

No.

IN THE
SUPREME COURT OF THE UNITED STATES
IN RE

GREGORY BARTUNEK - Petitioner

VS.

UNITED STATES OF AMERICA - Respondent

PETITION FOR WRIT OF HABEAS
CORPUS FOR A PRISONER IN CUSTODY
FOR AN ORDER OF A JUDGE OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA
DOCKET NO. 8:17 CR 28

GREGORY BARTUNEK

Prisoner No. 227639

HALL COUNTY DEPARTMENT OF CORRECTIONS

110 PUBLIC SAFETY DRIVE

GRAND ISLAND, NE 68801

LIST OF PARTIES

All parties appear in the
caption of the case on the
cover page.

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PETITION FOR WRIT OF HABEAS CORPUS

OPINIONS BELOW

The petitioner prays that a writ of Habeas Corpus issue to review the Detention Order below.

The opinion of the United States District Court for the District of Nebraska appears as Appendix C which is unpublished.

JURISDICTION

The jurisdiction of this Court is invoked under Article III of the Constitution of the United States and 28 U.S.C. § 2241.

REASONS FOR NOT MAKING APPLICATION
TO THE DISTRICT COURT IN WHICH
THE PETITIONER IS HELD

1. The petitioner has exhausted all his remedies in the District Court.

2. The petitioner cannot make the Application in the District Court because:

a) District Court Judge Robert Rossiter Jr. told the petitioner if he tried to file any pro se documents with the court, it would not be allowed, and the document would be forwarded to his attorney, instead; and

b) The petitioner's Panel Attorney, Andrew Wilson, won't pursue any actions, whatsoever, to get him released pending trial. (See Appendix A).

3. Even if the petitioner's Panel Attorney could get another detention

hearing before Judge Rossiter Jr., the judge would never order the petitioner to be released pending trial, because he told the petitioner that it was "water under the bridge", and nothing, no facts, would change his decision, regardless if the decision was right or wrong. (See Appendix B).

4. The petitioner did petition for a writ of habeas corpus to the District Court, but it was dismissed. Case No. 8:17-CV-00303-RGH-PRSE).

The lawsuit was filed on August 16, 2017, and disposed on September 21, 2017.

Judge Richard G. Kopf was assigned to that case. Dismissed without prejudice

5. There are important Constitutional and legal issues that have not been addressed, but should be settled by this Court. Neither the District Court or the Court of Appeals for the Eighth Circuit have addressed these issues.

HISTORY

1. On January 19, 2017, the petitioner was indicted by a Grand Jury for two counts:
Count I: Violation of 18 USC § 2252A(a)(2); and
Count II: Violation of 18 USC § 2252(a)(4)(b).

2. The petitioner was arraigned on February 17, 2017, in the United States District Court for the District of Nebraska, Case No. 8:17CR28. The petitioner pleaded "Not Guilty" to the charges.

3. On February 23, 2017, a detention hearing was held pursuant to 18 USC § 3142. Magistrate Judge Susan Bazis entered a Release Order, but the petitioner was not released because the government claimed they did not have the required electronic monitoring equipment, and could not obtain it until February 28, 2017. No one questioned this.

4. On February 24, 2017, U.S. Assistant Attorney, Michael Norris, filed a motion to stay the release, and review and revoke the Release Order, under 18 USC § 3145(a)(1).

5. Norris did not show any good cause or present any new evidence to merit reopening the hearing as required by NE Crim R 46.2 and by 18 U.S.C. § 3142 (f)(2)(B). Nonetheless, Judge Robert Rossiter revoked the Release Order and Ordered the petitioner to be detained at the conclusion of the second detention hearing on February 28, 2017.

(Filing No. 28). (See Appendix C),
6. The petitioner asked his Public Defender, Michael Maloney, to file a "motion to reconsider", or appeal Judge Rossiter's Order, but Maloney would not respond to his request. On March 9, 2017, Maloney stopped the speedy clock until April 13, 2017, because he was too "busy" to wait his time trying to pursue the petitioner's pretrial release, or performing any discovery, or filing and pretrial motions, or to even communicate with the petitioner. Because of this, the petitioner sought and was granted Pro Se status on April 4, 2017.

7. The petitioner filed a motion to re-open the detention hearing, which was denied by Judge Rossiter Jr. on April 11, 2017. (Filing Nos. 38, 45).

