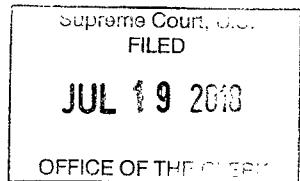


18-6722

No.



IN THE
SUPREME COURT OF THE UNITED STATES



CRAIG PORTER — PETITIONER
(Your Name)

vs.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
TEXAS COURT OF CRIMINAL APPEALS
FIRST COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CRAIG PORTER
(Your Name)

3872 F.M. 350 South
(Address)

LIVINGSTON, TEXAS 77351
(City, State, Zip Code)

(936) 967-8082
(Phone Number)

QUESTION(S) PRESENTED

DID THE FIRST COURT OF APPEALS ERRONEOUSLY AFFIRMED APPLICANT'S CONVICTION BASED ON STATE PROSECUTION'S ARGUMENTS WITH REGARDS TO APPLICANT'S RIGHT TO A SPEEDY TRIAL?

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	4
REASONS FOR GRANTING THE WRIT.....	7
CONCLUSION.....	15

INDEX TO APPENDICES

APPENDIX A - ~~DECISION OF STATE COURT OF APPEALS
THE DATE ON WHICH HIGHEST STATE COURT DECIDED CASE.~~

APPENDIX B - ~~DECISION OF STATE TRIAL COURT WAS NOT GIVEN
TO APPLICANT~~

APPENDIX C - ~~DECISION OF STATE SUPREME COURT REFUSING
REVIEW~~

APPENDIX D - ~~N/A~~

APPENDIX E - ~~N/A~~

APPENDIX F - ~~N/A~~

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>UNITED STATES v. ROBINSON</u> , 455 F. 3d 602, 607 (6th Cir. 2006)	7
<u>DOGGETT</u> , 505 U.S. AT 652, n. 1, 112 S. CT. 2686	7
<u>DRAGO</u> , 96 S.W. 3d AT 314	7
<u>CHAPMAN v. EVANS</u> , 744 S.W. 2d 133 AT 137	8
<u>DOGGETT</u> , 505 U.S. 647, 651, 112 S.CT. 2686, 120 L. ED. 2d 520	8
<u>STEEL v. STATE</u> , 792 S.W. 2d 95	9
<u>TURNER v. STATE</u> , 504 S.W. 843 845 (Tex. Crim. App. 1974)	9
<u>McKINNEY v. STATE</u> , 491 S.W. 2d 404, 407 (Tex. Crim. App. 1973)	9
STATUTES AND RULES	
<u>TEXAS CODE OF CRIMINAL PROCEDURE, ART. 29.02</u>	8
<u>VERNON'S ANNOTATED CODE OF CRIMINAL PROCEDURE</u> (V.A.C.C.P)	11
<u>TEXAS CODE OF CRIMINAL PROCEDURE ART. 1.05</u>	3
<u>TEXAS CONSTITUTION, ART. I, SECTION 10</u>	3
OTHER	
<u>UNITED STATES CONSTITUTION AMENDMENT SIX</u>	13
<u>UNITED STATES CONSTITUTION AMENDMENT FOURTEEN</u>	3

