No. 18-5666

IN THE

SUPREME COURT OF THE UNITED STATES

ARTHUR DENNISON,

Petitioner-Appellant,

v.

MARKS HOOKS, WARDEN,

Respondent-Appellee.

PETITION FOR REHEARING

PURSUANT TO S.CT. R. 44

Arthur Dennison #667-007

Ross Correctional Institution

P.O. Box 7010

Chillicothe, Ohio 54601

I. INTRODUCTION

This Supreme Court denied Petitioner, Arthur Dennison's (hereinafter Dennison) Writ of Certiorari on October 9, 2018. (See Order of denial attached). Dennison now requests for a rehearing pursuant to S.Ct. R. 44 asking that this Supreme Court consider hearing this case from the Circuit Court's denial to grant a Certificate of Appealability (COA), as this case involves a federal constitutional violation.

II. QUESTIONED PRESENTED

DID THE SIXTH CIRCUIT COURT OF APPEALS ERR IN DENYING A CERTIFICATE OF APEALABILITY TO STATE PRISONER ARTHUR DENNISON TO CHALLENGE THE DENIAL OF HIS PETITON FOR FEDERAL HABEAS CORPUS REVIEW BROUGHT PURSUANT TO 28 U.S.C. 2254?

A. Constitutional Right to a Speedy Trial.

i. Speedy trial violation.

In deciding to hear this case, Dennison would like to point out that when a speedy trial violation is at issue, one of the deciding factors is length of the delay and another factor, and more importantly, who was at fault in creating the delay. In this case though it has been

determined that Dennison and or Dennison's counsel was at fault for creating more of the over two year delay, Dennison presents that the entire delay was orchestrated entirely, though indirectly, by the State.

The Sixth Circuit Federal Court of Appeals in denying to issue a COA stated the following in pertinent part in its July 19, 2017, Oder attached to the Writ of Certiorari marked as Appendix A:

> When assessing whether a defendant's Sixth Amendment right to a speedy trial has been violated, this court reviews questions of law de novo and questions of fact for clear error. United States v. Howard, 218 F.3d 556, 563 (6th Cir. 2000). To make the determination, a court must consider four factors: (1) the length of the delay; (2) the reason for the delay; (3) whether defendant asserted his rights; and (4) whether the defendant suffered prejudice. United States v. Williams, 753F.3d 626, 632 (6th Cir. 2014). The first factor is a threshold requirement. Id. If the delay is not uncommonly long, the judicial examination ends, but a delay of one year or more is presumptively prejudicial, thus triggering examination of the remaining three factors. Id.
>
> Because the delay between Dennison's indictment and trial exceeded one year, it is presumptively prejudicial, and the remaining three factors must be considered. The third factor weighs in Dennison's favor because he repeatedly asserted his right his right to a speedy trial. The fourth factor weighs against Dennison because, although he was incarcerated prior to trial, he has not shown that the delay had any impact on his ability to prepare or present a defense. See Williams, 753 F.3d at 634; Howard, 218 F.3d at 564.
>
> As to the second factor, the record reflects the Dennison and his lawyers are more to blame for the delay than the government. See Williams, 753 F.3d at 632. Dennison's first lawyer sought continuances from the initial trial date in February 2010 to January 2011 so that he could adequately prepare for trial, and, in November 2010, Dennison obtained new counsel, who requested continuances through June 2011 to adequately prepare for trial. The trial was further continued until June 2012 because Dennison was seeking recusal of the trial judge and defense counsel needed additional time to prepare for trail and obtain an expert witness. Dennison contends that the prosecutor necessitated

> several of the continuances by repeatedly collecting and turning over to the defense recorded jailhouse phone calls involving Dennison and other individuals and that the prosecutor did so to delay the trial so additional evidence against Dennison could be obtained. But Dennison has not shown that the prosecutor acted in bad faith in obtaining the recordings or unreasonably delayed turning them over to the defense.
>
> Because the delay was mostly attributable to Dennison and his counsel and Dennison has not shown that the delay actually impaired his defense, reasonable jurist would not debate the district court's determination that the state courts reasonably rejected Dennison's speedy trial claim.

(Sixth Circuit Appeals Court Order issued July 19, 2017, pgs. 2-3).

First, the Sixth Circuit Court was correct in acknowledging that Dennison's case did meet the first factor or threshold because the delay clearly exceeded one year, to be exact two and one half years. In addition, the Circuit Court was correct again in acknowledging as it relates to the third factor that Petitioner adamantly over numerous objections requested declared his right to a speedy trial.

As to the second factor, the Circuit Court found with the State courts that Dennison and Dennison's lawyers were at fault for most of the delay. However, the pro se motions filed by Dennison were never ruled on by the trial court so this was no delay on Dennison. Furthermore, majority of the continuances filed by defense counsel were due to the prosecutor's "piecemeal strategy" or tactic in turning over discovery evidence, which, in order for defense counsel to provide effective assistance guaranteed by the Sixth Amendment to the U.S. Constitution, (See also Strickland v. Washington, 466 U.S. 668, 687-688, 104 S.Ct. 2052, 80 L. Ed. 2d 674 (1984)) counsel was ultimately forced to request multiple continuances in order to go over the material; even though some of those continuances by defense counsel Dennison argued against once

Dennison realized the underhanded tactic being used by the prosecutor, a tactic defense counsel should have also picked up on.