8. On April 24, 2017, the petitioner appealed the judge's decision to the United States Court of Appeals of the Eighth Circuit, but the appeal was dismissed on May 24, 2017. The appellate court tried to appoint Maloney to litigate the appeal; but Maloney refused, stating there was a conflict of interest, so the court allowed Maloney to withdraw as counsel. That same date, leaving the petitioner without the assistance of counsel for the appeal.

9. On October 18, 2017, the petitioner filed a motion for Review and Revocation of a Detention Order and to Re-open the Detention Hearing. (Filing No 212). Having diligently studied the Constitution, laws, and legislative intent in formulating

18 USC § 3142, the plaintiff was able to determine that both Norris and Judge Rossiter Jr. failed to follow the Constitution and laws of the United States. He planned to call three witnesses and proffer additional material evidence in favor of his release, that was unavailable at his previous hearings. (See Appendix D and E)

10. On November 8, 2017, the plaintiff mailed a motion requesting a hearing before the Court, and asking the court to take judicial notice of the laws concerning due process violations due to lengthy incarceration and punishment endured by the plaintiff. (Filing No. 227). In particular he asked the court to review United States v. Gallo, 653 F.Supp. 320 (E.D.N.Y. 1986). Because of lengthy mail delays, the motion was not filed until November 13, 2017.

11. On November 8, 2017, Judge Rossiter Jr. denied the plaintiff's motion to re-open the detention hearing (Filing No. 222) without a hearing, and without seeing any evidence or hearing any testimony. (Filing No. 223).

12. The plaintiff filed a motion to reconsider Order 223, (Filing 228), on November 13, 2017. (See Appendix F).

13. On November 14, 2017, Judge Rossiter Jr. denied the plaintiff's motion 227 as moot, and denied motion 228, even though the plaintiff had new material evidence to present to the court as required by ME Crim R 46.2 and 18 U.S.C. § 3142 (f)(2)(B). (Filing No 229).

14. On November 22, 2017, the plaintiff appealed Orders 223 and 229, and asked for the appointment of counsel to the United States Court of Appeals of the 8th Circuit (17-3593). (Filing Nos. 242 and 245)

so that he could properly prepare for his defense and upcoming trial, and because of the extreme limitations and stress imposed upon him by being illegally incarcerated and punished for over one (1) year in the Douglas County Department of Corrections, the petitioner asked the court to appoint counsel to represent him at trial scheduled for March 12, 2018. (Filing No. 298).

18. On March 5, 2018, Judge Rossiter Jr. appointed the petitioner's stand-by attorney, Michael Maloney, to represent him at trial. (Filing No. 300). There was no reason for a lengthy delay of the trial, but Maloney asked for a lengthy delay, not of just one (1) month as before, but for almost six (6) months until August 27, 2018. (Filing Nos. 302 and 304).

19. On March 14, 2018 and March 15, 2018, the petitioner filed a motion to Re-consider

Appointment of Counsel and NOT
delay trial, and a motion
for Justice, respectively.
(Filing Nos. 305 and 307). (See Appendix G and H).

20. On March 20, 2018 a hearing was
held regarding the above motions. Judge
Rossiter Jr. denied motion 305 and 307
with the exception of appointment of
CJA Panel Attorney, Andrew J. Wilson.
(Filing No. 308, 309). During the hearing
the petitioner asked Judge Rossiter Jr.
if there were any facts whatsoever
that he could proper to persuade
him to be released pending trial.
Judge Rossiter Jr. emphatically stated
there were not. The petitioner also
asked to be released to the Veteran's
Treatment Center, where he could still
be detained, allowing him greater
freedom in accordance with 18 USC § 3142(i)(2),
but the judge refused to consider it.
Judge Rossiter Jr. told the petitioner
regardless of his decision to detain

him was right or wrong, it was "water under the bridge", and the judge would not re-visit the issue. (Filing No. 308) (See Appendix B).

The petitioner argued that there was no reason to delay the trial until August 27, 2018, reminding the judge of the seventy (70) day speedy trial statute 18 U.S.C. § 3161.

The judge told the petitioner he could schedule the trial for April if he continued Pro Se, but not if a Panel Attorney was appointed, forcing the petitioner to give up his sixth amendment rights for Counsel, or give up his rights for a speedy trial.

