

18-8103  
No.

Supreme Court, U.S.  
FILED

FEB 14 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

DERREK HEARD -PETITIONER

vs.

WALTER BERRY, warden -RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Derrek Heard pro se

**ORIGINAL**

Central State Prison

Macon, GA 31208

## QUESTION(S) PRESENTED

- (1) Are the United States District Court for the Northern District of Georgia and the United States Court of Appeals for the Eleventh Circuit required to apply relevant precedent established in Slack v. McDaniel, to a Georgia state-prisoner's case?
- (2) Is the Georgia Supreme Court required to apply its own established, relevant precedent to a state-prisoner's appeal consideration?
- (3) Is it an abuse of discretion when Georgia State-Trial and State Appellate Courts disregard relevant evidence of negligence and make decisions conflicting relevant precedents established by the United States Supreme Court?

## 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:

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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,  
 unpublished.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,  
 unpublished.

For cases from state courts:

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

reported at Heard v. State, 761 S.E.2d 314 (2014); or,  
 has been designated for publication but is not yet reported; or,  
 unpublished.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,  
 unpublished.

## JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 16, 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: November 27, 2018, and a copy of the order denying rehearing appears at Appendix D.

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

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

**Amendment V:** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation.

**Amendment VI:** In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

### 28 U.S.C. §1254 Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

### 28 U.S.C. §2253 Appeal

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from--

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State Court

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

**28 U.S.C. §2254 State custody; remedies in Federal courts**

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that--

(A) the applicant has exhausted the remedies available in the courts of the State.

## STATEMENT OF THE CASE

Petitioner was arrested for the homicide of Robert Ledbetter August 19, 2003, and a Dekalb County grand jury returned a true bill of indictment for malice murder, felony murder, aggravated assault, and possession of a firearm during the commission of a felony November 13, 2003. Petitioner was released on bond October 16, 2004; a motion for an out-of-time statutory speedy trial was filed May 06, 2005; an order to nolle prosequi was filed May 09, 2005; and Petitioner was rearrested for the same homicide October 27, 2009. A Dekalb County grand jury returned a true bill of indictment for malice murder, felony murder, aggravated assault, and possession of a firearm during the commission of a felony November 29, 2009. Trial began June 07, 2010, and the jury returned guilty verdicts for malice murder and felony murder June 11, 2010. Petitioner was sentenced to life in prison that same day.

A motion for new trial was filed July 08, 2010; amended September 26, 2011; an evidentiary hearing was held and an order denying the motion filed November 29, 2011. A timely notice of appeal was filed December 20, 2011, but on February 11, 2012, Petitioner filed a motion for remand requesting conflict free counsel in order to raise ineffective assistance of trial counsel claims and the Supreme Court of Georgia dismissed the appeal and granted the motion in an order filed February 27, 2012. An amended motion for new trial was filed May 22, 2012, and again May 16, 2013; an evidentiary hearing was held and an order denying the motion filed August 16, 2013; a motion for an out-of-time appeal was filed in the Supreme Court

of Georgia September 24, 2013; the appeal filed October 22, 2013; and the convictions confirmed by an order filed July 11, 2014.

Petitioner filed an application for writ of habeas corpus in Bibb County Superior Court March 25, 2015; an evidentiary hearing was held and an order denying the petition was filed October 08, 2015. Petitioner filed a timely application for a certificate of probable cause in the Supreme Court of Georgia which was denied in an order filed October 17, 2016.

Petitioner filed a 28 U.S.C. §2254 writ of habeas corpus application in the United States District Court for the Northern District of Georgia October 20, 2016; the Magistrate Judge report and recommendation was filed January 11, 2018; a timely objection to the report and recommendation was filed; the United States District Court adopted the magistrate report and recommendation in an order denying the petition March 19, 2018, on grounds of procedural default for not presenting claims in the State court.

Petitioner filed a timely application for a certificate of appealability in the United States Court of Appeals for the Eleventh Circuit, demonstrating that, although the claims in the federal petition bore different labels , the federal constitutional violations presented were exactly the same in substance as those presented in the State court. The Court of Appeals denied the COA in an order filed August 16, 2018.