TABLE OF AUTHORITIES CITED - CONT.-

<u>CASES</u>	<u>PAGE NUMBER</u>
<u>SHAW v. STATE</u> , 117 S.W. 3d 883.....	10
<u>DOGGETT v. UNITED STATES</u> , 505 U.S. 657,	10
112 S.C.T. 2686	505
<u>DOGGETT v. UNITED STATES</u> , 1647, 651,	10
112 S.C.T. 2686, 120 L. Ed. 2d 520 (1992)	
<u>CHRISTMAS v. STATE</u> , 453 S.W. 2d 144	11
<u>HUDSON v. STATE</u> , 453 S.W. 147	11
<u>WESLEY v. STATE</u> , 749 S.W. 2d 933.....	11
<u>RUTHERFORD v. STATE</u> , 116 Tex. App. 649 (1884).....	11
<u>STATE v. BOND (MOREAU v. BOND)</u> , 114 T. 468, 271 S.W. 379 (1925)	11
<u>BARKER v. WINGO</u> , 407 U.S. AT 534-35	12
<u>HARDESTY v. STATE</u> , 738 S.W. AT 11	12
<u>BARKER v. WINGO</u> , 407 U.S. AT 531, 92 S.C.T. 2182	12
<u>PHILLIPS v. STATE</u> , 650 S.W. 2d AT 401	12
<u>HARDESTY v. STATE</u> , 738 S.W. 2d 911 (TEX. APP. - DALLAS 1987)	12
<u>MAPLES v. STEGALL</u> , 427 F.3d AT 1030.....	12
<u>LEDO v. SOWERS</u> , 809 F. 2d 1216 1271 (6TH GR 1987)....	12
<u>UNITED STATES v. CARODNA</u> , 302 F. 3d 494	13
<u>BARKER v. WINGO</u> , 407 U.S. 574 AT 533	13
<u>MUNOZ</u> , 991 S.W. 2d 818 829 (TEX. CRIM. APP. 1999).....	13
<u>STATE v. MUNOZ</u> 991 S.W. 2d 818 829 (TEX. CRIM. APP. 1999).....	14
<u>MUNOZ</u> , 960 S.W. 2d AT 198.....	14
<u>STATE v. MUNOZ</u> , 991 S.W. 2d 818 829 (TEX. CRIM. APP. 1999).....	14
<u>BOSWORTH v. STATE</u> , 422 S.W. 3d 759(2013).....	14
<u>COURTNEY v. STATE</u> , 472 S.W. 2d 151 154	14
TEX. CRIM. APP. 1971)	
<u>STATE v. GUERRERO</u> , 110 S.W. 3d 155	14
<u>BARKER v. WINGO</u> , 407 U.S. AT 531, 92 S.C.T. AT 2192,.....	14
33 L. ED. 2d AT 117	
<u>STALUNK v. UNITED STATES</u> , 412 U.S. 434 (1973).....	3
<u>BARKER v. WINGO</u> , 407 S.14 522 92 S.C.T. 2182.....	3
2188	

TABLES OF AUTHORITIES CITED-CONT.-

CASES

PAGE NUMBER

DRAKE, 96 S.W.3d 313

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 N/A to the petition and is

[] reported at N/A; 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 _____ to the petition and is

[] reported at N/A; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

For cases from **state courts**: *APPLICANT'S SOLE COPY MAILED TO TEXAS COURT OF CRIMINAL APPEALS ALONG WITH PETITION FOR DISCRETIONARY REVIEW.*
The opinion of the highest state court to review the merits appears at Appendix N/A to the petition and is

[] reported at N/A; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

[] reported at N/A; 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 N/A.

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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/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 4/18/2018. A copy of that decision appears at Appendix A.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE RIGHT TO A SPEEDY TRIAL IS GUARANTEED UNDER THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND APPLIED THROUGH THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION. THE RIGHT TO A SPEEDY TRIAL IS ALSO GUARANTEED UNDER ARTICLE 1, SECTION 10 OF THE TEXAS CONSTITUTION AND ARTICLE 1.05 OF THE TEXAS CODE OF CRIMINAL PROCEDURE (T.C.C.P.).

THE UNITED STATES SUPREME COURT ESTABLISHED A BALANCING TEST AND SUGGESTED FOUR FACTORS TO CONSIDER IN DETERMINING WHETHER AN ACCUSED HAS BEEN DENIED A SPEEDY TRIAL. THE FACTORS, THOUGH NOT EXCLUSIVE, ARE: (1) LENGTH OF DELAY; (2) REASON FOR DELAY; (3) THE DEFENDANT'S ASSERTION OF THE RIGHT TO SPEEDY TRIAL; AND (4) PREJUDICE DUE TO DELAY. SEE BARKER V. WINGO, 407 U.S. AT 531, 92 S.Ct. AT 2192, 33 L.Ed. 2d AT 117.

THE UNITED STATES SUPREME COURT HELD THAT SINCE THE DELAYED TRIAL IS THE STATE'S ACTION, I.E., IF THE REVIEWING COURT FINDS THAT A DEFENDANT'S RIGHT TO A SPEEDY TRIAL WAS VIOLATED, NO OTHER REMEDY WOULD BE APPROPRIATE BUT TO DISMISS THE INDICTMENT AND/OR OVERTURN THE CONVICTION. SEE STRUNK V. UNITED STATES, 412 U.S. 434 (1973); ALSO BARKER V. WINGO, 407 U.S. 514, 522, 92 S.Ct. 2182, 2188; AND DRAGO, 96 S.W. 3d 313.

