

18-8514
No. _____

Supreme Court, U.S.
FILED

NOV 28 2018

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Jonathan Leroy Homedew — PETITIONER
(Your Name)

vs.

United States Of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Of Iowa

United States District Court, For The Southern District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jonathan Leroy Homedew

(Your Name)

P.O. Box 7000

(Address)

ORIGINAL

Florence, Colorado 81226

(City, State, Zip Code)

(Phone Number)

RECEIVED

FEB 21 2019

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Whether Petitioner waived Speedy Trial Rights based on Co-defendants Plea arrangements
2. Whether Petitioner had rights to be present at all tribunal proceedings per provisions established in Rule 43(c).
3. Whether District Court abused its discretion when refraining from a prompt disposition to meet Speedy Trial Rights.

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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- i 21 U.S.C. §841(a)(1)
- i 21 U.S.C. §841(b)(1)(c)
- i 21 U.A.C. §846(1)
- i 18 U.S.C. §3161(j)(B)

- ii Rule 48(b)(1)(c)
- iii Rule 43
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OTHER

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 3rd Cir - COURT OF APPEALS; 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 is unpublished.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 _____; 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 is unpublished.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 is unpublished.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 July 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: Sept 13 2018, and a copy of the order denying rehearing appears at Appendix B.

[] 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. § 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

ii Sixth Amendment iii Fifth
iv Sixth Amendment
iv Sixth Amendment
iv Sixth Amendment
iv Fifth Amendment

i 21 U.S.C. §841(b)(1)(c)
i 21 U.S.C. §846
i 21 U.S.C. §841(a)(1)
i 21 U.S.C. §841(b)(1)(c)
i 18 U.S.C. §3161(j)(B)

STATEMENT OF THE CASE

The record in this case reflects Petitioner 's backgraound as follows:

On September 07, 2016, United States Postal Inspector, Kevin Marshall identified a suspicious package while conducting a routine examination of parcels at the United States Postal service's facility in South Desmoin Iowa. After a drug sniffing dog alerted to the presence of a controlled substance, Marshall obtained a search warrant to open the package . He found that the parcel contained a search warrant to open the package. He found that the parcel contained approximately One Kilogram of Methampphetamine . Law enforcement conducted a controlled delivery of the package to its intended address. Shortly thereafter, the package was delivered , Co-conspirator , Carr arrived in a vehicle registered to Homedew. Carr retrieved in a vehicel registered to Homedew. Carr, retreived the package and drove off. The authorities arrested Carr shortly thereafter. Carr at that time elected to cooperate with the investigating officer. Carr disclosed that he had a business relation with "Jon". Carr stated that he anticipated receiving another package from Jon containing approximately 27 pounds of methamphetamine that had already been shipped .Carr also told authorities that Jon was flying into town the next evening. Using text messages Carr showed them Jon's cell phone number and a social media search law enforcement concluded that Jon was Jonathan Homedew.

On September 08, about ten law enforcement officers positioned themselves around the demone's air port in anticipation of Homedew's arrival.

They spotted him leaving the air port with a back pack. Police Arsurveillance team positioned themselves around the Desmone's air port in anticipation of Homedew's arrival. The Surveillance invesigative law enforcement team plaeeded Homedew under arrest , and took possession of his Back pack. The team did not conduct an immediate search of the Back pack, previous to escorting Mr. Homedew to Squad car , and sought Homedew's permission to search the Back pack, this is when Mr. Homedew disclosed that he had previously searched the Back pack, and Officer Ben Carter sought Mr. Homedew's permission to conduct a search of the Back pack in order to retrieve the bagage claim receipt . According to the record , Mr. Homedew consented to a search of the Back pack, asserting that the receipt would be in the pouch . See UniteddewStates v. Homedew at 4:16-cr-0145 JAJ-HCA-1. The Court preceded , consolidating the petitioner's trial scheduling and setting forth all defendants,(Four Conspirators) for November 01, 2016, Shipp's counsel involved a continuance and was granted Three months , where counsel asserted that additional time was needed for a plea deal, holding that her Co-defendahtschad no objections to the requested continuance.

The Court in granting the continuance conducted a hearing, resetting the matter until February 13, 2017.

