

U. S. S. Ct. Case No:

P. Ct. AZ Case No: CR-17-0610-PR

AZ COA Case No: 1 CA-SA 17-0257

MCSC Case No: CR2013-003413

IN THE UNITED STATES SUPREME COURT

ALAN MICHAEL BARTLETT

Petitioner

VS.

SUSANNA C. PINEDA

Respondent

PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI OF
THE SUPREME COURT OF ARIZONA DECISION
DENYING PETITION FOR REVIEW OF ARIZONA
COURT OF APPEALS DECISION

Alan M. Barthel #T242560

3127 West Gibson Lane

Phoenix, Arizona 85009

Petitioner - Pro Se

QUESTION PRESENTED

Whether Respondent Judge
Susanna C. Pineda abused discretion
denying Petitioner Bartlett's Motion
to Dismiss for Lack of Speedy Trial
in violation of the 6th USCA Amendment
of the United States Constitution
(18 USCA 3173), Article 2, Section 4, 11, and 24
of the Arizona Constitution, Rule 8.3(a)
and 8.6, Arizona Rules of Criminal
Procedure, and in accordance with
Interstate Agreement on Detainers (IAD),
Section 2, 18 U.S.C.A. App. 2 and Arizona
Revised Statute, ARS 31-481.

LIST OF PARTIES

Petitioner:

Alan Michael Bartlett #T242560
3127 West Gibson Lane
Phoenix, Arizona 85009

Respondent:

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TABLE OF CONTENTS

I. Opinions Below 1

II. Jurisdiction 1

III. Statement of the Case 3

IV. Statement of the Facts 6

V. Law and Argument 10

A. State Violated IAD 12

B. Non-Excludable Time 14

C. Motion to Dismiss 18

D. Demand for Speedy Trial 20

VI. Conclusion 25

A. Prayer for Relief 26

For

Contents of Appendix 28

Appendix A 29

Appendix B 31

Appendix C 35

Certificate of Compliance 38

Certificate of Service 39

TABLE OF AUTHORITIES

Cases

Bloate v. U.S.,

599 US 196 (2010) 16, 18, 25

Doggett v. U.S.,

505 US 647 (1992) 13, 16, 21, 22, 25

Dusky v. U.S.,

362 U.S. 402 (1960) 16

Faretta v. California,

423 US 806 (1975) 14

Godnez v. Mordan,

509 US 389 (1993) 15, 16

Hijar v. Burris,

474 US 1016 (1985) 13, 22, 23, 25

State v. Sandoval,

175 Ariz 343 (1993) 18

United States v. Pineda-Doval,

692 F.3d 942 (2012) 12

TABLE OF AUTHORITIES

Cases

Zedner v. United States,

547 US 489 (2008) 18

Statutes

18 USCA 3173 11

28 USCA 1257 2

Section 2, 18 USCA, App. 2 7

ARS 31-481 7, 10, 14, 22, 23, 26

6th USCA 10, 13, 17, 25, 26

14th USCA 17, 26

rules

Arizona Rules of Criminal Procedure,

Rule 6.1 8, 9, 11, 14, 23

Rule 8.2 9, 20

Rule 8.3 10, 14, 22

Rule 8.4 9, 11, 15, 18, 24, 25

Rule 8.5 20

Rule 8.6 11

Rule 11 11

(iiiiii)

MEMORANDUM OF POINTS AND AUTHORITIES

I. OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

III. JURISDICTION

The superior court had original jurisdiction over this matter under article 6, section 14 of the Arizona Constitution. (see Appendix C).

The Arizona Court of Appeals had jurisdiction over the writ of mandamus under article 6, section 9 of the Arizona Constitution, Arizona Revised Statutes; ARS 12-120, ARS 13-4033, and Rule 1 and 8, Arizona Rules of Special Action Procedure.

The Supreme Court of Arizona had jurisdiction over the petition for review

under article 6, section 5 of the Arizona Constitution, and Rule 8, Arizona Rules of Special Action Procedure. (See Appendix A)

The Supreme Court of the United States has jurisdiction over this petition for writ of certiorari under 28 USCA 1257. The Supreme Court of Arizona denied Bartlett's petition for review on June 12, 2018, and under Supreme Court Rule 13.1, this petition for writ of certiorari is timely.

