

NO. 18-8246

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IN THE  
SUPREME COURT OF THE UNITED STATES

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IN RE: DENNIS D. JACKSON *Petitioner*

ON PETITION FOR REHEARING AND  
REHEARING EN BANC

Dennis D. Jackson  
PETITIONER PRO SE

#645-759

5900 B.I.S. RD.

RECEIVED  
Lancaster, OH 43130

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## **EXHIBITS**

Exhibit A: United States Supreme Court, March 25, 2019 Decision (Original  
Habeas Corpus Petition filing)

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## **MEMORANDUM IN SUPPORT**

NOW COMES, the Petitioner Dennis D. Jackson, pro se, and pursuant to United States Supreme Court Rule 44, who respectfully petitions this Honorable Court for a Rehearing, and Rehearing En Banc of the Court's decision in the above captioned case filed March 25, 2019 (attached hereto as Ex. A). Petitioner asks this Honorable Court to address his Motion for Judicial Notice, to be filed after the filing of this application before assessing this application.

### **SUMMARY:**

Petitioner in his request for Rehearing, and for a Rehearing En Banc, asserts his Petition does not set forth claims as presented in his Petition based solely on an error of state law, but asserts the Ohio Court system as a whole is arbitrary and lacks a rational mechanism/process for remedying errors, of process as committed by the Ohio Court of Appeals causing Procedural Due Process, and Equal Protection of law violations to remain unaddressed, and continuing U.S. Const. violations imposed against Petitioner, which all claims carry an ultimate violation of subject matter jurisdiction issues which have also been left unresolved. Petitioner asks this Honorable Court in its reconsideration to conduct review of his Request for Judicial Notice, in addition and in support of his Application for

reconsideration. As he is in custody in violation of his U.S. Const. rights pursuant 28 U.S.C. 2254(a).

- I. Rehearing is required because the Courts decision failed to evaluate violations of the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments of the U.S. Const., a Procedural Due Process, and Equal Protection of rights of a state created appellate process which provides Petitioner a protected liberty interest.**

A Rehearing of his Habeas Corpus Petition, which is presented in good faith and not for delay. Petitioner believes this Court, a Court of his last resort has mistakenly assessed his claims as an attack, and conflict of a statutory State created fast and speedy statute, but here again reasserts such is a *prima facie* showing of a continuing violation of his 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendment rights of the U.S. Const., concerning Procedural Due Process, and Equal Protection Clauses which have been violated by the State of Ohio Appellate Courts procedure used in review of his fast and speedy trial issues in respect to Ohio Revised Code 2945.71 – 2945.73 issues which Petitioner asserts, such reviewing procedure as used by the Second Dist. Court of Appeals, Ohio is in conflict with the standard of review as set forth and clearly established by the Ohio Supreme Court, and therefore violates his protected liberty interest rights as established by the U.S. Const.;

II. Rehearing is required to secure uniformity of decisions in this U.S. Supreme Court of pertinent U.S. Supreme Court Precedent.

A Rehearing En Banc as this Court's decision conflicts with the decisions of this U.S. Supreme Court precedence in **Evitts v. Lucey**, 469 U.S. 387, *Id.* at 393, where this Court held:

(“Almost a century ago, the Court held that the Constitution does not require States to grant appeals as of right to criminal defendants seeking to review alleged trial court errors. *McKane v. Durston*, 153 U.S. 684 (1894). Nonetheless, if a State has created appellate courts as “an integral part of the . . . system for finally adjudicating the guilt or innocence of a defendant,” *Griffin v. Illinois*, 351 U.S., at 18, the procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution.”);

**Steel Co. v. Citizens for a Better Env’t**, 523 U.S. 83, *Id.* at [\*\*1013], where this Court held:

(“On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it.” (citing *Great Southern Fire Proof Hotel Co. v. Jones, supra*, 177 U.S. 449 at 453)), following that (“And if the record discloses that the lower court was without jurisdiction this court will notice the defect, although the parties make no contention concerning it.”) *Id.*;

and **U.S. v. Cotton**, 535 U.S. 625, *Id.* at [\*\*\*\*11] where this Court held:

(“subject-matter jurisdiction, because it involves a court’s power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court.”)