The Petitioner was not present , nor notified of those proceedings . The Court in citing the ends of justice , excluded the time between the filing of the motion , and a new trial

CONTINUANCE

date of consideration under the Speedy Trial Act. On December 16, 2018, upon discovering the continuance, Petitioner filed a pro se motion claiming that his attorney had ignored his clear request to file an objection to any continuances. Petitioner, herein asserted a violation of his rights to a Speedy Trial, and pleaded for an attorney different from counsel previously appointed to the case based on the break down in communication and unwarranted conflict which breached any trust in further representation.

The gist of the two motions were that, the delays in the case violated Petitioner's rights to a Speedy Trial under both the Speedy Trial Act and Sixth Amendment of the Constitution.

The Court at that time substituted counsel, which also submitted a dual motion with his client's pro se petition, requesting dismissal of the indictment based upon violations of Speedy Trial Rights.

REASONS FOR GRANTING THE PETITION

1: Petitioner , " Jonathan Leroy Homedew" an indigent, incarcerated party , hereby respectfully proceeds before the Highest court in the United States, without the luxury of an attorney pursuant to provisions that are set forth in Johnson v. Avery, 393 US 483, respectively moves for an order Granting a Writ Of Certiorari.

*Mr. Homedew attaches hereto as exhibit,(A), and (B), Affidavits ; Swearing as fact, presenting that, the Court Of Appeals erroneously affirmed the lower Court's decision, denying Defendant's petition to dismiss the grand jury indictment, where the Court created delays which violated the Speedy Trial Act.

** Petitioner, hereinafter, was charged by Grand jury indictment for drug conspiracy in violation of 21 U.S.C. §841(a)(1), 21 U.S.C. §841(b)(1)(c), and 21 U.S.C. §846, for distribution of over 50 grams of a mixture or substance containing a detectable amount of methamphetamine.

*** Opposite the charged Co-conspirators and Government witnesses, Mr. Homedew elected to enjoy Sixth Amendment guarantees of the constitution, appearing before the Petit jury . As provided in Petitioner's Sworn declaration, and reflected by the record, Mr. Homedew, previous to pretrial proceedings learned of the lower court's decision to honor the Co-conspirator's request for continuance in relation with plea negotiations. Moreover, the lower Court, on November 10, 2016, consolidated petitioner's trial proceedings where Co-conspirator Shipp's counsel, shortly thereafter, moved for a Three month continuance , lamenting that more time was needed to work out a negotiation and or plea deal with the Government.

**** Where the Court was lead to believe that no objections would be ensued by any of the Co-defendants and theretby granted the continuance motion, following a hearing, resetting the trial proceedings for February 13, 2017. The Court, in citing the ends of justice , excluded the time between filing of the motion, and a new trial date and considerations under the Speedy Trial Act.

***** Petitioner , now argues that, previous to any of the pretrial proceedings, the Government, nor the Court advised Mr. Homedew of Speedy Trial rights as required by provisions established in 18 U.S.C. §3161(j)(B).

The Sixth Amendment provides that , " in all criminal prosecutions, the accused shall enjoy the right to a Speedy and Public trial."

On its' face , the prosecution has begun and extends only to those persons who have been" accused " in the course of that prosecution. United States v. Marion, 30 L.Ed 2d 468, 404 US 301.

Petitioner, upon introduction of his Court appointed attorney made clear that he wanted to proceed with trial as permitted by the Speedy Trial Act, and counsel assured that trial overall would be a wiser choice verses a suppression hearing . However, Counsel made a non-strategic decision , motioning for a suppression

hearing despite of what she had initially relayed to her client, where the Court had deemed the filing as meritless as she had suspected it would be.

Mr. Homedew, being disturbed by his counsel's decision vehemently attempted to contact his attorney to no avail and thereby motioned to the Court out of desperation, establishing that his counsel's decision to proceed with the Suppression hearing created a serious conflict, and break down in attorney client communication where she refrained from accepting phone calls from the Petitioner or family members in relation with the suppression hearing ..

Mr. Homedew established in pro se filings that his counsel capriciously, and arbitrarily pursued a suppression proceeding and recklessly waived his Rights set forth in provisions established under the Speedy Trial Act.. Although a hearing was conducted which appointed new counsel , no corrective measures were rendered curing the time lost relating to the Speedy Trial rights.

***** Grant of Writ Of Certiorari is warranted , reversing the lower Courts decision with directives, dismissing the Grand jury indictment where the lower Court's integrity is in question and Mr. Homedew was stripped of protections guaranteed by the Fifth Amendment under Due process , combined with Equal protections of the law.

