

18-8828 **ORIGINAL**
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

FEB 19 2019

OFFICE OF THE CLERK

DANTE OVERBY — PETITIONER
(Your Name)

VS.

PENNSYLVANIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPERIOR COURT OF PENNSYLVANIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DANTE OVERBY - GZ-5437
(Your Name)

1200 MOKYCHIC DRIVE - SCI-PHOENIX
(Address)

COLLEGEVILLE, PA 19426
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

DOES THE GUILTY PLEA INDUCED BY AN "ILLUSORY PROMISE" VIOLATE THE 6th AMENDMENT?

WHERE THE GUILTY PLEA WAS RULED INVOLUNTARY, BUT THE COURT FAILED TO REVIEW THE PREJUDICE PRONG OF THE INEFFECTIVENESS CLAIM, SHOULD PREJUDICE HAVE BEEN PRESUMED?

DID PETITIONER RECEIVE A FULL AND FAIR HEARING ON THE ISSUES HE TENDERED ON DIRECT APPEAL?

DOES THE GUILTY PLEA INDUCED BY AN "ILLUSORY PROMISE" CONSTITUTE BAD FAITH WHICH VIOLATES THE 5th AMENDMENT'S DOUBLE JEOPARDY CLAUSE?

DID THE STATE COURT'S APPLICATION OF PA.R.CRIM.P. RULE 600 VIOLATE PETITIONER'S FEDERAL SPEEDY TRIAL RIGHTS?

DOES ALLOWING PETITIONER TO "ENTER A CONDITIONAL GUILTY PLEA WHICH DEFENSE COUNSEL, THE PROSECUTION AND THE COURT UNDOUBTEDLY WAS ILLEGAL" AMOUNT TO OVERREACHING THAT BARS A RETRIAL?

WAS PETITIONER ACTUALLY AFFORDED A TRIAL AT ALL WHERE THE TENDERED GUILTY PLEA IS VOID AB INITIO?

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:

Josh Shapiro - Attorney General of Pennsylvania

Lawrence J. Goode - Philadelphia District Attorney's Office

The Superior Court of Pennsylvania - for the Eastern District

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STATUTES AND RULES

Pennsylvania Rules of Criminal Procedures, Rule 600

OTHER

Article III, 5th Amendment, 6th Amendment, and the 14th Amendment to the United States Constitution.

Townsend v. Sain, 372 U.S. 293 (1963)

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United States v. Dinitz, 424 U.S. 600 (1976)

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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 _____ to the petition and is

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 is unpublished.

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

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

The opinion of the POST CONVICTION RELIEF ACT court appears at Appendix B to the petition and is

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

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____

No petition for rehearing was timely filed in my case.

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

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.
2

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 11-19-18.
A copy of that decision appears at Appendix C.

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 _____.
2

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE III:

"The Judicial Power of the United States, shall be vested in one supreme court--The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution"

AMENDMENT V:

"nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb"

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 to have the assistance of counsel for his defence"

AMENDMENT XIV:

"No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law"

STATEMENT OF THE CASE

1. On 4-22-06, Petitioner was arrested and charged with Aggravated Assault and related offenses.

2. On 10-26-06, Petitioner filed a hand-written Motion to Dismiss Pursuant to Pa.R.Crim.P. Rule 600(a)(2). Appendix H.

3. On 11-22-06, Petitioner was denied release on house arrest and the Court granted the Commonwealth's Motion to hold Petitioner in custody without bail, after a speedy trial violation.

4. On 12-6-06, Petitioner wrote the Trial Judge seeking a hearing on his Motion to Dismiss.

On 3-5-07, Petitioner was offered, and he accepted, a conditional guilty plea which preserved his speedy trial issues for appellate review.

6. Upon Petitioner's appointed lawyer filing an Anders Brief, Petitioner sought leave to proceed pro se, which was granted on 5-12-08.