**III. Rehearing is required because this Court's failed to evaluate if a Procedural Due Process and Equal Protection claim in respect to an appellate Court's process used during direct review ultimately led to a United States Subject Matter Jurisdiction law violation.**

Subject matter jurisdiction challenges may be taken at any time, which allow the Court to assess Procedural due process, Equal Protection of law rights, and Protected liberty rights if such are the determining factor, or serves to be strongly persuasive in respect to the Court's decision.

Consideration by the full Court is therefore necessary to secure and maintain uniformity of the Court's prior decisions as the State of Ohio is in violation of Petitioner's Procedural Due Process, Equal Protection of law, and Protected Liberty interest. As the asserted continuing U.S. Constitutional errors and subject matter errors require correction by this Court.

**ISSUES FOR REVIEW:**

Petitioner presents the following issues for further consideration by this Court in respect to his deprivation of his U.S. Const. protected liberty interest (1) **Petitioner has original liberty interest in Procedural Due Process, and Equal Protection Clauses, of the U.S. Const. during direct appellate review in the Second Dist. Court of Appeals, Ohio, through reasonable application of Ohio State law, and right to have such reasonable application of law**

equally applied to him as similarly situated persons; (2) Petitioner has original liberty interest in not being imprisoned in violation of his U.S. Constitutional rights, and by a Trial Court lacking subject matter jurisdiction before commencement of trial or sentencing phase; and (3) Petitioner has original liberty interest in his 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendment U.S. Constitutional rights as the State of Ohio provides no State Mechanism/process to remedy violation of these Constitutional rights.

#### **ORIGINAL LIBERTY INTERSET IN OHIO'S APPELLATE PROCEDURE**

The V., and XIV. Amendments of the U.S Const. explicitly states in pertinent part that "No person shall be deprived of life, liberty, or property without due process of law. This Courts holding in *Evitts v. Lucey, supra.* is consistent with the requirements of the U.S. Const. as Petitioner believes this Court has mistakenly overlooked that he clearly had an original liberty interest in Due Process, and Equal Protection of law in respect to his appellate procedure used by the Ohio Second District Court of Appeals. A procedure clearly established by the Ohio Supreme Court that such review of speedy trial violations remain consistent with the 14<sup>th</sup> Amendment of the U.S. Const. (see *State v. MacDonald*, 48 Ohio St. 2d 66) in regards to review of his trial Court judgment, and in particular to Assignment of Error VII., in respect to ORC 2945.71 through 2945.73, an issue of direct review concerning procedure used in review of such claim. See Appx. A attached to Habeas

Corpus Petition (Direct Appellate Review decision, of Mont. Co. Appeals Case Number CA24430, dated May 25, 2012, in pertinent part). A liberty interest which which shows a defect in subject matter jurisdiction of the trial Court.

This Court holding in *U.S. v. Cotton* is also consistent with Petitioner's argument that he must be immediately discharged as a result of a subject matter jurisdiction issue in respect to proceedings in the Montgomery County, Ohio Trial Court, Case Number 2010-CR-1126, a defect which this Court has upheld to take notice of, and correct regardless when such is discovered, and challenged. This Court has also mandated and held a State to the burden of establishing jurisdiction. Where this Court has clearly established:

(“If facts alleging jurisdiction are challenged, the burden rests upon the party claiming jurisdiction to demonstrate that jurisdiction of the subject matter exist.”) See *McNutt v. G.M.A.C.* (1935) 56 S. Ct. 780, 298 U.S. 178 80 L. Ed. 1135.

This the Court has not required as mandated by its precedence of the State of Ohio, to prove such, nor has the State attempted on its own to establish jurisdiction and right to custody within the guidelines of the U.S. Constitution.

#### **ARGUMENT:**

Petitioner asserts he has a protected liberty interest by the State of Ohio's enforcement upon all Court's of Ohio to comply with the Due Process and Equal Protection Clauses of the U.S. Const., required to be adhered to with application of its speedy trial statutes. See *Johnson v. Overberg*, 639 F.2d 326 at [\*\*4]; also see

Request for Judicial Notice. As the Ohio Supreme Court has held such statutes are consistent with the 14<sup>th</sup> Amendment and this Court's holding in *Barker v. Wingo*, 407 U.S. 515, Id. at 514, See *State v. MacDonald*, 48 Ohio St. 66 which held:

(“A defendant's right to a speedy [\*\*\*4] trial is a fundamental right guaranteed by the Sixth Amendment to the United States Constitution, and is made obligatory on the states by the Fourteenth Amendment. *Klopfer v. North Carolina* (1967), 386 U.S. 213. Article I, Section 10 of the Ohio Constitution, also affords an accused the same guarantees as the Sixth and Fourteenth Amendments. See *State v. Butler* (1969), 19 Ohio St. 2d 55.”).

