama Court of Criminal Appeals.

OPINIONS BELOW

The decision of the Alabama Supreme Court (Pet. App. 26a-27a) is not reported. The decision of the Alabama Court of Criminal Appeals is not yet released for publication but appears at 2018 WL 4275482 (Sept. 7, 2018), and is reproduced at Pet. App. 9a-24a.

JURISDICTION

The Alabama Supreme Court entered its judgment denying petitioner's petition for a writ of certiorari on January 4, 2019. Pet. App. 26a-27a. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be

informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

INTRODUCTION

This case presents an important issue regarding whose responsibility it is to make certain that a plea agreement offered by a state prosecutor to a criminal defendant is not an illegal plea agreement. In this case, the prosecutor offered a plea bargain that the defendant accepted, pleaded guilty to based on the terms of the plea agreement, and was sentenced and served five years of his split sentence in prison in conformance with the plea agreement. Following the defendant's release on five-year term of probation, his probation was revoked, and he appealed.

On appeal, the Alabama Court of Criminal Appeals determined that his sentence was illegal because the statute under which he was sentenced did not allow imposition of a split sentence and thus, the revocation of his probation was illegal. That Court remanded the case to the Lee Circuit Court for re-sentencing. *State v. Sanders*, 237 So.3d 900 (Ala. Crim. App. 2016).

Following re-sentencing, the defendant appealed the revocation of his probation for a second time. On this appeal, the Court remanded the case to the Lee Circuit Court to determine whether Sanders had entered his guilty plea based on his belief that he would receive a split sentence. The Lee Circuit Court allowed Sanders to withdraw his guilty plea based on its determination that

the split sentence was a material part of his decision to enter a guilty plea in 2012.

On May 16, 2017, Sanders moved to dismiss the indictment on the ground that his Sixth Amendment right to a speedy trial had been violated. Sanders asserted that he had been incarcerated since his arrest in September 2010, except for a five-month period when he was released on probation. Following a hearing in July 2017, the circuit court denied Sanders' motion. Sanders subsequently pleaded guilty, reserving his speedy trial issue for appeal, and was sentenced to 40 years' imprisonment.

On appeal from the denial of his motion to dismiss the indictment based on the State's violation of his constitutional right to a speedy trial, Sanders asserted that the seven-year delay between his arrest and his second guilty plea was a direct result of the State having offered him an illegal, split sentence. Sanders argued that all four factors announced in *Barker v. Wingo*, 407 U.S. 514 (1972), weigh in his favor.

The state appellate court disagreed finding that the only time period to be considered for purposes of analyzing Sanders' claim that his right to a speedy trial had been violated was the period from the second remand order in his appeal from his probation revocation until his second guilty plea—a period of only ten months. 2018 WL 4275482 (Sept. 7, 2018), Pet. App. 9a-24a. From the denial by the Alabama Supreme Court of his petition for a writ of certiorari to the Alabama Court of Criminal Appeals, Sanders petitions this Court for a writ of certiorari.

STATEMENT OF THE CASE

1. Sanders was convicted of first-degree rape and sodomy of a minor under the age of 12 years old. After Sanders withdrew his guilty plea, Sanders moved to dismiss the case against him for violation of his right to a speedy trial after he served the originally negotiated sentence. The Lee Circuit Court denied his motion. On February 15, 2018, Sanders appealed the lower court's denial of his Motion to Dismiss and timely filed his Notice of Appeal. The Alabama Court of Criminal Appeals affirmed the lower court's denial on September 7, 2018, in case number CR-17-0482. Pet. App. 9a-24a. A timely Application for Rehearing was filed on September 25, 2018, and was denied by the Court of Criminal Appeals on November 9, 2018. Pet. App.25a.

2. A copy of the memorandum opinion of the Alabama Court of Criminal Appeals is reproduced at Pet. App. 9a-24a. A copy of the order of the Court of Criminal Appeals denying Petitioner's Application for Rehearing is reproduced at Pet. App. 25a.