7. On 12-22-09, the Superior Court affirmed judgment without reviewing the speedy trial issues Petitioner had preserved for appellate review.

8. On 4-5-10, Petitioner sought Allocatur review in the Pennsylvania Supreme Court, which was denied on 11-9-10.

9. On 11-21-11, Petitioner filed a timely Post Conviction Relief Act ("PCRA") Petition, which he amended on 10-9-15.

10. On 12-29-16, the Commonwealth filed a Motion to Dismiss Petitioner's PCRA petition, to which Petitioner filed a response on 2-22-17.

11. On 3-27-17, an Evidentiary Hearing was held via video conference.

12. On 4-27-17, the PCRA Court issued an Order granting Petitioner relief.

13. On 5-10-17, both Petitioner and the Commonwealth filed Notices of Appeal to the Superior Court.

14. On 5-22-17, Petitioner filed a Motion to Preclude Retrial based on Double Jeopardy, which was denied on 6-2-17.

15. On 2-23-18, the Superior Court quashed Petitioner's appeal and granted the Commonwealth relief, reversing the PCRA Court's grant of relief and reinstating the invalid guilty plea.

16. Petitioner then filed a Petition for Allowance of Appeal, for each matter, to the Pennsylvania Supreme Court, both of which were denied on 11-19-18, and this timely Petition for Writ of Certiorari followed.

REASONS FOR GRANTING THE PETITION

SPEEDY TRIAL

Since most states use presumptive time periods to protect the right to speedy trial, the stated time period chosen by the State must automatically trigger an inquiry, because the right is fundamental, and if the State evades an inquiry, by ignoring a Defendant's, or his Lawyer's request for one, it must be deemed a violation of the right, and the only possible remedy is dismissal.

Instantly, when Petitioner was arrested, Pa.R.Crim.P. Rule 600(a)(2) applied to him¹, which mandated that, because he remained in custody after arrest, trial was to commence within 180 days. see Appendix G - Text of Pa.R.Crim.P. Rule 600 in Force when Petitioner was Arrested.

Petitioner was arrested on 4-22-06, after the Rule 600(a)(2) violation occurred, he filed a Motion to Dismiss on 10-26-06, see Appendix H - Motion to Dismiss Pursuant to Pa.R.Crim.P. Rule 600(a)(2), and wrote the Trial Judge seeking a hearing on his motion (Appendix M - Letter From Trial Judge), to no avail, even though Petitioner put the Court on notice that his only witness had gone missing (Appendix H - Motion to Dismiss, Page 2).

Petitioner also entered into a conditional guilty plea agreement that expressly preserved his speedy trial issues for appellate review, which turned out to be an "illusory promise", Appendix B - PCRA Court Opinion Granting Relief, Page 6, and it has been over 12 years since the violation occurred, but the specific issues raised in the Motion have not been addressed by any Court.

1. Rule 600 was amended and subsection (a)(2) means something totally different than it did when Petitioner was arrested. see Appendix I - new Version of Rule 600. This is relevant because the Superior Court referenced the new version when it decided this matter on PCRA review. see Appendix A -2-23-18 - Superior Court Opinion, Page 6.

The issues raised by Petitioner are simple, "[the Pennsylvania Supreme] Court adopted Rule 600, and its predecessor Rule 1100, to protect Defendants' constitutional rights to a speedy trial under the Sixth Amendment of the United States Constitution and Article 1 section 9 of the Pennsylvania Constitution, in response to the United States Supreme Court decision in Barker v. Wingo, 407 U.S. 514 -- (1972)". Commonwealth v. Bradford, 46 A.3d 693, 700-701 (Pa. 2011).

After a speedy trial violation, "the only possible remedy is dismissal" of the indictment, Barker, supra, at 522, not the remedy of Rule 600(e). But Petitioner received neither a remedy nor a hearing on his Motion to dismiss.