Mandamus relief is the proper vehicle for disposition when the petitioner's question is in conflict with the Supreme Court's precedents, and where there is no equally, and adequate remedy by appeal. By declining jurisdiction, would force Petitioner Bartlett to choose between two untenable options; (1) trial, and/or (2) lengthy appeals process. It is unusual for a higher court to accept mandamus jurisdiction when such an action could lawfully be litigated in a lower court, but the circumstances notwithstanding

the apparent recurrence of this purely legal issue, merit the Supreme Court's acceptance of jurisdiction.

III. STATEMENT OF THE CASE

A. This is a fraud prosecution where the state alleges Bartlett diverted corporate proceeds / profits into personal accounts and charged him with fraudulent schemes and artifices, forgery, and taking the identity of another.

The indictment charges;

Count 1 , Fraudulent Schemes and Artifices (ARS 13-2310)

Count 2-20, Forgery (ARS 13-2002)

Count 21-22, Taking the Identity of Another (ARS 13-2008)

B. Bartlett is sole-member and resident statutory agent of two limited

(3)

liability companies; United States Disabled Veterans, LLC., a nationally recognized organization, and United States Handicapped-Disadvantaged Services, LLC., a local organization doing national business, registered and listed at the Arizona Corporation Commission, Arizona Department of Revenue, and United States Treasury.

As an Arizona State University graduate, Bartlett organized those "for-profit" businesses to employ the disadvantaged and disabled. However, over time, those organizations experienced "complex" chargeback frauds that he was unable to encumber, causing dissolution.

After reporting those "sophisticated" bank teller frauds to state and federal law enforcement, proceeds from business activities were turned over to Maricopa County Superior Court - collections unit, on advice of Maricopa County Sheriff, Lt. Chad Brockman, in exchange for twenty-five year old fines and

restitution.

As sole-member and resident statutory agent of USDV and USHD, Bartlett had implied authority to allocate those resources to third-party handling, and Maricopa County Sheriff's Office has "NO" apparent authority to arrest and/or indict anybody for those decisions.

Bartlett argues that he broke no law and committed no crime doing this because the State of Arizona has no authority to charge and indict him when no crime committed. Bartlett was subsequently indicted by a Maricopa County grand jury with false testimony three years later.

C. Bartlett is presently detained by state authorities while in federal custody executing a 216 month federal sentence imposed by the district court in Anchorage, Alaska. (see Exhibit 3).

- U.S. District Court - Anchorage
District of Alaska
case no: 3:13-cr-00044-RRB

- Bureau of Prisons
reg. no: 48428-239

D. This petition for writ of certiorari to the Supreme Court of the United States follows the Supreme Court of Arizona, June 12, 2018 order denying Bartlett's petition for review, (see Appendix A), of the Arizona Court of Appeals, October 10, 2017 order denying jurisdiction. (see Appendix B).

Under Supreme Court Rule 13.1, this petition for writ of certiorari is timely.

IV. STATEMENT OF THE FACTS

On May 8, 2013, the U.S. Attorney's Office for the District of Alaska indicted Bartlett in case: 3:13-cr-00044-RRB on an unlawful indictment absent any

grand jury proceeding and/or any valid arrest warrant. The government alleges he committed those offenses between 2010 and 2011. (see Exhibit 3).

On August 21, 2013, Maricopa County, for the State of Arizona indicted Bartlett in case no: CR2013-003413. The state alleges he committed those offenses between 2009 and 2010.

On November 25, 2014, Bartlett notified Maricopa County, for the State of Arizona of detention status in Alaska requesting final disposition in case no: CR2013-003413. (see Exhibit 1).

On October 5, 2015, Bartlett notified Maricopa County, for the State of Arizona of detention status in Alaska, a second time, requesting final disposition in case no: CR2013-003413 as required under Interstate Agreement on Detainers, section 2, 18 U.S.C.A. App. 2 and/or ARS 31-481. (see Exhibit 1).

On October 19, 2015, the United States District Court - Anchorage, for the District of Alaska sentenced Bartlett to 240 months in federal prison.

On January 20, 2016, Maricopa County, for the State of Arizona, took custody and transported Bartlett for initial appearance in case no: CR2013-003413.

On March 15, 2016, Bartlett waived counsel under Rule 6.1(c), Arizona Rules of Criminal Procedure, and Commissioner Jerry Bernstein declared him competent.