STATEMENT OF THE CASE

THERE WAS AN APPROXIMATE TIME SPAN OF THREE YEARS AND SEVEN MONTHS BETWEEN THE DATES OF APPLICANT'S ARREST AND FORMAL CHARGE, JANUARY 15, 2013, AND JANUARY 16, 2013, RESPECTIVELY, AND THE DATE TRIAL BEGAN, AUGUST 8, 2016. APPLICANT REMAINED IN CUSTODY THIS ENTIRE TIME SPAN, IN THE HARRIS COUNTY JAIL.

ON AUGUST 7, 2014, APPLICANT WAS GRANTED LEAVE BY JUDGE JIM WALLACE, TO WAIVE RIGHT TO COUNSEL, AND PROCEED PRO SE, WITH ATTORNEY JEROME GODINICH AS "STAND-BY" COUNSEL. (C.R. I, 129-131).

WHILE IN "PRO SE STATUS," APPLICANT FILED A WRIT OF MANDAMUS, ON JANUARY 6, 2015, TO THE FOURTEENTH COURT OF APPEALS, TO COMPEL TRIAL COURT TO SET A DATE FOR SPEEDY TRIAL. (14-15-00014-C.R.). APPLICANT FILED ANOTHER WRIT OF MANDAMUS ON FEBRUARY 2, 2015, TO THE FOURTEENTH COURT OF APPEALS, TO EITHER SET A DATE FOR SPEEDY TRIAL OR DISMISS CHARGE AGAINST APPLICANT. (14-15-00099-C.R.) BOTH WRITS OF MANDAMUS WERE DENIED, OR DENIED IN PART AND DISMISSED IN PART.

ON MARCH 9, 2015, APPLICANT, WHILE STILL IN "PRO SE STATUS," FILE A WRIT OF HABEAS CORPUS IN THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF HOUSTON, TEXAS, TO COMPEL TRIAL COURT TO SET A DATE FOR SPEEDY TRIAL OR DISMISS CHARGE AGAINST APPLICANT. THE WRIT OF HABEAS CORPUS WAS DENIED AND/OR DISMISSED. (C.A. NO. 4:15-cv-647).

STATEMENT OF THE CASE - CONT. -

ON MARCH 6, 2015, ATTORNEY JEROME GODINICH
WAS RE-ASSIGNED TO REPRESENT APPLICANT, AND
SUBSEQUENTLY FILED MOTION TO DISMISS ON
DECEMBER 11, 2015 (C.R. 1,283). MOTION WAS
HEARD AND DENIED ON AUGUST 8, 2016.

IN ADDITION^{TO} THE AFOREMENTIONED WRITS OF MANDAMUS
AND HABEAS CORPUS, APPLICANT FILE A WRIT OF HABEAS
CORPUS ON AUGUST 15, 2014, TO SET A BOND (SEE ~~EXHIBIT~~
~~A~~); A MANDAMUS TO SET BAIL IN THE FOURTEENTH
COURT OF APPEALS ON DECEMBER, 23, 2014 (No. 14-14-
01015-C.R.); ANOTHER MANDAMUS TO SET BOND IN
THE FOURTEENTH COURT OF APPEALS ON JANUARY 20, 2015
(No. 14-15-00069-C.R.); AND A B HABEAS TO SET BOND
IN THE FOURTEENTH COURT OF APPEALS ON JANUARY, 20,
2015 (No. 14-15-00070-C.R.). ALL AFOREMENTIONED
WRITS WERE FILED BY APPLICANT WHILE HE WAS IN
"PRO SE STATUS."

TRIAL BEGAN ON AUGUST 8, 2016, AND ENDED ON AUGUST 10,
2016, WHERE APPLICANT WAS FOUND GUILTY FOR THE LESSER-
INCLUDED OFFENSE OF MANSLAUGHTER, (R.R. V, 165); (R.R.
III, 150-151). ON AUGUST 11, 2016, APPLICANT WAS
SENTENCED TO "LIFE" IMPRISONMENT IN TEXAS DEPART-
MENT OF CRIMINAL JUSTICE. (C.R. I., 338); (R.R. VI, 34).
APPELLATE COUNSEL FILED TIMELY WRITTEN NOTICE OF
APPEAL (C.R. I, 343). ~~OPINION~~ APPEAL WAS DENIED BASED
ON THE ~~OPINION~~ OF THE FIRST COURT OF APPEALS ON
DECEMBER, 19, 2017 (No. 01-16-00716-C.R.).