Petitioner filed a timely motion for reconsideration; an order denying the motion was filed November 27, 2018. Petitioner now files a timely petition for certiorari with this Honorable Court pursuant to 28 U.S.C. §1254

## REASON FOR GRANTING THE PETITION

I, I, Derrek Heard, Petitioner pro se, consider myself fortunate to live in a country where every citizen has certain inalienable rights and a Supreme Tribunal to ensure those rights are protected. The American judicial system is a remarkable instrument of justice; however, it is comprised of imperfect humans and mistakes occur. For this reason, Petitioner comes now before this Honorable Court seeking a certiorari to the decision of the United States Court of Appeals for the Eleventh Circuit.

Petitioner filed a §2254 habeas corpus petition in the United States District Court for the Northern District of Georgia and the petition was denied on grounds of procedural default. The District Court held that: (1) Grounds One through Four were not raised in the State court; (2) Ground Five was not raised on direct appeal; and (3) Ground Six had been adjudicated on the merits in the state appellate court. The Court of Appeals denied Petitioner a COA sighting Slack v. McDaniel, 529 U.S. 473 (2000), as the governing authority for its decision. Considering the record of the case, the decision of the Court of Appeals implies that it is not bound to apply Slack's allowances to the instant case.

"When a District Court denies a state prisoner's habeas corpus petition on procedural grounds without reaching the prisoner's underlying federal constitutional claims, a COA ought to issue and an appeal of the District Court's order might be properly taken if the prisoner showed, at least, that jurists of reason

would find it debatable both whether (a) the petition stated a valid claim of the denial of a constitutional right, and (b) the District Court was correct in its procedural ruling." Slack, *supra*.

The District Court adopted the opinion of the Magistrate Report and Recommendation that Grounds One through Four: "Are procedurally defaulted because, he has asserted them in the federal petition as ineffective assistance of trial counsel claims, while he only raised ineffective assistance of appellate counsel claims in the State Courts. ... he did not actually give them an opportunity to consider them." (R&R p.10)<sup>1</sup>

This Honorable Court has clearly established that one must: "Fairly present federal claims to the State Courts in order to give the State the 'opportunity to pass upon and correct' alleged violations of its prisoner's rights." Duncan v. Henry, 513 U.S. 364 (1995). And: "We have made it clear, however, that the prisoner need not place the correct label on his claim, ... as long as the substance of the federal claim has been fairly presented." Picard v. Connor, 404 U.S. 270 (1971).

According to Slack, Petitioner must show that jurists of reason would debate that there was a valid claim of the denial of a constitutional right and debate that the procedural ruling was correct. Ineffective assistance of trial counsel for failing to: (1) Advocate for Petitioner's cause; (2) make the adversarial testing process work; (3) protect Petitioner from the risk of double jeopardy; and (4) ensure the trial

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<sup>1</sup> R&R indicates reference to the Magistrate Report and Recommendation.

court had legally established jurisdiction of person, are each a valid claim of a constitutional violation based on relevant statute and precedent.

As for the opinion that Grounds One through Four were not presented to the State Court, please consider the following excerpts from both the State and Federal petitions:

(1) Ground One of the state habeas petition. "Ineffective assistance of appellate counsel; failure to raise ineffective assistance of trial counsel claim; withdrawing the request to charge the jury on accomplice. The Sixth Amendment to the United States Constitution guarantees the accused the right to effective assistance of counsel for the defense against criminal charges. ... carefully considering the reasonableness of counsel's performance based on all the circumstances of the case and in the light of prevailing professional norms. ... The following enumerations of error that address ineffectiveness will demonstrate trial counsel's deficiencies and their adverse effects, thus, proving that appellate counsel was equally ineffective.

Argument is then presented to support Petitioner's claim that trial counsel was ineffective using a reasonable application of relevant statute and precedent; taking into account all the circumstances of the case. And the substance of the claim is clarified in the closing remarks: "When trial counsel withdrew the request to charge the jury on accomplice, he ceased to advocate for Petitioner's cause."