On April 7, 2016, Maricopa County Attorney Jason Holmes, for the State of Arizona filed a motion for examination of defendant's mental health condition pursuant to Rule 11, Arizona Rules of Criminal Procedure, and Judge Margaret Mahoney granted this motion over Bartlett's "OBJECTION", who had been evaluated by Commissioner Jerry Bernstein and declared competent on March 15, 2016

at the standard to waive counsel under Rule 6.1(c), Arizona Rules of Criminal Procedure, a higher standard, rather than the lower standard of competency to stand trial under Rule 11, Az. R. Cr. P., Bartlett argues this time should "NOT" be excluded under Rule 8.4(a), Az. R. Cr. P. because the State of Arizona Rule 11, Az. R. Cr. P. mental health commitment is involuntary and over DEFENSE OBJECTION.

On March 22, 2017, Commissioner Wendy O. Morton declared Bartlett competent to stand trial and ordered case remanded to master calendar.

On March 29, 2017, Judge Margaret Mahoney renewed Bartlett's waiver of counsel status under Rule 6.1(c), Az. R. Cr. P., and declared this matter complex under Rule 8.2(a)(3), Az. R. Cr. P., extending the trial date out after 13 months in Rule 11, Az. R. Cr. P. competency.

V. LAW AND ARGUMENT

These rules, statutes, and opinions are precedent that Bartlett is entitled to relief from the court's order under the Supreme Court's binding precedent.

- Denying Bartlett's motion to dismiss for lack of speedy trial under Rule 8.3(a), Az. R. Cr. P., and ARS 31-481, IAD, and the 6th USCA of the United States Constitution. (See Exhibit 2, Appendix C).
- Excluding time from November 25, 2014, when Bartlett notified Maricopa County of detention status, and requesting final disposition under Rule 8.3(a), Az. R. Cr. P., and ARS 31-481, IAD, until January 30, 2016, when Maricopa County took custody and transported him for initial appearance in case no: CR2013-003413. (See Exhibit 1 and 3, Appendix C).

The time from November 25, 2014, until January 20, 2016 deprives Bartlett of his 6th USCA Amendment right to Speedy Trial under 18 USCA 3173, I.A.D., and Rule 8.6, Az. R. Cr. P.

- Excluding time from April 7, 2016, under Rule 8.4(a), Az. R. Cr. P., when Maricopa County Attorney Jason Holmes filed a motion for examination of defendant's mental health condition under Rule 11, Az. R. Cr. P., over Bartlett's "OBJECTION" until March 29, 2017. Bartlett had been declared competent to waive counsel under Rule 6.1(c), Az. R. Cr. P., at a higher standard, rather than the standard of competency to stand trial, under Rule 11, Az. R. Cr. P., on March 25, 2016 by Commissioner Jerry Bernstein.

The time April 7, 2016 until March 29, 2017, deprives Bartlett of his 6th USCA Amendment right to speedy trial under 18 USCA 3173 and Rule 8.6, Az. R. Cr. P. (see Appendix C)

We will review the courts order over defense objection for clear error.

Standard of Review

Reviewing an erroneous decision for clear error, we apply the doctrine of clear error standard of review.

The judgment below must be affirmed unless; (1) we have a definite and firm conviction that the court committed clear error of judgment in the decision it reached upon weighting the relevant factors - illogical, (2) the court applied the wrong law - implausible, and (3) the court rested its decision on clearly erroneous finding of fact - unsupported inferences drawn from facts. *U.S. v. Pineda-Dovel*, 692 F.3d 942 (2012).

A. State Violated Bartlett's Sixth And Fourteenth Amendment Right To Speedy Trial Under Interstate Agreement On Detainers

(12)

Denying Bartlett's motion to dismiss for lack of speedy trial violated his 6th USCA and 14th USCA Amendment rights guaranteed under the United States Constitution. *Doggett v. U.S.*, 505 US 647 (1992). When a defendant requests final disposition on an open detainer, with-out-state, under Rule 8.3(a), Az. R. Cr. P., and in accordance with ARS 31-481, IAD, the receiving state has 90 days to take custody of the detainee, and 90 days to take him to trial. (180 days total - Speedy Trial Act). *Hijar v. Burris*, 474 US 1016 (1985).

In this case, Bartlett notified Maricopa County of his detention status in Alaska and requested final disposition of indictment on November 25, 2014, and a second time on October 5, 2015. (see Exhibit 1).

Hijar v. Burris, 474 US 1016 (1985). It took Arizona 14 months (428 days), a violation of Bartlett's 6th USCA Amendment rights to take custody and transport him to Arizona.

- Final disposition request under
(13)

Rule 8.3(a), Az. R. Cr. P. and ARS 31-481, IAD. (see Exhibit 1 and 3).

First Request: November 24, 2014

Second Request: October 5, 2015

Arizona took custody of Bartlett at Federal Prison Sea-Tac, in Seattle, WA on January 20, 2016.

