

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LARRY J. KUSHNER — PETITIONER
(Your Name)

vs.

NJ ATTORNEY GENERAL, ET AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

US CIRCUIT COURT THIRD CIRCUIT; USDC NEW JERSEY
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LARRY J. KUSHNER
(Your Name)

731 GREENS AVE
(Address)

LONG BRANCH, NJ 07740
(City, State, Zip Code)

732-670-6703
(Phone Number)

QUESTION(S) PRESENTED

1. Did the State of New Jersey violate the defendants constitutional right to a speedy trial by its delay of 16 months from arrest to indictment?
2. Did the State of New Jersey, mis-apply Federal case precedents and create a "new exception to somesones speedy trial rights for 'a complex case'?"
3. Did the State of New Jersey violate one or more of the defendants constitutional rights by failing to oversee the proceeding and the prosecutors actions from the time of arrest in February 2007 till indictment in May, 2008, by not taking any action or supervising the prosecutor?
4. Did the United States District Court Judge and the Third Circuit Court of appeals violate the defendants right to a to due process and equal protection of the law by affirming the judgement after determining numerous errors by the State Court?
5. Is the applicable standard in this appeal, one that requires the lower courts decesion to be "objectively unreasonable"?

LIST OF PARTIES

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

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	9
CONCLUSION.....	10

INDEX TO APPENDICES

APPENDIX A	-Decesion of Third Circuit Court of Appeals dated May 22, 2018
APPENDIX B	Decesion of USDC, Judge Sheridan, dated 7/14/17
APPENDIX C	Order of USDC denying petition and granting certificate of appealability
APPENDIX D	Judgement of Conviction dated January 31, 2011-Superior Court New Jersey
APPENDIX E	"Order of USDC-NJ granting in forma pauperis
APPENDIX F	Order of US Court of Appeals appointing defendant pro bono counsel

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 5/22/2018.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including 6/22/18 (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US Constitution, Amendment 6. "Speedy Trial"

US Constitution "Equal protection Clause"

US Constitution, "Due process of Law"

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

see attached list of cases and authorities cited to the Third Circuit Court of Appeals which will be cited to the brief and record filed herein

STATUTES AND RULES

OTHER

STATEMENT OF THE CASE

I. Statement of Facts

A. Pre-Indictment

Petitioner, Larry J. Kushner, was arrested on February 8, 2007 by the State of New Jersey on charges of credit card fraud and identity theft. He was on February 13, 2007, released on bail. Fifteen months later, on May 12, 2008, a grand jury indictment was returned against Petitioner. The grand jury indictment charged Petitioner with twenty-six counts of thefts by deception, credit card fraud, tax evasion, and identity thefts. No court order authorizing the fifteen-month delay was issued.

The court took no action between the date of arrest and indictment and never called the defendant to court not took any role in supervising the prosecutor.

Over three years after his arrest, Petitioner pled guilty to one count of second-degree theft by deception and one count of third-degree failure to file a tax return on September 14, 2010. The judge dismissed all remaining charges against Petitioner and all charges against Petitioner's wife. As part of the plea agreement, Petitioner reserved the right to challenge the pre-indictment delay based on Sixth Amendment speedy trial grounds. Petitioner was ultimately sentenced on January 28, 2011 to seven years of imprisonment plus restitution.

After Petitioner's arrest, he and his wife were required to surrender their passports, which prevented Petitioner and his wife from traveling for religious purposes. Petitioner was unable to pay for his private attorney for the length of his case, and later was represented by the Public Defender's office. The financial hardship due to this delay extended to his business affairs as well. After his arrest, Petitioner lost his job and his business partner appropriated Petitioner's half of their business. Furthermore, as an active member of the community, Petitioner suffered

anxiety and embarrassment due to his public arrest. In contrast to federal law, and the law of many States, New Jersey imposes no statutory time limit on the period between arrest and indictment (unless the person is placed into custody. *See N.J. STAT. ANN.* § 2A:162-15 (West 2017).) Thus, after Kushner's arrest was publicly announced (with the predictably devastating impact on his reputation and income, the state was free to take as long as it wished to formulate the indictment and proceed to trial.

B. Post-Indictment State Proceedings

Following the issuance of the Indictment the state trial court appointed a public defender to represent Kushner. Kushner's public defender thereafter secured a series of continuance. Eventually, Kushner agreed to plead guilty but sought at the same time to challenge the delay between the initial arrest and the issuance of the indictment.