3. The Alabama Court of Criminal Appeals held that the time period to be considered for speedy trial analysis only begins from the date of reversal, based upon a misapplication of the factors set out in *Barker v. Wingo*, *supra*. Accordingly, the Alabama Court of Criminal Appeals misapprehended and misapplied the law when calculating the correct time period to be considered for speedy trial act analysis. Additionally, the holding of the Alabama Court of Criminal Appeals, that Sanders is at fault for accepting the illegal split sentence offered by the State, imposes an impermissible burden on the defendant

to ensure that the State is properly doing its job and offering a legal plea agreement.

The Court's holding is against public policy in that it excuses and rewards the inexcusable and egregious actions on behalf of the State in offering Sanders a plea agreement and obtaining his acceptance of it with a sentence that was illegal at the time the plea agreement was offered. If the Court's holding stands, then the State is allowed to fail to do its job and defendants will be punished for the State's incompetence. Our justice system provides checks and balances and if this holding stands, the State has no check to hold it accountable to perform its duties legally and ethically.

4. A writ of certiorari is due to be granted on one of three grounds. First, the issue presented by Mr. Sanders regarding an invalid plea agreement with an illegal sentence that was fully served is a question of first impression in Alabama. Accordingly, the writ is due to be granted pursuant to Rule 39(a)(1)(C), Ala. R. App. P.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari, review the proceedings below, and remand this cause to the Alabama Supreme Court with an order to grant Mr. Sanders's Motion to Dismiss the Indictment Pursuant to violations of his right to a speedy trial. In its opinion, the Alabama Court of Criminal Appeals made several critical errors that merit reconsideration. Pet. App. 9a-24a.

First, the court erred in holding that the time period to be considered for delay should not include the seven (7) years of Sanders' incarceration. The Alabama Court of Criminal Appeals has improperly held that the relevant time period for a speedy trial act analysis is the time from the date of the second remand, April 20, 2017, until Sanders entered his guilty plea on February 15, 2018. The court improperly used this basis from case law that is wholly distinguishable on the facts and did not include a plea agreement and sentence that was illegal when offered. There is no case on point that has facts regarding an illegal plea agreement and sentence.

The decision of the Alabama Court of Criminal Appeals conflicts with binding U.S. Supreme Court and Alabama Supreme Court precedent discussing negligent delay and the speedy trial timeframe analysis. Accordingly, this Petition for Certiorari is due to be GRANTED.

The trial court erred when it denied Petitioner's Motion to Dismiss based upon the State's violation of Sanders' right to a speedy trial because the length of and reasons for the delay, his assertion of his right to a speedy trial, and the prejudicial impact to Sanders weigh so greatly in his favor. Therefore, the trial court's denial of Sanders' motion to dismiss the indictment is due to be reversed.

The State continues to misunderstand the facts of this case and therefore, has presented no argument sufficient to defeat Sanders' claim. Indeed, the State's brief cites but one new case to support its argument, *Waters v. State*, 155 So. 3d 311 (Ala. Crim. App. 2013), and that case is

distinguishable from the facts present here. Sanders' argument should prevail.

1. Sanders entered into a Negotiated Plea Agreement.

While the fact that Sanders entered into a negotiated plea agreement is obvious, it is critical to note that the plea agreement included the sentence of 20 years with five years split to serve in prison. Mr. Sanders accepted that plea on the basis of the sentence proffered by the State. The State argued that, “[t]he guilty-plea (sic) conviction was not void. Only the sentence was void, and once that guilty plea was entered, there was no speedy trial claim remaining at that point.” (State’s Br. 4.) The State then cites *Waters v. State*. 155 So. 3d 311 (Ala. Crim. App. 2013). *Waters* is distinguishable on the facts.

In *Waters* the defendant filed a *pro se* motion to withdraw his guilty plea to first-degree stalking, for which he was sentenced as an habitual offender to 30 years’ imprisonment. The trial court summarily denied the motion. The Alabama Court of Criminal Appeals reversed and remanded for an evidentiary hearing. On remand, the defendant’s request to withdraw his plea was denied and the defendant appealed. The appellate court held that the defendant failed to establish that his trial counsel made a material misrepresentation about what punishment the defendant would receive if he agreed to plead guilty.