STATEMENT OF THE CASE - CONT. -

APPLICANT FILE A PETITION FOR DISCRETIONARY REVIEW ON MARCH 5, 2018, AFTER FILING A MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR DISCRETIONARY REVIEW ON JANUARY 17, 2018. PETITION FOR DISCRETIONARY REVIEW WAS REFUSED ON APRIL 4, 2018. TITUS, APPLICANT FILES THIS, HIS WRIT OF CERTIORARI.

REASONS FOR GRANTING THE PETITION

PURSUANT TO RULE 10(C) OF THE RULES OF THE UNITED STATES SUPREME COURT, WHICH STATES "A STATE COURT OR A UNITED STATES COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT, OR HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT," APPLICANT SEEKS REVIEW OF THIS PETITION FOR WRIT OF CERTIORARI, THUSLY.

LENGTH OF DELAY — THE LENGTH OF APPLICANT'S PRE-TRIAL INCARCERATION WAS FROM JANUARY 15, 2013, TO AUGUST 8, 2016; A TIME SPAN OF APPROXIMATELY THREE YEARS AND SEVEN MONTHS DELAY. THUS, PRESUMPTIVE PREJUDICE IS APPLIED. SEE UNITED STATES v. ROBINSON, 455 F. 3d 602, 607 (6TH CIR. 2006) (CITING DOGGETT, 505 U. S. AT 652, n.1, 112 S. CT. 2686). AS THE COURT OF APPEALS STATED IN THEIR OPINION TO APPLICANT'S APPELLATE COUNSEL'S BRIEF "THE PARTIES DO NOT DISPUTE THAT THE DATE BETWEEN PORTER'S [APPLICANT'S] INDICTMENT AND TRIAL — (41) MONTHS — WAS SUFFICIENTLY LENGTHY TO TRIGGER THE BARKER FACT INQUIRY. SEE DRAGO, 96 S.W. 3d AT 314." THIS FACTOR WEIGHS IN APPLICANT'S FAVOR.

REASON FOR DELAY — COURT RECORD WILL SUPPORT THE FACT THAT A TRIAL DATE WAS SCHEDULED FOR JANUARY 23, 2015. THAT TRIAL SETTING WAS

REASONS FOR GRANTING THE PETITION - CONT. -

RESET WITHOUT REQUEST FROM APPLICANT NOR HIS CONSENT TO IT. APPLICANT'S NEXT COURT APPEARANCE WAS ON JANUARY 29, 2015. AGAIN RESET WAS GRANTED WITHOUT APPLICANT'S REQUEST FOR IT NOR HIS CONSENT TO IT. DURING THESE DATES, APPLICANT WAS IN "PRO SE STATUS". "A CRIMINAL ACTION MAY BE CONTINUED BY CONSENT OF THE PARTIES. THERETO, IN OPEN COURT, AT ANY TIME ON A SHOWING OF GOOD CAUSE, BUT A CONTINUANCE MAY BE ONLY FOR AS LONG AS ^{IS} NECESSARY," TEXAS CODE OF CRIMINAL PROCEDURE, ART. 29.02. (EMPHASIS ADDED). APPLICANT DID NOT APPEAR IN OPEN COURT NOR PUT HIS SIGNATURE ON ANY DOCUMENT/PAPER REQUESTING OR OTHERWISE ACQUIESCING TO ANY RESETS OR CONTINUANCES.

STATE PROSECUTION WAITED OVER TWO YEARS AFTER APPLICANT'S ARREST TO CONDUCT RE-EVALUATION OF DNA. IT WAS TRIAL COURT'S ABUSE OF DISCRETION TO ALLOW STATE TO CONDUCT RE-EVALUATION OF DNA, WITHOUT FILING OR REQUESTING FOR A CONTINUANCE, TO DO SO, FURTHER DELAYING TRIAL FOR APPLICANT. ADDITIONALLY, STATE WAITED UNTIL APPLICANT TIMELY ASSERTED HIS RIGHT TO SPEEDY TRIAL TO CONDUCT THE RE-EVALUATION OF THE DNA. APPLICANT DID NOT CONSENT NOR ACQUIESCED TO THIS IMPROPER CONTINUANCE. SEE TEXAS CODE OF CRIMINAL PROCEDURE, ART. 29.02; ALSO CHAPMAN V. EVANS, 744 S.W. 2d 133 AT 137; AND BOGGETT, 505 U.S. 647, 651, 112 S.Ct. 2686, 120 L.Ed. 2d 520.