On October 8, 2010, Kushner's public defender filed a motion to dismiss the indictment for lack of a speedy trial. Kushner's motion focused on the delay from the time Petitioner was arrested until the time he pled guilty. Kushner pointed out that he had been unable to maintain his income after his arrest and, over time, lost the ability to pay for an attorney.

The trial court denied the motion. In its opinion, the trial court discussed both the pre-indictment delay and the delay between the indictment and the plea agreement. Next, the trial judge examined the complexity of the case in analyzing the reason for the delay. In doing so, the trial judge concluded that overall delay was neither "intentional," nor the fault of the State. The trial court highlighted that this was a "complex case" and "paper intensive." Based on this finding, the trial court concluded that a fifteen-month pre-indictment delay was reasonable. Next, the trial court concluded that Petitioner asserted his right to a speedy trial at the plea hearing, thus preserving the issue.

On appeal to the Superior Court of New Jersey, Petitioner argued that the fifteen-month delay “between his arrest and his indictment was unreasonable, prejudicial, and infringed on his right to a speedy trial.” The Superior Court affirmed the trial court’s decision to deny Petitioner’s motion to dismiss. The Superior Court agreed with the trial court that a fifteen-month period of pre-indictment delay was reasonable and therefore lawful due to complexity of the case. The Supreme Court of New Jersey subsequently denied Petitioner’s appeal.

C. Federal Habeas Corpus Proceedings

On June 10, 2014, Kushner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (2012). App. 14. In his Petition, Kushner asserted that the State violated his Sixth Amendment right to a speedy trial.. In reviewing the Petition, the United States District Court for the District of New Jersey (Sheridan, D.J.) questioned the New Jersey courts’ speedy trial analysis. First, the District Court questioned why the state courts concluded that the State’s actions in delaying Petitioner’s indictment were not intentional, because intentionality is not required in finding a speedy trial violation. Further, most speedy trial violations are due to negligence on behalf of the State. Next, the District Court was concerned by the state courts’ reliance that this was a complex case as a way to justify the delay. The Court found that complexity of a case is not relevant factor in finding a speedy trial violation and found that the State should have indicted Petitioner on the original charges and later sought leave to amend the indictment, if necessary. The District Court was troubled with the state courts’ dismissal of prejudice that Petitioner suffered and noted that the protection of a speedy trial exists to minimize the very prejudice that Petitioner suffered.

The United States District Court for the District of New Jersey denied the Petition on July 13, 2017. Although the District Court was troubled by the state courts’ speedy trial analysis, the

Court did not find that the state courts' analysis was an unreasonable application of clearly established federal law. . Even though the "State proffered no good reason" to "leave [Petitioner] in limbo" for fifteen-months, the court could not find that the state courts' decision that there was no speedy trial violation to be unreasonable. A certificate of appealability was granted as to Petitioner's speedy trial claim.

The Third Circuit affirmed the decision of the District Court, and in so doing not only allowed this new exception, "a complex case" but also applied and unreasonable "double standard" that the errors be objectively unreasonable". Specifically, the defendants due process and equal protection rights should give him a "de novo review" and based upon the finding by the United States district court Judge, Judge Sheridan dismiss this judgement.

REASONS FOR GRANTING THE PETITION

The defendant was arrested and released on bail, in February 2007. The prosecutor did not indict this defendant until May 2008. A period of sixteen (16) months. During that time the NJ Superior Court did nothing, never had the defendant appear and never reviewed or oversaw the prosecutors actions.

The State Court denied the defendants motion to dismiss because of his right to speedy trial under the Sixth Amendment to the US Constitution and NJ Constitutions. The State Court ruled that this delay was permissible because it was a complex case.

This court should review this matter because the State Court and lower Federal Court are creating a new exception to a defendants rights to a speedy trial. No case of this Court allows for that exception and therefore it is new and an extension of this Courts rulings.

Further, the lower Federal Courts (USDC and Third Circuit) in reviewing this decision both found errors in the State Court proceeding but applied a higher standard

of review by determining that to reverse this judgement they had to determine that the lower Courts decision was "objectively unreasonable". The defendants rights under due process of law and equal protection would hold that the standard to be applied should be the same as to any defendant, and therefore based on the finding of the district Court this judgement should be vacated.

Additionally, this Court should rule that a defendant has rights from the time of his arrest, and that by the Courts of New Jersey's actions (or inaction) the defendants constitutional rights have been violated and this case should be dismissed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



LARRY KUSHNER

Date: 08/20/2018