¶ The Marion, supra decision maintained three different views which found to effect the running of applicable statutes of limitations in a criminal case. One was that, once the time has run the Court need not raise the issues in a pretrial motion and is entitled to relief.

***** Here the record affirmatively reflects that, the Court was lead to believe, no objections would be ensued from any of the defendants, granting a continuance for Petitioner's Co-defendants, and reset trial proceedings for February 13, 2017.

The Court's opinion fallaciously maintained orders and directives between filing of the motion and a new trial date for consideration under the Speedy Trial Act. Contrary to warranted inequities the lower court's practices eroded judicial expectations where the Sixth Amendment clearly supports the Speedy Trial Act. The Court in the least should have conducted a hearing in determining as to whether dismissal of the indictment was warranted under the speedy Trial Act.

Where the Government failed to meet the time requirement of the Speedy Trial Act under FRCrp 48(b) the Court has authority to dismiss the indictment against Mr. Homedew.

United States v. Sears an Roebuck, 877 F.2d 734, 737-38(9th Cir. 1989). The delay of Speedy Trial proceedings constituted an oppressive delay where invocation of the Speedy Trial provisions is not required to await an indictment, or information, or other formal charges . see Marion, supra.

We now ask that the Solicitor General provides whether or not Mr. Homedew forfeited Speedy Trial rights based upon his Co-defendant's petition for continuance.

We now conclude , requesting that, the Solicitor general provide whether or not Mr. Homedew forfeited , and or waived Speedy Trial rights based on his CO-defendant's

petition for continuance...

THE LOWER COURT ERRED in denying Petitioner's right to be present where the Courts in a light aptly summarized in rule 43, rights of an accused to be present at every court proceeding pursuant to Constitutional safeguards that are set forth in Fifth Amendment under both , Due process, and equal protection . This is a matter being presented for review where the Court entertained a severence proceeding , prohibiting the Petitioner's presence.

Being at the proceedings was a procedural safeguard protected by the Fifth Amendment under Equal protection of the law...

Mr. Homedew, never waived any right to be present any Court proceedings, and was deprived of being informed as to Court decisions concerning his Co-conspirators by the Court, or its officers, (Prosecutors, Court Appointed Attorneys)..

The lower Court in entertaining Mr.Homedew's pro se litigations refrained from allowing Mr. Homedew to be present at those proceedings, where as had he been permitted to take part in those proceedings objection entitlement could have been rendered, and his Speedy Trial rights would not have been delayed. ^{sw}

Omitting Rule 43(a) proceedings , invokes a clear impairment of constitutional protections relating to Fifth Amendment protections, appearance of an accused indicates fairness intended by congressional intent.

While this proceeding comports with the requirements of Gerstein v. Pugh, 420 U.S. 103 , 126, 95 S.Ct. 854, 43 L.Ed 2d 54,(1975),.it is far from clear that it is the equivalent of the hearing the Eighth Circuit have required as a prerequisite to extended pre-trial detention in Colemen or Petton. See Pope v. Montgomery, 2017 U.S. Dist. LEXIS 218393.

It questions as to whether or not Mr. Homedew enjoyed the right to trial by an impartial Jury where he subjected a blatant prejudice, being stripped from appearance established under Rule 43(a) provisions..

The Eighth Circuit Court of appeals maintained in Horton v. United States, 2015 U.S. Dist. LEXIS 135321 that, "A criminal defendant's right to be present at every stage of a criminal trial is rooted to a large extent, in the confrontation clause of the Fifth and Fourteenth Amendments." Citing, United States v. Picardi, 739 F.3d 1118, 1123(8th Cir. 2014), maintaining further how Rule 43, is broader than the constitutional right, and include the right of the criminal defendant to be present during all stages of trial proceedings.

Rule 43 states that, unless provided otherwise "the defendant must be present every trial stage including jury impanelment. Fed. R. Crim.P. 43(a)(2). "

Because Mr. Homedew was not present in the Court proceedings, this created unwarranted constitutional and Rule 43(a) deprivations, stripping him of the ability to object. United states v. Fonteno, 14 F. 3d 1364, 1370(9th Cir. 1994)....

The Rule 43(a) provisions seriously compells Certiorari review , we ask both the Supreme Court to GRANT Writ of Certiorari in this matter in establishing whether or not the lower court erred when failing to provide redress to Mr. Homedew's pro se

filings out of his presence , prohibiting objections permitted by Rule 50(b), of Fed.R.Crim.Proc.