REASONS FOR GRANTING THE PETITION-CONT. -

TRIAL DATE WAS ALSO SCHEDULED FOR OCTOBER 2, 2015, AND THEN CANCELED WITHOUT APPLICANT'S APPEARANCE IN COURT, NOR HIS CONSENT.

APPLICANT'S SECOND COURT-APPOINTED ATTORNEY, ROBERT SCOTT, WITHDREW AS APPLICANT'S COUNSEL TWO MONTHS AFTER BEING APPOINTED TO REPRESENT APPLICANT, WITHOUT ANY EXPLANATION AS TO WHY. ABUSE OF DISCRETION OF THE TRIAL COURT ALLOWED ATTORNEY ROBERT SCOTT TO WITHDRAW, FURTHER DELAYING TRIAL FOR APPLICANT. "ALLOWING AN ATTORNEY TO BOW OUT WHENEVER HE CHOOSES WOULD FRUSTRATE THE ACCUSED'S RIGHT TO ADEQUATE REPRESENTATION." SEE STEEL V. STATE, 453 S.W.2d 486, 487. "ATTORNEY MAY NOT WITHDRAW SIMPLY ON THE GROUND OF PERSONALITY CONFLICTS OR DISAGREEMENTS." SEE SOLIS V. STATE, 792 S.W.2d 95.

REVIEW OF THE COURT RECORDS WILL SUPPORT THE AFOREMENTIONED AS THE REASONS FOR MAJORITY OF THE DELAY TO TRIAL AS TRIAL COURT'S AND STATE'S ACTIONS.

THE PRIMARY BURDEN IS ON THE PROSECUTION AND THE COURTS TO INSURE THAT DEFENDANTS ARE SPEEDILY BROUGHT TO TRIAL. TURNER V. STATE, 504 S.W.2d 843, 845 (TEX. CRIM. APP. 1974); MCKINNEY V. STATE, 491 S.W.2d 404, 407 (TEX. CRIM. APP. 1973).

REASONS FOR GRANTING THE PETITION-CONT.-

DURING THE SPEEDY TRIAL HEARING, STATE GAVE ONE OF THE REASONS FOR THE DELAY TO TRIAL ATTRIBUTABLE TO OVERCROWDED DOCKET. OVERCROWDED DOCKET NOT VALED REASON FOR DELAY TO TRIAL. SEE SHAW v. STATE, 117 S.W. 3d 883.

IT WAS STATE'S NEGLIGENCE TO WAIT TWO YEARS AFTER APPLICANT'S ARREST TO CONDUCT MORE DNA TESTING. "ALTHOUGH NEGLIGENCE IS OBVIOUSLY TO BE WEIGHED MORE LIGHTLY THAN A DELIBERATE INTENT TO HARM THE ACCUSED DEFENSE, IT STILL FALLS ON THE WRONG SIDE OF THE DIVIDE BETWEEN ACCEPTABLE AND NON-ACCEPTABLE REASONS FOR DELAYING A CRIMINAL PROSECUTION ONCE IT HAS BEGUN."

DOGGETT v. UNITED STATES, 505 U.S. 657, 112 S.Ct. 2686,

"ON ITS FACE, THE SPEEDY TRIAL CLAUSE IS WRITTEN WITH SUCH BREADTH THAT, TAKEN LITERALLY, IT WOULD FORBID THE GOVERNMENT TO DELAY THE TRIAL OF AN 'ACCUSED' FOR ANY REASON AT ALL." DOGGETT v. UNITED STATES, 505 U.S. 647, 651, 112 S.Ct. 2686, 120 L.Ed. 2d 520 (1992).

THE SECOND BARRIER FACTOR WEIGHS IN APPLICANT'S FACTOR.