This delay is by no means any fault of Bartlett and that violation is enough to justify dismissal.

B. State Violated Bartlett's Sixth And Fourteenth Amendment Right To Speedy Trial Excluding Non-Excludable Time

On March 15, 2016, Bartlett waived counsel under Rule 6.1(c), Az. R. Cr. P., and *Faretta v. California*, 422 US 806 (1975), at the standard of competency to waive counsel, which is arguably a higher standard than the standard of competency to stand trial. At this

hearing, Commissioner Jerry Bernstein declared Bartlett competent to waive counsel and represent himself at this higher standard of competency.

In other words, a defendant's competence to waive counsel [is] measured by the same standard under which competence to stand trial is evaluated. *Godnez v. Moran*, 509 US 389 (1993).

Non-Excludable Time

On April 7, 2016, Maricopa County Attorney Jason Holmes, filed an "OPPOSED" motion for examination of defendant's mental health condition and Judge Margaret Mahoney granted that motion over Bartlett's objection.

Rule 8.4(a), Arizona Rules of Criminal Procedure

Excluded Time. Delays occasioned by the defendant, including, but not limited to, delays caused by an examination and

hearing to determine competency or intellectual disability, the defendant's absence or incompetence, or inability to be arrested or taken into custody in Arizona.

Bartlett argues that because the state filed this involuntary mental health petition over his objection, and the standard for waiver of counsel, under *Godnez v. Moran*, 509 US 389 (1993), *Dusky v. U.S.*, 362 US 402 (1960), is measured at the same standard as the standard of competence to stand trial, which was determined by the court on March 15, 2016, that the court abused discretion accepting and granting the state's motion for examination of defendant's competence. Further, when the county attorney files an "opposed" motion, involuntarily committing the defendant over objection, that time is [not] excludable under Rule 8.4(2), Ar. R. Cr. P., *Bloate v. U.S.*, 599 US 196 (2010), *Zedner v. U.S.*, 547 US 489 (2008), *Doggett v. U.S.*, 505 US 647 (1992).

In this case, Bartlett was involuntarily
(16)

committed to competency proceedings and his waiver of counsel was revoked in violation of his 6th USCA and 14th USCA Amendment rights under the United States Constitution. The 12 months Bartlett was involuntarily committed on the state's motion is [NOT] excludable time;

- March 15, 2016

Bartlett competent to waive counsel

- April 7, 2016

State motion involuntarily committing Bartlett to mental health proceedings

- March 23, 2017

State declared Bartlett competent to stand trial

- March 29, 2017

State reinstated Bartlett's waiver of counsel

The 12 months (365 days) from April 7, 2016 until March 29, 2017 is [NOT] excludable time under the Speedy Trial Act and Rule 8.4(a), Az. R. Cr. P. *Bloate v. U.S.*, 559 US 196 (2010), *Zedner v. U.S.*, 547 US 489 (2006). Over the course of that 12 month time period, County Attorney Evelyn Hernandez requested 8 continuances, over defense objection, and every continuance was granted.

C. Defendant's Motion To Dismiss
For Lack Of Speedy Trial Violations

Bartlett contends denial of his motion to dismiss for lack of speedy trial violations based on incorrect interpretation of law is clearly erroneous. *State v. Sandoval*, 175 Ariz 343 (1993). The state alleges Bartlett committed those crimes between 2009 and 2010, but made no effort to pursue any indictment until 2013. It is currently 2018, and 8 years after the alleged commission of any crime and he is

(18)

still in custody awaiting deposition;

- 2009 and 2010

alleged offense committed

- August 21, 2013

state indicts Bartlett

- November 5, 2014

Bartlett notifies state
requesting final disposition

- October 5, 2015

Bartlett notifies state a
second time requesting
final disposition

- January 20, 2016

state takes custody of
Bartlett and transports
him to Arizona from
federal facility

- June 20, 2018

Bartlett still awaiting disposition
(19)

and presumptively
prejudiced by lapse
in prosecution.

Continuances

On March 29, 2017, after 12 months in competency, Bartlett requested a continuance to prepare pretrial motions and mount his defense. The court never considered his motion for continuance under Rule 8.5, Az. R. Cr. P., but declared this matter complex under Rule 8.2(a)(3), Az. R. Cr. P. extending the last day out from 180 days until 270 days.

On August 3, 2017, the court granted Bartlett's first motion for continuance of 90 days to allow him adequate time to locate witnesses and documentary evidence.