Presumably, the States cites *Waters v. State* due to the court’s discussion which separated the conviction and the sentence. However, the court’s holding was specific to the facts of that case. Here, there was no separation of the

conviction and the sentence because the guilty plea was part of the negotiated split sentence. In its brief, the State actually conceded that fact. *Waters* actually supports the distinction we have here in that there was a certain sentence bargained for in this case. The *Waters* Court held that the defendant failed to establish that his trial counsel made a material misrepresentation about what punishment the defendant would receive if he agreed to plead guilty to first-degree stalking, and, thus, trial court acted within its discretion in denying defendant's motion to withdraw his guilty plea; at hearing on defendant's motion to withdraw plea, trial counsel testified that "there was no plea agreement to any certain sentence," that he explained to defendant that there was no plea agreement, and that he explained to defendant that it would be up to the circuit court to decide what the sentence would be.

In *Waters*, the guilty plea was not negotiated with the sentence as it was in the present case. Further, the 30-year sentence was not determined to be illegal by the appellate court so as to trigger any further procedural steps as it has done here. The State argues here that the guilty plea conviction was not void, only the sentence was void. However, that argument is contradicted by the facts. The Court of Criminal Appeals specifically remanded the matter for a hearing on the voluntariness of the plea to ensure that the plea was not entered on the basis of the split sentence. So the State's assertion is not consistent with what the Alabama Court of Criminal Appeals did with the first remand on Sanders' initial appeal of his probation revocation.

Sanders accepted the negotiated plea agreement in June 2012. Hypothetically, if the trial court rejected the

negotiated plea agreement on the basis that the negotiated sentence was void, then Sanders would have had the opportunity to negotiate a new sentence, enter a cold plea, or decide to proceed to trial. The guilty plea would not have stood separately as a stand-alone conviction. The State is incorrectly treating the negotiated plea and the negotiated sentence as two different steps; however, it was a negotiated plea where the plea was premised upon the agreement to the sentence.

Sanders gave up everything in that negotiated plea with NO benefits of the bargain because the sentence was determined void AFTER the sentence was served. He gave up the ability to have a meaningful trial when case was first presented. Sanders gave up the use of his defensive strategy at trial in exchange for pleading guilty and serving five years. Then Sanders' probation was improperly revoked and when he appealed the improper revocation, the Alabama Court of Criminal Appeals voided the probation revocation and determined the sentence was illegal.

Once Sanders withdrew his guilty plea, the State offered a retaliatory plea agreement of no less than 40 years. Sanders fulfilled his end of the plea bargain by serving the negotiated sentence, and yet, when the Alabama Court of Criminal Appeals points out the illegality of the sentence, Sanders continues to be punished as a direct result of the State's incompetence in offering a plea agreement incorporating an illegal sentence. The State should have offered a legal plea that held up the State's end of the original bargain. Indeed, the State originally allowed Sanders to plead guilty to a 20-year sentence but when the Alabama Court of Criminal Appeals

again remanded the case for a second time, and allowed Sanders to withdraw his plea, the State refused to offer the sentence originally offered. Sanders continues to be punished for mistakes made on behalf of the State.

The State then contends that Sanders “attempts to minimize the fact that he did not assert his right to a speedy trial until after he was allowed to withdraw his guilty plea.” (State’s Br. 5.) Sanders’s timing of his assertion of his right to a speedy trial was made as soon as he withdrew his guilty plea on May 2, 2017. It was made on the same day, in fact, by oral motion and the brief in support thereof was filed a week later with the trial court.

2. The Length of the Delay is Presumptively Prejudicial.

The State appears to rest its case on the fact that there is no “presumptively prejudicial delay” significant enough to trigger the remaining three *Barker* factors. See *Barker v. Wingo*, 407 U.S. 514 (1972). Unfortunately, the State’s brief provides absolutely no case law to support its blanket assertion.