ASSERTION OF RIGHT- AS STATED BEFORE, APPLICANT'S FIRST TIMELY ~~OF HIS~~ ASSERTION OF HIS RIGHT TO A SPEEDILY TRIAL WAS THROUGH A WRIT OF MANDAMUS TO THE FOURTEENTH COURT OF APPEALS, ON JANUARY 6, 2015;

REASONS FOR GRANTING THE PETITION - CONT.

AND APPLICANT'S SECOND WRIT OF MANDAMUS TO THE FOURTEENTH COURT OF APPEALS WAS FILED ON FEBRUARY 2, 2015. BOTH WRITS OF MANDAMUS WAS FILED WHILE APPLICANT WAS "PRO SE." "WHEN ACCUSED DESIRES EARLIER TRIAL HE MUST REQUEST IT OR SEEK WRIT OF MANDAMUS." CHRISTMAS v. STATE, 453 S.W. 2d 144; ALSO SEE HUDSON v. STATE, 453 S.W. 147. REMEDY FOR DELAY IN COMING TO TRIAL IS REQUEST TO TRIAL COURT FOR SPEEDY TRIAL OR APPLICATION FOR WRIT OF MANDAMUS. WESLEY v. STATE, 749 S.W. 2d 933,

ON MARCH 9, 2015, WHILE APPLICANT WAS "PRO SE," A WRIT OF HABEAS CORPUS WAS FILED IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF HOUSTON, TEXAS, TO COMPEL TRIAL COURT TO SET A DATE FOR SPEEDY TRIAL OR DISMISS CHARGE AGAINST APPLICANT. "A SPEEDY TRIAL MEANS A REASONABLY SPEEDY TRIAL AND THE RIGHT TO IT MAY BE SECURED BY THE WRIT OF HABEAS CORPUS OR MANDAMUS." SEE RUTHERFORD v. STATE, 16 TEX. APP. 649 (1884); STATE v. BOND, (MORLEAU v. BOND), 114 T. 468, 271 S.W. 379 (1925); SEE ALSO (V. A. C. C. P.) VERNON'S ANNOTATED CODE OF CRIMINAL PROCEDURE, ART. 576.

THE WRITS OF MANDAMUS AND HABEAS CORPUS CLEARLY APPRISED THE TRIAL COURT AND STATE THAT APPLICANT WAS ASSERTING HIS RIGHT TO A

REASONS FOR GRANTING THE PETITION-CONT.-

SPEEDY TRIAL. COMPARE BARKER V. WINGO, 407 U.S. AT 534-35; HARDESTY V. STATE, 738 S.W. AT 11.

"THE FREQUENCY WITH WHICH THE DEFENDANT ASSERTS HIS SPEEDY TRIAL RIGHT IS PROBATIVE INDICATION OF THE PREJUDICE HE IS SUFFERING." SEE BARKER V. WINGO, 407 U.S. AT 531, 92 S.Ct. 2182 (1982).

ATTORNEY WAS ~~R~~ JEROME GODINICH WAS RE-ASSIGNED TO REPRESENT APPLICANT ON MARCH 6, 2015, AND SUBSEQUENTLY FILED MOTION TO DISMISS ON DECEMBER 11, 2015. THE COURT OF CRIMINAL APPEALS, OF TEXAS, RECOGNIZED THAT IN SOME CASES, DEFENSE COUNSEL MAY LEGITIMATELY FEEL LONG DELAY HAS CAUSED A CLIENT SO MUCH PREJUDICE THAT DISMISSAL IS WARRANTED. SEE PAILLIPS V. STATE, 650 S.W. 2d AT 401; SEE ALSO HARDESTY V. STATE, 738 S.W. 2d 9, 11 (TEX. APP.-DALLAS 1987).

AS APPLICANT STATED EARLIER, HE HAS FILED SEVERAL WRITS OF HABEAS CORPUS AND MANDAMUS FOR A BOND, WHICH WAS NOT GIVEN TO HIM FOR HIS FIRST TWO YEARS OF INCARCERATION. REQUEST FOR BAIL IS AN ASSERTION OF A SPEEDY TRIAL RIGHT. COMPARE MAPLES V. STEGALL, 427 F. 3d AT 1030; ALSO LEDD V. SOWERS, 809 F. 2d 1266, 1271 (6TH CIR. 1987).

THE THIRD BARKER FACTOR WEIGHS IN APPLICANT'S FAVOR.

REASONS FOR GRANTING THE PETITION - CONT.