D. Demand For Speedy Trial Under
Rule 8.3(a), Az. R. Cr. P.,
And ARS 31-481, IAD

In Doggett, the United States Supreme Court recognized that four separate inquiries are required in determining when constitutionally a speedy trial violation occurs;

1. whether delay before trial was uncommonly long;

2. whether the state or the defendant is more to blame for the delay;

3. whether in due course the defendant asserted his right to a speedy trial; and

4. whether he suffered a prejudice as the delays result

Doggett v. U.S., 505 US 647 (1992). The following analysis demonstrates that Bartlett meets all the criteria set forth in Doggett.

Bartlett has demanded a speedy trial under Rule 8.3(a), Az. R. Cr. P. and ARS 31-481, IAD since November 25, 2014 when he requested final disposition. *Doggett v. U.S.*, 505 US 647 (1992), *Hijar v. Burris*, 474 US 1016 (1985). The state's lapse in prosecuting him is "presumptively prejudicial." *Doggett v. U.S.* 505 US 647 (1992). As a result of the lapse in prosecution, he is unable to secure out-of-state witnesses and documents vital to his defense. *Id.* His liberty interests are being violated due to his current incarceration past the legal time limit for trial. *Id.*

Bartlett has established a *prima facie* violation to Rule 8.3(a), Az. R. Cr. P., and ARS 31-481, IAD. The state seeks exclusion of time under Rule 8.4, Az. R. Cr. P., and bears the burden of establishing the delay. *Doggett v. U.S.*, 505 US 647 (1992). The exclusionary periods rule does [NOT] apply to:

- Time between Bartlett's request for final disposition and arrest;

November 25, 2014:

Final disposition request

October 5, 2015:

Second final disposition request

January 20, 2016:

State took custody of Bartlett

This is over 14 months of "NOT" excludable time in violation of ARS 31-481, IAD. *Hijar v. Burris*, 474 US 1016 (1985), and Rule 8.3(d), Az. R. Cr. P.

- Time Bartlett was involuntarily committed to competency on state's motion after being declared competent to waive counsel under Rule 6.1(c), Az. R. Cr. P., measured at higher standard, rather than lesser standard to stand trial;

(23)

March 15, 2016:

Bartlett waived counsel and
declared competent at higher standard

April 7, 2016:

Maricopa County Attorney Jason
Holmes involuntarily committed
Bartlett over objection after
being declared competent
March 15, 2016 at the higher
standard

Generally speaking, a Rule 11,
Az. R. Cr. P. competency motion
is a defense motion filed by
counsel when a defendant is
uncooperative or unable to
understand the proceeding against
him. Bartlett "argues" that this
involuntary commitment is [not]
excludable time under Rule 8.4(2),
Az. R. Cr. P.

March 22, 2017:

Bartlett declared competent for the
(24)

second time.

This is over 12 months of [NOT] excludable time in violation of Rule 8.4(a), Az. R. Cr. P., because the Rule 11, Az. R. Cr. P., competency motion is a defense motion, and not a prosecution motion.

II. CONCLUSION

The 6th USCA Amendment of the United States Constitution guarantees that in all criminal prosecutions, the accused shall enjoy the right to a speedy trial. *Doggett v. U.S.*, 505 US 647 (1992), *Hijar v. Burris*, 474 US 1016 (1985). Any period of delay not caused by the defendant, *Bloate v. U.S.*, 599 US 196 (2010), is [NOT] excludable time, *Zedner v. U.S.*, 547 US 489 (2008), and that any period of delay not occasioned by the defendant, or by counsel on his behalf are [NOT] excludable time periods under Rule 8.4(a),

AZ. R. Cr. P.

A. Prayer For Relief

Bartlett argues that the denial of his motion to dismiss for lack of speedy trial was clearly erroneous and violated his 6th USCA and 14th USCA Amendment rights under the United States Constitution, and in accordance with AFS 31-481, IAD.

It is not possible to undo the ~~damage~~ done by Respondent Judge Susanna C. Pineda's order;

1. denying Bartlett's motion to dismiss for lack of speedy trial (see Appendix C, Exhibit 2)
2. not excluding delays where the state is more to blame (see Appendix C)

Accordingly, Bartlett respectfully
(26)

requests the Supreme Court of the United States grant certiorari, and vacate Susanna C. Pineda's orders to maintain uniformity of this court's precedents, and remand to the lower state court with instructions to dismiss case no: CR2013-003413, consistent with this petition.

DATED this 20th day of June, 2018.

Alan M. Bartlett
Petitioner - Pro Se