The State argues that the period from June 8, 2012, until May 5, 2017,¹ is not to be counted towards a speedy trial analysis. But June 2012, is when Sanders accepted the negotiated plea agreement for a split sentence and May 2, 2017, is when he withdrew his guilty plea after the Alabama Court of Criminal Appeals ordered a second hearing on the voluntariness of his plea. The State offers no analysis for why the five years Sanders spent

¹ Sanders actually withdrew his plea on May 2, 2017, at the same time he asserted his speedy trial violation.

incarcerated is not counted other than stating that “there was a valid conviction in place.” (State’s Br. 7.) Notably, that conviction was not a trial by jury. It was a negotiated plea that was accepted on the basis of a sentence of five years. For that reason, the conviction and the sentence cannot be separated in this analysis. The conviction would not have been in place if the sentence had not been in place, pursuant to the negotiated plea agreement.

The State provides no case law to support its assertion that the time served under an illegal sentence is somehow not relevant to the speedy trial analysis. The State further argues that Sanders’ incarceration for the two years prior to the original guilty plea also does not count toward the speedy trial analysis since he did not assert his claim then.

“An accused does not waive the right to a speedy trial simply by failing to assert it.” *Barker*, 407 U.S. at 528. Even so, courts applying the *Barker* factors are to consider in the weighing process whether and when the accused asserts the right to a speedy trial. 407 U.S. at 528-29. Not every assertion of the right to a speedy trial is weighted equally. *Id.* Here, Sanders asserted his right to a speedy trial and the violation thereof as soon as he realized that the original split sentence was illegal. Thus, there has been no delay on behalf of Sanders in asserting his right.

Assuming, *arguendo*, that the two years from Sanders’ arrest until the original guilty plea on June 8, 2010, are not factored into the speedy trial analysis, the delay remains “presumptively prejudicial” under the law because the period from the date of his original plea until his withdrawal on May 2, 2017, including his continued

incarceration to this day is well over the five-year trigger that is considered “presumptively prejudicial.”

A finding that the length of delay is presumptively prejudicial ‘triggers’ an examination of the remaining three *Barker* factors. 505 U.S. at 652 n. 1 (“[A]s the term is used in this threshold context, ‘presumptive prejudice’ does not necessarily indicate a statistical probability of prejudice; it simply marks the point at which courts deem the delay unreasonable enough to trigger the *Barker* inquiry.”); *see also, Roberson v. State*, 864 So. 2d 379, 394 (Ala. Crim. App. 2002).

In *State v. Jones*, 35 So.3d 644 (Ala. Crim. App. 2009), the more than 30-month delay was presumptively prejudicial. 35 So. 3d at 646; *see also, State v. Van Wooten*, 952 So. 2d 1176 (Ala. Crim. App. 2006) (29-month delay was presumptively prejudicial); *State v. Stovall*, 947 So. 2d 1149 (Ala. Crim. App. 2006) (41-month delay was presumptively prejudicial); *Vincent v. State*, 607 So. 2d 1290 (Ala. Crim. App. 1992) (31-month delay was presumptively prejudicial).

In the instant case, Sanders was arrested on September 10, 2010. Sanders has been incarcerated for more than 72 months. Therefore, even under the precedent of the Alabama Court of Criminal Appeals, the length of delay is presumptively prejudicial.

3. The Reasons for the Delay Weigh Against the State.

The State has argued that Sanders is the reason for any delay. The State argued that the “entire scenario was the

result of Sanders' violations of his probation." (State's Br. 9.) The Alabama Court of Criminal Appeals held that the trial court did not have jurisdiction to revoke Sanders' probation and that the trial court had no authority to conduct a probation revocation hearing. For that reason, the order of revocation was voided. The State offers no other explanation or reason for delay because it cannot. Accordingly, the State fails to provide any legitimate argument regarding the reasons for the delay.