Ground One of the federal habeas petition: "Denial of effective assistance of counsel; withdrawing the request to charge the jury on accomplice. The Sixth Amendment to the United States Constitution guarantees the accused the right to effective assistance of counsel for the defense against criminal charges. ... effective assistance of counsel ultimately embodies not whether counsel's choices were strategic, but whether they were reasonable. ... Considering all the circumstances in the instant case, both trial and appellate counsels' choices were unreasonable."

A more improved argument is then presented to support Petitioner's claim that trial counsel was ineffective using a reasonable application of relevant statute and precedent; taking into account all the circumstances of the case. And the substance of the claim is clarified in the closing remarks: "The trial court's view that the charge was warranted ... demonstrated that trial counsel failed to provide the 'Assistance' guaranteed.

(2) Ground Three of the state habeas petition: " Ineffective assistance of appellate counsel; failure to raise ineffective assistance of trial counsel claim; failure to request a jury charge on voluntary manslaughter. Prevailing professional norms; making the adversarial testing process work in a particular case; this includes making educated decisions based on all the circumstances of the case that can enhance a defendant's chance at a more favorable outcome."

Argument is then presented to support Petitioner's claim that trial counsel was ineffective using a reasonable application of relevant statute and precedent;

taking into account all the circumstances of the case. And the substance of claim is clarified in the closing remarks: "Because trial counsel did not request a jury charge on voluntary manslaughter, ... Petitioner was denied the high probability of a more favorable outcome."

Ground Two of the federal habeas petition: "Denial of effective assistance of counsel, failure to request a jury charge on voluntary manslaughter. The Sixth Amendment to the United States Constitution does not merely require provision of counsel to the accused, it guarantees 'Assistance' against the advocacy of the State. One of the duties of counsel is to maintain the adversarial testing process."

A more improved argument is then presented to support Petitioner's claim that trial counsel was ineffective using a reasonable application of relevant statute and precedent; taking into account all the circumstances of the case. And the substance of the claim is clarified in the closing remarks: "Because trial counsel failed to request the charge, the jury ... had only two options for a homicide; ... Trial counsel failed to provide 'Assistance' for Petitioner."

(3) Ground Five of the state habeas petition: "Ineffective assistance of appellate counsel; failure to raise ineffective assistance of trial counsel claim; failure to request a judgment of acquittal on the ground of violation of the constitutional right of due process. The Fourteenth Amendment and the Georgia Constitution guarantee the right of due process of law and the Sixth Amendment guarantees the right to effective assistance of counsel to ensure a defendant receives

due process of law. Both constitutions prohibit an individual from being twice put in jeopardy as a fundamental protection of due process. Counsel who allows a defendant to be twice put in jeopardy because it is the common practice of the court, is not just ineffective, [he] soils the very fabric of justice."

Argument is then presented to support Petitioner's claim that trial counsel was ineffective using a reasonable application of relevant statute and precedent; taking into account all the circumstances of the case. And the substance of the claim is clarified in the closing remarks: "The indictment and trial provided the potential or risk of double jeopardy. ... Trial counsel failed to contest. ... He failed to advocate for Petitioner and cost him the opportunity of an acquittal."

Ground Three of the federal habeas petition: "Denial of effective assistance of counsel; failure to request a judgment of acquittal for violation of the Double Jeopardy Clause. The Fifth Amendment to the United States Constitution plainly states in relevant part: 'Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.' When trial counsel ignores the fact that a defendant is being twice put jeopardy, regardless that it is common practice of the trial court to allow the injustice, not only is [he] ineffective, [he] is actually soiling the very fabric of our constitution."

A more improved argument is then presented to support Petitioner's claim that trial counsel was ineffective using a reasonable application of relevant statute and precedent; taking into account all the circumstances of the case. And the

substance of the claim is clarified in the closing remarks: "Charging a defendant with the two conditions constituting murder as two separate counts of an indictment is the equivalent of presenting two separate murder indictments to the jury. ... trial counsel's failure to challenge the violation violated the Sixth Amendment guarantee."