21. The petitioner asked Wilson to pursue further actions to get him released pending trial such as "Writ of Certiorari" or "Habeas Corpus", and to get an earlier trial date, but Wilson would not do anything. (See Appendix A).

22. The petitioner applied for an extension of time to file a Petition for a writ of certiorari, which was granted by Justice Gorsuch on May 16, 2018, extending the time to and including July 15, 2018. Application No. 17A1269.

23. On May 22, 2018 the Petition for Certiorari was received by the United States Supreme Court. The Court returned the Petition because of deficiencies. The petitioner mailed a corrected petition to the Court on June 7, 2018.

GROUND S

I. It is unconstitutional for the legislature to define all Chapter 110 crimes of 18 United States Code (18 U.S.C.), in particular § 2252 and § 2252A, as "crimes of violence" as defined by 18 U.S.C. § 3156(a)(4)(C), and then to use that definition as the sole rebuttable presumption under 18 U.S.C. § 3142(e), which cannot be rebutted, to detain the petitioner prior to trial. Violations of the Fifth, Eighth, Ninth, and Fourteenth Amendments of the Constitution.

1. 18 U.S.C. § 3156(a)(4)(C) is in direct conflict with 18 U.S.C. § 16 for the crimes the petitioner is charged with, because there is nothing "physical" in these offenses, and no person or property of another is involved any physical force.

2. Congress has the power to reasonably legislate the right to bail, provided the power is exercised rationally, reasonably, and without discrimination.

3. Both the United States and Judge Rossiter Jr. only used the fact that the petitioner's offenses

are defined as "crimes of violence" to prevent the petitioner from rebutting the presumption and keep the petitioner detained. During the detention hearing on February 28, 2017, Judge Rossiter Jr. stated:

"I am also required to take into consideration in that rebuttable presumption that Section 2252A(a)(2) is a crime of violence and I must take that into consideration."

(Filing No. 121, TR 13). And on April 11, 2017:

"And what you are charged with is also a crime of violence under the statutes. Tell me how you've [Bartunek] rebutted that presumption." (Filing No. 122, TR 33). And the United States, Michael Norris said,

"The rebuttable presumption is for a violent crime and it's for danger to the community and that's what we've pushed for this entire time (Filing No. 122, TR 35).

4 The Detention Order's sole reason that the petitioner was unable to rebut the presumption was that the crime involved a "crime of violence" (Filing No. 28, PP 2, 3) (See Appendix C).

II It is unconstitutional to deny bail under 18 U.S.C. 3142(e) solely on the grounds of dangerousness, in violation of the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution.

1. Neither Magistrate Judge Bazzis, or Judge Rossiter Jr., or Michael Norris believed the petitioner was a flight risk. During the February 23, 2017 Detention Hearing, Magistrate Bazzis stated:

"I don't -- I don't know that he's a flight risk. He's lived here, he's got roots here, he's got a house and I don't know that that's --" (Filing No 120, TR 17-18) And Norris replied:

"I'm not suggesting he is." (Filing No 120, TR 18). During the February 28, 2017 hearing, Maloney pointed out that the petitioner was not found to be a flight risk by Bazzis, and Judge Rossiter Jr. stated,

"Okay. Thank you. Well I agree with you." (Filing No 121, TR 11-12).

2 The Detention Order by Judge Rossiter Jr., "Statement of Reasons For

3. Norris presented hearsay evidence of three past unproven allegations of crimes, but no evidence to show that these were any more than just suspicions, below the level of "probable cause", let alone "clear and convincing".

4. Judge Rossiter did not apply the "presumption of innocence" to these allegations because he used them as "facts" to detain the petitioner. (Filing No 28) (See Appendix C).

5. Misdeeds or a bad record should not prejudice those who are not guilty of them, however in this case they did.

IV It is unconstitutional to stop the speedy trial clock because of an Interlocutory Appeal of a Detention Order, in violation of the Fifth, Sixth, and Fourteenth Amendments of the U.S. Constitution.

1. No delay in other pre-trial motions, or preparing for trial is introduced by the Appeal.

2. The petitioner was locked down twice for over two (2) weeks for alleged violations of minor infractions at Douglas County Department of (DCDC) Corrections. First, because he asserted his First Amendment rights to demand that DCDC follow a court order regarding access to the law library resources, and access to the courts. And again where he ran away screaming because he was being attacked by another inmate who believed he was a Child Molester (Chimo). When he asked why he was being punished a staff member sergeant told him that "it takes two to tangle" (See Appendix I).