The State offered Sanders a plea deal with a split sentence of twenty years with Mr. Sanders only serving five years, an offer that is illegal under The Split Sentence Act. *See ALA. CODE § 15-18-8 (1975).*

The Alabama Supreme Court in *Ex parte Walker* stated that the "State has the burden of justifying the delay." 928 So. 2d at 265 (citing *Barker*, 407 U.S. at 531); *Steeley v. City of Gadsden*, 533 So. 2d 671, 680 (Ala. Crim. App. 1988). Here, negligent delay is the only applicable type of delay. Negligent delay is weighted against the State, though not as heavily as deliberate delay. *Barker*, 407 U.S. at 531; *see also, Zumbado v. State*, 615 So. 2d 1223, 1234 (Ala. Crim. App. 1993); *State v. Jones*, 35 So. 3d at 652–53

In *State v. Jones* the trial court attributed "significant, unexplained gaps" to official negligence and held that the negligent inaction "weighs significantly against the State." *Jones* , 35 So. 3d 644, 653. "[N]egligence and 'bureaucratic indifference and inefficiency' must be weighed against the State." *Kimberly v. State*, 501 So. 2d 534, 537 (Ala. Crim. App. 1986).

In the present case, there is no evidence of deliberate delay and certainly no support for justifiable delay, since the State's failure to offer a legal sentence is negligent and not justifiable under the case law. However, it is clear that the circumstances presented here meet negligent delay. The State's failure to review the plea agreement in accordance with Alabama law is the definition of negligence. Indeed, such negligent delay, like that in *State v. Jones*, is weighty enough to raise a presumption of prejudice to Sanders.

4. Mr. Sanders Asserted his Right to a Speedy Trial Once it was Concluded that his Split Sentence was Illegal Under Alabama Law.

The State next argues that during the period between September 2010, until May 2, 2017, the speedy trial claim was not available to Sanders. (State's Br. 9.) The State suggests that even though Sanders asserted his right to a speedy trial as soon as it became available to him, the timing should be weighted heavily against him. The State argues that his speedy trial claim was not made "until very late in the proceedings, suggesting that he acquiesced in the delays." (State's Br. 10-11.)

Here, Sanders originally appealed an improper probation revocation, and, in the process, the Alabama Court of Criminal Appeals held that the original sentence was illegal, and his probation revocation was void. Sanders asserted his speedy trial claim as soon as it became available to him so there was no delay resulting from any of Sanders' actions. Indeed, without Sanders' first appeal of the improper probation revocation, the illegality of the sentence may never have been revealed. Sanders' actions

in filing the first appeal created the opportunity for his assertion of his speedy trial claim later. As the State concedes in its brief, the claim was not available to Sanders until the day it was made. (State's Br. 9.) Thus, Sanders could not possibly have acquiesced in the delay.

Here, Mr. Sanders asserted his right to a speedy trial and the violation thereof as soon as he realized that the original split sentence was illegal. Thus, there has been no delay on behalf of Mr. Sanders in asserting his right.

5. Mr. Sanders has been Unduly Prejudiced as a Result of the Delay.

Sanders has experienced all three types of prejudice which could result from an undue delay: (1) oppressive pretrial incarceration, (2) anxiety and concern of Sanders, and (3) the possibility that his defense will be impaired by dimming memories and loss of exculpatory evidence. *Ex parte Walker*, 928 So. 2d 266-68 (citing *Barker*, 407 U.S. at 532), *see also*, *Doggett*, 505 U.S. at 654; *Smith v. Hooey*, 393 U.S. 374, 377-79 (1969); *United States v. Ewell*, 383 U.S. 116, 120 (1966). The most serious form of prejudice is the last, because the inability of a defendant to prepare adequately his case skews the fairness of the entire system. *Doggett*, 505 U.S. at 654 (quoting *Barker*, 407 U.S. at 532); *see also*, *Jones*, 35 So. 3d at 655.