THE LOWER COURT ABUSED ITS DISCRETION, and created a gross abuse of discretion which resulted in a fundamental unfair trial proceeding.

The Sixth Amendment permits Speedy and Public trial proceedings. However, the lower Court created unwarranted prohibitions pertaining to Sixth Amendment guarantee of Speedy Trial rights .

The Court preceded with a continuation , allotting time for Mr. Homedew's co-defendants without determining any affects it may cause upon Petitioner's Speedy Trial Rights....

The decision rendered by the lower court was not only an abuse of the trial proceedings, that decision equated a blatant neglect act which clearly imposed upon Mr. Homedew's Sixth Amendment right of the Constitution .

Since Barker v. Wingo, 407 US 514, 530, 33 L.Ed 2d 101, it has been axiomatic in law of the Sixth and Fifth Amendments of the United States Constitution that a defendant in a criminal proceeding has rights under the Speedy Trial Act.

The lower Court proceeded with a continuance which intervened with Mr. Homedew's Speedy Trial rights. The record will reflect that Homedew never waived Speedy Trial Rights , or any right to be present at any trial proceedings , and where Mr. Homedew presented a pro se motion to sever was also an abuse of discretion where no attorney of record existed , based on the Court order , removing trial counsel .

The Court 's denial was a gross abuse of discretion making it virtually impossible to assess that Mr. Homedew enjoyed a fair and impartial jury trial proceeding where the Co-conspirators involved in Mr. Homedew's case elected not to go to trial..

The right to a Speedy Trial is distinct from other rights enshrined in the Constitution to protect an accused long established in Barker v. Wingo, 407 U.S. 514.

Where denial of a Speedy Trial does not perse prejudice the defendant's ability to defend himself , motions from Petitioner's counsel, and pro se filings in regards to Speedy Trial rights should have been entertained in a Court proceeding in determining the validity or disposition. It must be established that, Mr. Homedew, adamantly presented to both his Counsel, and the lower Court that pursuing Speedy trial rights were the major concern, giving them up was far from his intentions.

Mr. Homedew's federal Constitutional due process rights were violated because the Court failed to provide protections to him, having full knowledge of his never waiving any entitlements under the speedy Trial Act, where the Court involved a continuance without any consideration of his presence.

The first factor under Barker, the length of delay is a triggering mechanism absent a delay that is presumptively prejudicial inquiry into the other factors is unnecessary." Mathews v. Lockhart, 726 F. 2d 394(8th cir. 1984)(citing Barker, 407 U.S. at 530, United states v. Richards, 707 F. 2d. 997(8th Cir. 1983). See also United States v. White Horse, 316 F.3d 769, 774(8th cir. 2003)(explaining that, for a constitutional

speedy trial claim to prevail , " the interval between accusation and trial must be 'presumptively prejudicial") citing Doggett, 505 U.S. at 651-52). Barnes v. Dormire, 3013 U.S. DIst. LEXIS 18539, 2013 (quoting Barker, 407 U.S. at 530).

Petitioner's Constitutional Speedy Trial should have been thereby entertained and honored by the lower Court where the decision to refrain from redress of the issue was presumptively prejudicial .

The Eighth circuit has long discussed the notion of presumptive prejudice . Presumptive prejudice typically involves a delay in meeting the threshold requirement under Barker.

The lower Court's decision refraining from redress of the Speedy Trial proceedings, and prohibiting Mr. Homedew's presence at the court proceedings created an unwarranted abuse of the Court's discretion which invokes this Court's authority to GRANT a Writ Of Certiorari in this matter currently before the Supreme Court..

WHEREFORE , Mr. Homedew hereby respectfully moves for order seeking GRANTING Writ Of Certiorari based upon the lower Court's ABUSE OF DISCRETION.

Sil/


Mr. Jonathan Leroy Homedew, Pro se Litigant

2/8/19

Because the issues in this application are challenging the lower Court's disposition of an effective constitutional right Mr. Homedew prays that this Court entertain an evidentiary proceeding to further develop the record.

CONCLUSION

Following the question of whether Petitioner has alleged constitutional error , it is respectfully asked that this honorable court construe this pro se application liberally. See Haines v. Kerner, 404 U.S. 519, 520-21(1972).

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 2-9-19