The Ohio Supreme Court continued that:

(“the United States Supreme Court, in *Barker v. Wingo* (1972), 407 U.S. 514, declined to establish the exact number of days within which a trial must be held. While the court declared that its approach must be less precise, it also stated that “[t]he states, of course, are free to prescribe a reasonable period consistent with constitutional standards \* \* \*.” 407 U.S., at page 523.”)

Petitioner argues the Sixth Circuit Court's recognizing and holding that:

“Ohio legislature granted Petitioner a liberty interest when it required he be tried within 90 days of his arrest pursuant to (ORC 2945.71 – 2945.73), and that “This liberty interest cannot be denied without due process of law”, *Johnson v. Overberg*, supra., Id. is consistent with *Evitts*, supra., Id.

The importance of these holdings in regards to Petitioner's claims, as again ruled on by the Sixth Cir. Court in *United States v. Smith*, 94 F.3d 204, 207 (6<sup>th</sup> Cir. 1996), Cert. denied, 117 S. Ct. 997, 136 L. Ed. 2d 877, 1996 WL 757264 (Feb. 18, 1997)(No. 96-7259), the Circuit Court observed:

(enactment of an appellate system necessarily “alters the balance between the layers of adjudication in a Constitutionally significant manner...” That

is, the introduction of a second tier of adjudication unavoidably affects the operation and significance of the first tier, and for this reason, due process places constraints on an appeal even if it does not require an appeal in the first place. The appeal forms an “integral” and inextricable part of the procedures for determining whether a defendant should be deprived of his life, liberty, or property.) Id.

Petitioner here argues in respect to his claims, that there is a showing of an arbitrary denial of a state created right for which there is no state remedy for addressing the violation of his procedural due process and equal protection rights of the U.S. Const.. The Montgomery County Trial Court acted arbitrarily and deviated from proper procedure in denying petitioner's motion to dismiss all charges which such procedural due process was not cured through the appellate review process which petitioner took timely advantage of, represented by Court appointed counsel, who did not address petitioner's pro se pre-trial speedy trial issues at all knowing the Ohio Supreme Court requires such issues to be brought up on appeal, as it does not allow due process issues to be argued in state habeas corpus petitions leaving such issues lost after an appellate Court's ruling. *Tucker v. McAninch*, 82 Ohio St. 3d 423.

The Second District Court of Appeals also acted arbitrarily and deviated from proper procedures as prescribed by Ohio state law failing to properly review the record, for any continuances filed by either party, conduct a de novo review, and calculate the days as tolled against each party in assessing the trial Court's abuse of discretion, violating the procedural due process and equal protection of law pursuant the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments of the U.S. Const. through such acts.

This Honorable Court has held that a challenge of subject matter jurisdiction may be attacked at any time and must be addressed. While this Court does not indulge in error of state law ( i.e., Ohio's fast and speedy trial statute). This Court does intervene in a continuing U.S. Constitutional violation cause by a second tier Court (State Court of Appeals) process used on direct review of a first tier Court (Trial Court) decision and application of law, where the second tier has not comported with a U.S. Const. Clause, in respect to Procedural due process and equal protection rights, as required by this Court where a state creates an appellate process for defendant's.

Petitioner argues he is entitled to immediate discharge after exhaustion of state of appeals, and state and federal habeas corpus petitions, when it is later found he has a meritorious subject matter jurisdiction claim which this Court has held must be corrected, see *U.S. v. Cotton*, supra., due to failure of a state Court of appeals in the first instance to comport with the guidelines as set by precedence of this Court

**CONCLUSION:**

For the foregoing reasons it is Respectfully urged that this petition for a rehearing be granted, and that upon further consideration, the judgment of the Montgomery County Trial Court of the State of Ohio be vacated, and Petitioner immediately discharged.

Executed on Date: April 15, 2019



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I declare under the penalty of perjury pursuant 28 U.S.C. §1746, the foregoing statements and facts are true to the best of my knowledge.

Date: April 15, 2019