The third scenario recognized in *Doggett* involves delay caused by the state's "official negligence." *Doggett*, 505 U.S. at 656-57. Official negligence 'occupies the middle ground' between bad-faith delay and diligent prosecution. *Id.* In evaluating and weighing negligent delay, the court must 'determine what portion of the delay is attributable to the

[state]’s negligence and whether this negligent delay is of such a duration that prejudice to the defendant should be presumed.’ *Robinson*, 2 F. 3d at 570 (citing *Doggett*, 505 U.S. at 656-58). The weight assigned to negligent delay ‘increases as the length of the delay increases.’ *United States v. Serna-Villarreal*, 352 F. 3d 225, 232 (5th Cir. 2003) (citing *Doggett*, 505 U.S. at 656-57). Negligent delay may be so lengthy—or the first three *Barker* factors may weigh so heavily in the accused’s favor—that the accused becomes entitled to a finding of presumed prejudice. 352 F.3d at 231 (citing *Robinson*, 2 F. 3d at 570, citing in turn *Doggett*, 505 U.S. at 655). When prejudice is presumed, the burden shifts to the State, which must then affirmatively show either that the delay is ‘extenuated, as by the defendant’s acquiescence,’ or ‘that the delay left [the defendant’s] ability to defend himself unimpaired.’ *Doggett*, 505 U.S. at 658 & n. 4. *See Ex parte Walker*, 928 So. 2d at 266-68.

Prejudice is presumed under the fourth *Barker* factor if the post-indictment delay is five years or more like we have in the present case. *Serna-Villarreal*, 352 F.3d at 232 (refusing to presume prejudice under the fourth *Barker* factor in a case in which prosecutorial negligence delayed the accused’s trial for three years and nine months and citing *Doggett*), 505 U.S. at 658 (presuming prejudice after six-year delay caused by the government’s negligence); *United States v. Bergfeld*, 280 F. 3d 486, 489-91 (5th Cir. 2002) (presuming prejudice after a five-year-and-three-month delay caused by the government’s negligence, but noting that ‘[h]ad the delay been considerably shorter, [the accused] might well have been properly required to demonstrate prejudice’); *United States v. Cardona*, 302 F. 3d 494, 498-99 (5th Cir. 2002) (presuming prejudice where governmental negligence resulted in a delay of more than

five years); *United States v. Brown*, 169 F. 3d 344, 349-51 (6th Cir. 1999) (presuming prejudice where governmental negligence resulted in 5 1/2-year delay); *United States v. Shell*, 974 F. 2d 1035, 1036 (9th Cir. 1992) (presuming prejudice where governmental negligence resulted in a six-year delay).

Here, Sanders has been incarcerated for over seven years. The only party that benefits from the passage of time in the case is the State. Sanders does not. He does not benefit from being incarcerated for years at a time only to be released and then his probation improperly revoked. Then to have the revocation order deemed void and the sentence, which he has already served, to be ruled illegal, though Sanders remains stuck in jail. Then to have the State offer him even more time than he originally bargained for with the loss of the strategic benefit/leverage he had on June 8, 2012.

A defendant could not possibly be more prejudiced than Sanders is, given these very damaging circumstances. The Court has never been presented with a set of facts like the facts presented in this matter.

The State could have prevented this entire situation by offering a sentence of time served once the Alabama Court of Criminal Appeals remanded the matter due to the illegal sentence. The irony here is that the term of imprisonment that the State wanted Sanders to serve back in 2012 has already been served. The State got what it bargained for here. Sanders has not. He has now served a sentence that was illegal and was then offered a plea agreement of 40 years that was clearly retaliatory in nature. The State has been allowed to renege on its part of the bargain while

Sanders has kept his end of the bargain. He cannot get the seven-year delay back. He cannot reverse the time and age of witnesses that would have appeared in his defense. He cannot rejuvenate the memories of his witnesses. It is unjust that Sanders continues to be punished for the repeated incompetence of the State and remains incarcerated. The State cannot be rewarded for its failure to follow the rule of law.

CONCLUSION

Based on the foregoing arguments and authorities, the Court should grant the petition for a writ of certiorari.

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