PREJUDICE DUE TO DELAY — THE FIRST THREE FACTORS OF THE TEST FOR ANALYZING A DEFENDANT'S SIXTH AMENDMENT SPEEDY TRIAL CLAIM BASED ON POST-INDICTMENT DELAY, i.e., LENGTH OF DELAY, REASON FOR THE DELAY, AND THE DEFENDANT'S DILIGENCE, SHOULD BE USED TO DETERMINE WHETHER THE DEFENDANT BEARS THE BURDEN TO PUT FORTH SPECIFIC EVIDENCE OF PREJUDICE OR WHETHER IT IS PRESUMED. U.S.C.A. CONST. AMEND. SIX; UNITED STATES v. CARDONA, 302 F. 3d 494. IF THE PRESUMPTION OF PREJUDICE, ALBEIT UNSPECIFIED, IS NEITHER EXTENUATED, AS BY THE DEFENDANT'S ACQUIESCE, NOR PERSUASIVELY REBUTTED, THEN THE DEFENDANT IS ENTITLED TO RELIEF ON HIS SIXTH AMENDMENT SPEEDY TRIAL CLAIM. U.S.C.A. CONST. AMEND. SIX; UNITED STATES v. CARDONA, 302 F. 3d 494.

DURING APPLICANT'S SPEEDY TRIAL HEARING, APPLICANT TESTIFIED THAT HIS PRE-TRIAL INCARCERATION PROMOTED "IDLENESS." THE UNITED STATES SUPREME COURT HAS STATED IN BARKER v. WINGO, 407 U.S. 574 AT 533 "WE HAVE DISCUSSED PREVIOUSLY THE SOCIETAL DISADVANTAGES OF PRETRIAL INCARCERATION, BUT OBVIOUSLY THE DISADVANTAGES FOR THE ACCUSED WHO CANNOT OBTAIN HIS RELEASE ARE EVEN

REASONS FOR GRANTING THE PETITION - CONT.

MORE SERIOUS. THE TIME SPENT IN JAIL AWAITING TRIAL HAS A DETRIMENTAL IMPACT ON THE INDIVIDUAL. IT OFTEN MEANS LOSS OF JOB; IT DISRUPTS FAMILY LIFE; AND IT ENFORCES IDLENESS. (EMPHASIS ADDED). SEE ALSO MUNOZ, 960 S.W. 2d AT 198.

IN THE STATE'S APPELLATE BRIEF, THE STATE REMARKED "THE STATE ACCEPTS THAT THE APPELLANT HAS SHOWN SOME HARM FROM THE PRE-TRIAL DELAY. HE SPENT THE ENTIRE TIME INCARCERATED ON THIS CHARGE, WHICH IS SUFFICIENT TO SHOW SOME HARM. SEE STATE V. MUNOZ, 991 S.W. 2d 818, 829 (TEX. CRIM. APP. 1999)."...

"A SPEEDY TRIAL MOVANT DOES NOT HAVE TO SHOW ACTUAL PREJUDICE. A SHOWING OF SOME PRE-JUDICE WILL SUFFICE." BOSWORTH V. STATE, 422 S.W. 3d 759 (2013). SEE ALSO COURTNEY V. STATE, 472 S.W. 2d 151, 154 (TEX. CRIM. APP. 1971). COMPARE STATE V. GUERRERO, 110 S.W. 3d 155.

THE FOURTH BARRIER FACTOR WEIGHS IN APPLICANT'S FAVOR.

ANALYSIS

- ① ALL PARTIES AGREE LENGTH OF DELAY WAS PRESUMPTIVELY LONG TO TRIGGER REMAINING BARKER FACTORS
- ② COURT RECORDS WILL SUPPORT FACT THAT STATE CAUSED MAJORITY OF DELAY BY PRO~~E~~RASTINATING TO RE-EVALUATE DNA; AND TRIAL COURT ALLOWED IMPROPER CONTINUANCES FOR STATE, AND ALSO ALLOW COUNSEL TO WITHDRAW WITHOUT PROPER CAUSE.
- ③ APPLICANT TIMELY ASSERTED HIS ~~RIGHT~~ THREE TIMES, AND COURT-APPOINTED COUNSEL FILED FOR DISMISSAL.
- ④ APPLICANT SUFFERED PREJUDICE DUE TO DELAY.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Craig Porter

Date: 07/15/18