3. The court blamed the petitioner for the delays and lengthy incarceration, but it was due to the limitations he faced in preparing for pretrial motions and trial under the stringent conditions in DCDC.

4. Norris withheld discovery for several months causing several delays

of the trial, over three months delays.

5. Even when the petitioner had a panel attorney appointed to him, with no pre trial motions or need for a lengthy delay, Judge Rossiter Jr. delayed trial for an additional six (6) months.

VI The Detention order was illegal in violation of 18 U.S.C. § 3142(k)(1), because the contents of the order listed any specific facts or details of the case, and the written statement of reasons merely restated part of 18 U.S.C. § 3142(f)(2)(B), violating the Fifth, Eighth, and Fourteenth Amendments of the Constitution.

1. The Finding of Facts did not show why past unproven charges or acts presented any danger to any one or the community.

2. The weight of the evidence was not high.

3. The Statement of Reasons for

2. On November 8, 2017, Judge Rossiter Jr. denied the petitioners appeal of his detention order, even though there were material changes in his circumstances (length of detention), and new material evidence that was not available at previous detention hearings. (See Appendix D and E). The Judge never saw the evidence or heard testimony.

VII The petitioners due process, reasonable bail, speedy trial, trial in open court, presumption of innocence, equal protection under the law, right to competent counsel were all violated, rights that should have been protected by the Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments of the Constitution of the United States.

1. This entire document as well as all facts in this case and previous Grounds are incorporated here in to show this true.

VIII Magistrate Judge Bazis abused her discretion believing 18 U.S.C. § 3142(c)(1)(B)(xiv) applied to this case, and Judge Rossiter Jr. also abused his discretion believing 18 U.S.C. § 3142(e)(3)(E) applied in this case, violating the petitioner's due process and equitable bail and equal protection rights under the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States of America

1. The two sections of § 3142 only apply if the case or offense involved a minor victim, and is under section 2252 A(a)(1)...

2. The petitioner is charged with violating 18 U.S.C. 2252(a)(1).

3. An electronic image is not a victim. Therefore, the alleged child pornography is not a victim.

4. The statute specifically states the case or offense must involve a minor victim.

5. The statute excludes 18 U.S.C. § 2252(a)(4), possession of child pornography, because there is no minor victim involved in doing so, which further shows that it is the the distribution that would have to involve a minor victim.

6. No probable cause was shown that the alleged child pornography was sent to a minor.

7. There was no clear and convincing evidence of any prior bad acts or crimes were committed by the petitioner.

8. Magistrate Bazzis abused her discretion requiring electronic monitoring, and the petitioner should have been released on February 23, 2017.

9. Judge Rossiter Jr. abused his discretion ruling that the rebuttable presumption applied in this case, and then detaining the petitioner based solely on this error.

Conclusion

The above facts and grounds show that there are compelling reasons that the court grant this petition for writ of habeas corpus. The grounds raise legal and constitutional issues that have not but need to be addressed by this court. Some issues have been addressed by various circuits, but they don't come to the same conclusions, and it is up to this court to decide these issues that are important to all citizens unjustly detained as I am. With sentencing and possible mistrial, appeals, I most likely will end up incarcerated and punished 2 years or more.

Wherefore, the petitioner prays that the court grant this petition and release him, immediately, pending trial under minimum conditions of 18 U.S.C. § 3142.

Respectfully Submitted,

Gregory P. Bartnack

Gregory P. Bartnack

6/27/18

Date

VERIFICATION

I, Gregory Bartunek, am the petitioner in the above-titled action.

I have read the foregoing petition and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and to those matters, I believe it to be true.

I declare under the penalty of perjury that the foregoing is true and correct.

By: Gregory P. Bartunek

Date: 6/27/18

Gregory P. Bartunek

ID: 227639 Cell: D103

Hall County

Department of Corrections

110 Public Safety Drive

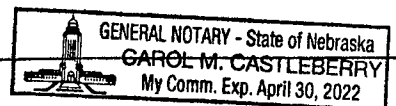
Grand Island, NE 68801

SWORN AND SUBSCRIBED BEFORE ME

ON THIS 27th DAY OF June, 2018.

Carol M. Castleberry 6-27-18

Notary



**Additional material
from this filing is
available in the
Clerk's Office.**