(4) Ground Nine of the state habeas petition: "Ineffective assistance of appellate counsel; failure to raise ineffective assistance of trial counsel claim; failure to request a dismissal of the indictment for lack of jurisdiction. The Sixth Amendment guarantee of effective assistance of counsel and the analysis of that guarantee in Strickland v. Washington, 466 U.S. 668 (1984), unquestionably establish that it is counsel's duty to bring to bear such skills and knowledge as to ensure that the laws and procedures governing the parties in a criminal prosecution are properly applied. When counsel allows a court that lacks jurisdiction of person to proceed with a criminal prosecution, [his] duty to the defendant is ignored and the Sixth Amendment guarantee is violated."

Argument is then presented to support Petitioner's claim that trial counsel was ineffective using a reasonable application of relevant statute and precedent; taking into account all the circumstances of the case. And the substance of claim is clarified in the closing remarks: "Trial counsel did not bring to bear such skill and knowledge to ensure adherence to the rule governing jurisdiction of person, thereby, failing to uphold the Sixth Amendment guarantee."

Ground Four of the federal habeas petition: "Denial of effective assistance of counsel; failure to request a dismissal of the indictment for lack of jurisdiction. The Sixth Amendment guarantees 'Assistance' to bring to bear such skill and knowledge that will ensure the laws and procedures of a criminal prosecution are strictly adhered to. The legal establishment of jurisdiction is a prerequisite and any court not having legal jurisdiction has no authority to render judgment or impose sentence on a defendant. When counsel allows a court without legal jurisdiction to try and sentence a defendant, [he] does not provide the 'Assistance' the Sixth Amendment guarantees.

A more improved argument is then presented to support Petitioner's claim that trial counsel was ineffective using a reasonable application of relevant statute and precedent; taking into account all the circumstances of the case. And the substance of the claim is clarified in the closing remarks: "Recording the return of the grand jury indictment into open court upon the minutes of the court is no meaningless formalism; it is a necessary prerequisite to legally establish jurisdiction. ... he allowed Petitioner to be tried and sentenced by a court having no legal jurisdiction, thus, providing no effective 'Assistance' as guaranteed."

The foregoing presentment- portions taken directly from Petitioner's state and federal habeas corpus briefs (see Attachments 1 and 2)- demonstrate that the claims of ineffective assistance of trial counsel were fairly presented to the State Court to pass upon before being raised in the federal court. However, the State Court did not address the merits of the claims as they were presented. These are

real claims supported by reasonable argument and any jurist of reason would debate that the constitutional violations are valid and that the procedural ruling is incorrect. But: "A COA is not the occasion for ruling on the merit of a petitioner's claim. It requires only an overview ... and a general assessment." Jordan v. Fisher, 135 S. Ct. 2647; 192 L. Ed.2d 948 (2015).

II. Ground Five of the federal petition-trial court erred in allowing certain written testimony to be reviewed after deliberations had begun-the District Court held to be procedurally defaulted because it was not raised on direct appeal. The issue was preserved on the record by trial counsel but appellate counsel made the choice not to raise it on direct appeal.

In fact, trial counsel preserved the violation of what is known as the continuing witness rule: "For the purpose of habeas review later on." (TT pp.615-617)<sup>2</sup>. Petitioner-at the time-did not know that the issue had to be raised on direct appeal first but appellate counsel-being trained in law-knew. Yet, counsel chose to raise three different grounds. Two of those grounds had been presented by argument before and were disproved with such overwhelming rebuttal, that any reasonable person would have thought the choices untenable.

On the other hand, allowing the jury to review certain written testimony after deliberation had begun denied Petitioner of a fair trial; and that issue which was preserved on the record, had not been argued, was supported by relevant case law, and was highly tenable. Petitioner did not raise an ineffective assistance of

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<sup>2</sup> TT indicates reference to the trial transcript.

appellate counsel claim, rather, he raised the continuing witness rule violation as an enumeration of error in his state habeas corpus petition. [Not knowing at the time it had to have been raised on direct appeal first.]