Dennison did everything in his power to demand his right to a speedy trial, but if the trial court ignores a defendant's requests then when is the right guaranteed? "A defendant has no duty to bring himself to trial; the [government] has that duty ...." United States v. Ingram, 446 F.3d 1332 (6th Cir. 2006). Dennison eventually requested the trial judge to recuse himself from the case because Dennison felt the judge was not acting impartial plus, from the beginning the trial judge didn't want to acknowledge Dennison's (90) day speedy trial right pursuant to Ohio Revised Code 2945.71. Furthermore, every time a continuance was requested by defense counsel the prosecutor would submit more discovery material knowing that defense counsel would need additional time to review such material. Dennison also believed his first defense attorney was working along side the prosecution in delaying trial and sought new counsel who was later appointed.

Finally, the last and most important factor the Circuit Court found was that Dennison could not show prejudice in preparing a defense. In fact, Dennison had in fact shown prejudice. The longer Dennison was held in the county jail after demanding his right to a speedy trial the prosecutor was able to obtain, on numerous occasions, jailhouse telephone recordings of Dennison. These recording were obtained only after defense counsel requested continuances.

Dennison was ready to proceed to trial on the minimal evidence of unreliable witnesses' on behalf of the State prior to these jailhouse recordings. Once the jailhouse recordings were obtained, after Dennison's long wait in jail, this placed a bigger burden on the Petitioner to now have to defend against his own jailhouse recordings which would have never existed had his

right to speedy trial had been not violated. Furthermore, the prosecution during trial admitted to the jury that none of the recording were incriminating.

ii. COA may issue once a substantial showing of the denial of a constitutional right

In Buck v. Davis,137 S. Ct. 759, 775, 197 L. Ed. 2d 1 (Feb. 22, 2017), this Supreme Court reiterated the standard of review by the lower courts on the determination to grant or deny Certificate of Appealabilty (COA). This Court Supreme Court stated:

> A state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal. Federal law requires that he first obtain a COA from a circuit justice or judge. 28 U. S. C. §2253(c)(1). A COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." §2253(c)(2). Until the prisoner secures a COA, the Court of Appeals may not rule on the merits of his case. *Miller-El v. Cockrell*, 537 U. S. 322, 336, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003).
>
> The COA inquiry, we have emphasized, is not coextensive with a merits analysis. At the COA stage, the only question is whether the applicant has shown that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Id.*, at 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931. This threshold question should be decided without "full consideration of the factual or legal bases adduced in support of the claims." *Id.*, at 336, 123 S. Ct. 1029, 154 L. Ed. 2d 931. "When a court of appeals sidesteps [the COA] process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction." *Id.*, at 336-337, 123 S. Ct. 1029, 154 L. Ed. 2d 931."

Buck, 137 S. Ct., at 773. (Emphasis added).

The Sixth Circuit Court of Appeals did exactly what this Supreme Court specifically stated not to do when determining to grant a COA, and that is deciding the merits of Petitioner's issue and using that as a basis to deny the COA. *Id.*, at 336-337, 123 S. Ct. 1029, 154 L. Ed. 2d 931." The Circuit Court didn't have jurisdiction to reach the merits claim of the at the COA stage of the proceeding.

Based on the lower court's lack of jurisdiction in reaching the merits of Dennison's issue and basing that to deny a COA this Supreme Court should reverse the lower court's decision and remand the case back to be determined under the proper standard of review as determined in *Buck* v. Davis 137 S. Ct. 759.

III. CONCLUSION

For this reason, this Supreme Court should accept jurisdiction of this case to resolve the constitutional claim or remand the case back to the lower court to determine the COA based on the proper standard of review.

Respectfully submitted,

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Date: 10-24-18

PETITIONER PRO SE

No. 18-5666

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DECLARATION IN SUPPORT OF INMATE MAILING/FILING

I hereby **declare**, under the penalty of perjury, the laws of the United States of America, that the attached MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, PETITION FOR REHEARING, CERTIFICATION OF COUNSEL AND PROOF OF SERVICE was deposited in the Ross Correctional Institution's internal mail system, with first class postage prepaid, on this 24 day of October, 2018.

Executed on October 24 2018.

Arthur Dennison #667-007
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CERTIFICATION OF COUNSEL

I, Arthur Dennison # 667-007, do declare that on this October 26, 2018, as required by Supreme Court Rule 44 hereby submit the following CERTIFICATION OF COUNSEL certifying that I am acting in pro se and unrepresented by counsel in the filing of a PETITION FOR REHEARING.

This certificate, pursuant to the above mentioned rule, is attached to each PETITION FOR REHEARING. The grounds presented in the PETITION FOR REHEARING are in compliance and restricted to the above mentioned rule, that it is presented in good faith and not intended for any delay.

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

Arthur Dennison #667-007
Ross Correctional Institution
P.O. Box 7010
Chillicothe, Ohio 45601

Executed on October 26, 2018.