Fortunately, this Honorable Court holds a constitutional violation of greater significance than the uneducated errors of a state prisoner trying to interpret and apply the law meaningfully. "In setting forth the preconditions for issuance of a COA under §2253 (c), Congress expressed no intention to allow trial court procedural error to bar vindication of substantial constitutional rights on appeal." Barefoot v. Estelle, 463 U.S. 880 (1983). "Why should a prisoner, who may well be proceeding pro se, lose his basic claim because he runs afoul of the state procedural rule governing the presentation to the State Courts of the 'cause' for his not following state procedural rules? Edwards v. Carpenter, 529 U.S. 446 (2000).

The two components that determine whether a COA should issue are the underlying constitutional claim and the District Court's procedural ruling. The right to a fair trial is one of the most fundamental of constitutional guarantees. The choice not to raise the claim on direct appeal was one that Petitioner had no control over under the circumstances. And considering all the circumstances of the instant case, appellate counsel's decision was not a reasonable one. Petitioner prays that this Honorable Court finds cause and grants a certiorari in this instance.

III. Ground Six of the federal petition-the trial court's abuse of discretion-the District Court held to be procedurally barred because it had been adjudicated on the

merits by the Georgia Supreme Court. To overcome the procedural bar Petitioner must show that every fair-minded jurist would conclude that the Barker-Doggett speedy trial analysis was incorrectly applied in this instance. Petitioner shows the following:

(1) The Barker-Doggett four-factor balancing test used to determine whether a speedy trial violation has occurred gives the trial courts broad discretion and deference for making decisions. But decisions that blatantly ignore evidence that has been presented and rulings that are contrary to well established precedent, constitute an abuse of discretion; plain and simple.

The first factor-length of delay-the trial court calculated to be 28 months. The time from initial arrest to trial was 82 months but the trial court only considered the time an indictment was "active" as relevant for this factor. 28 months was more than adequate to make the delay presumptively prejudicial and the first factor was weighed against the State.

The second factor-the reason for the delay-the trial court did not weigh against the State despite undisputed evidence of the State's negligence according to the Barker-Doggett criteria. From the onset of the investigation, the State sought a missing witness which is an acceptable reason for a delay. However, the State must demonstrate due diligence in its actions so as to meet the Barker-Doggett criteria.

There was a 21 month period of time between initial arrest and the nolle prosequi of the first indictment when the investigation was "active," but the missing

witness was not located. Two years after the nolle prosequi, defense counsel sent an e-mail that prompted the State to revisit the case. The case file was given to then Juvenile Court Investigator Mark Porter who testified that he spent six hours in his car, in the parking lot of a part-time job, and came up with the lead that shortly thereafter led to the location of the missing witness. (TT pp. 17-30)<sup>1</sup>.

Investigator Porter used the same case file-which ADA Rock testified had been sitting on the shelf collecting dust and, "probably would still be, if not for that e-mail,"-and the same resources available at the time the investigation was "active" to locate the missing witness in a short period of time. After which, the State took another two years to follow up on.

The testimony given by Investigator Porter and ADA Rock is direct evidence that the State investigation was not conducted with the diligence required by Doggett, and gives the impression that the State had no vested interest in resolving a case with no statute of limitations in an expedient manner. Given all the circumstances of the instant case, every fair-minded jurist would conclude the trial court decision that the State was not negligent is incorrect and the second factor should weigh against the State.

(3) The third factor-the defendant's assertion of the speedy trial right-the trial court weighed against Petitioner because he made no explicit demand until the first indictment was being nolle prosed and until five months after the second indictment was returned.

"The accused is not required to demand a speedy trial at the first available opportunity, ... In order to invoke the right the accused need not file a formal motion. ... The relevant question for the third Barker-Doggett factor is whether the accused asserted his right to a speedy trial 'in due course.' This requires a close look at the procedural history of the case with particular attention to the timing, form, and vigor of the accused's demand to be tried immediately" Ruffin v. State, 663 S.E.2d 189 (2008).

The State Appellate Court put emphasis on the fact that Petitioner made no explicit demand until the nolle prosequi was being filed on the first indictment and until five months after the return of the second indictment. [The same court that established the precedent in Ruffin.] But even the District Court order denying the petition, acknowledged: "The Petitioner has set forth valid arguments about the ways in which he asserted his right to a speedy trial." (DO p. 12).<sup>3</sup> . Given all the circumstances of the instant case, every fair-minded jurist would conclude that the trial court was incorrect to weigh the third factor against Petitioner.

(4) The fourth factor-prejudice against the defendant-the trial court weighed against Petitioner because he made no claims of any specific prejudices. Notwithstanding, Petitioner made claims of the very prejudices that are affirmed by the Barker-Doggett analysis; prejudices that affect both parties; prejudices attributed to an extraordinarily long delay.

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<sup>3</sup> DO indicates reference to the District Court Order denying petition.

The actual time period from initial arrest to trial was 82 months and this Honorable Court has clearly established that: "Time effects the reliability of a trial in ways that neither side can prove or, in fact, identify. As time between crime and trial increases, the need to prove specific prejudice decreases." Doggett v. United States, 505 U.S. 647 (1982).

The trial court points out that Petitioner made no showing that the delay weakened his ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence. Granting that, Petitioner does point out the fact that the Georgia Appellate Courts have clearly established that extraordinarily long delays (such as in the instant case) raise a presumption of actual prejudice as demonstrated in Doggett. [ See Hester v. State, 601 S.E.2d 456 (2004), and State v. White, 655 S.E.2d 575 (2008).]

The trial court completely ignored the fact that it was 82 months between crime and trial-not 28 months when the charges were "active"-and that it is ultimately time that erodes the reliability of a trial. Once the crime has been committed, the adverse effects of time begin, and continue to increase in effect (charges pending or not) as the delay increases. "As the United States Supreme Court has explained, prejudice should be assessed in the light of the interests of defendants which the speedy trial right is designed to protect." State v. Alexander, 758 S.E.2d 289 (2014).

"Consideration of prejudice is not limited to the specifically demonstrable. ... affirmative proof of particularized prejudice is not essential to every speedy trial claim." Doggett, *supra*. Given all the circumstances of the instant case, every fair-minded jurist would conclude that the trial court was incorrect to weigh the fourth factor against Petitioner.

The above analysis of the four factors of the Barker-Doggett balancing test reveal that: (1) The trial court gave no value to evidence of the State's negligence; (2) both trial and State Appellate courts failed to apply relevant State Supreme Court precedent in to instant case; and (3) the State Courts made decisions contrary to this Honorable Court's holdings on state negligence and prejudice to a defendant. In light of the evidence presented every fair-minded jurist would conclude that the trial court abused its discretion when applying the Barker-Doggett analysis. Accordingly, the first and second factors should weigh against the State but the third and fourth factors should not weigh against Petitioner.

Petitioner in no way means to imply that his knowledge of the law is substantial. In fact, his inadequacies have been plainly demonstrated by the errors committed while trying to obtain the relief available within the limits of the law, through post-conviction procedures, while trying not to waste the valuable time and resources of the courts.

Though study of the law has been restricted by availability, Petitioner has discovered relevant violations of statute, procedure, and constitutional rights that

have occurred during the criminal proceedings in the instant case. He has presented viable claims of violations of constitutional rights to the State and Federal Courts so they could be addressed on their merits; only to have the courts make reference to common practice or declare a procedural bar or default.

Petitioner has done no more than attempt to exercise his inalienable right to the protections of the same laws he is obliged to obey; but the actions of the courts give the impression that: (1) The District Court for the Northern District of Georgia and the United States Court of Appeals for the Eleventh Circuit are not bound to apply the relevant precedent of Slack v. McDaniel, to a Georgia state prisoner; (2) the Georgia Supreme Court does not have to apply its relevant precedent to a state prisoner; and (3) the Georgia State Trial and State Appellate Courts can disregard actual evidence and make rulings that are contrary to the United States Supreme Court holdings on State-negligence and prejudice to a defendant.

## CONCLUSION

THEREFORE, Petitioner prays that this Honorable Court finds cause in the above arguments and grants certiorari.

Respectfully submitted,

*Derrick Heard pro se*  
DERRICK HEARD 1231345

this 15th day of February, 2019