The Commonwealth relies on Barker's finding that "[this Court] cannot definitely say how long is too long in a system where justice is supposed to be swift and deliberate", ID at 521, for the proposition that "there is no constitutional significance to the number of days or the procedure chosen by the Court in enacting [Rule 600]". Bradford, Supra, at 701 (quoting Commonwealth v. Sloan, 907 A3d 460, 468 (Pa. 2006)).

While the Barker Court is of the opinion that it can find "no constitutional basis for holding that the speedy trial right can be quantified into a specific number of days or months", Barker, supra, at 523, Petitioner believes that, because States "are free to prescribe a reasonable period consistent with constitutional standards", ID, a constitutional basis exists to, at least, deem a violation of the presumptive time period chosen by the State to automatically trigger a Barker balancing test, to more effectively protect this fundamental constitutional right. And where a State evades the Barker analysis,, as is the case instantly, once the case reaches the Federal Courts,

an inquiry into the reason for the State evading the Barker analysis should be undertaken, and if no valid reason exists, the indictment should be dismissed with prejudice, to deter such behavior.

The Article III prerequisites are met. see Spencer v. Kemna, 523 U.S. 1, 7 (1998) ("challenge to [Petitioner's] conviction and sentence 'satisfies the case-or-controversy requirement, because the incarceration...constitutes a concrete injury, caused by the conviction and redresable by invalidation of the conviction'").

And jurisdiction exists where federal cases are not "being used only for the purpose of guidance" and instead are "compel[ling] the result". Michigan v. Long, 463 U.S. 1032, 1041-42 (1983).

INVALID GUILTY PLEA/UNFAIR TRIAL

On 3-5-07, the Prosecutor offered Petitioner a plea agreement wherein he would be allowed to appeal issues he raised in his Motion to Dismiss for both State and Federal speedy trial violations (Appendix D - N.T.- 3-5-07, Guilty Plea & Sentencing, Page 9) if he plead guilty.

The Trial Judge assured Petitioner the same thing. ID at 9-10 ("What can happen is -- in other words, you're pleading guilty. If you still maintain that you think you have an issue under Rule 600, you can still file an appeal in that regard; and the DA will not object on those grounds. Okay?").

And Petitioner's Trial Counsel echoed what the Court and Prosecutor said. ID at 9 ("In other words, they're saying because you're pleading guilty, they're not going to say you can't appeal your 600 rights. They're not going to say you're right on 600. You understand?").

Trusting the word of the Trial Judge, Petitioner accepted the plea agreement on those terms.

On Direct Appeal, Petitioner was appointed a lawyer who filed an "Anders" brief, forwarding a speedy trial issue that Petitioner did not raise, seeking to be removed from the case. So Petitioner sought leave to proceed pro se, which was granted on 5-12-08 (Appendix E - Lower Court Docket Excerpt, Page 11).

The Superior Court found that "[Petitioner] pled guilty in this case and therefore waived any right to raise a Rule 600 claim" citing Commonwealth v. Pitts, 981 A.2d 875 (2009)(Appendix F - 12-22-09, Superior Court Opinion Excerpt, Page 4). This is when it became obvious to Petitioner that he had been duped out his right to a jury trial by the Court, Prosecutor and his own Trial counsel. This is an "unfulfilled ([and] unfulfillable) promises", Brady

V. United States, 397 U.S. 742, 755 (1970), in violation of the Sixth and Fourteenth Amendments.

Thus, because Pennsylvania deems conditional guilty pleas to be "facially invalid", Commonwealth v. Terreforte, 564 A.2d 479, 481 (Pa. Super. 1989), "[i]t follows that [since] the prosecution breached its promise with respect to an executed plea agreement, the [Petitioner pled] guilty on a false premise -- his conviction cannot stand". Mabry v. Johnson, 467 U.S. 504, 509 (1984).

DEPRIVATION OF A FULL & FAIR HEARING

Petitioner filed a timely PCRA Petition and was granted relief (Appendix B - 4-27-17, PCRA Court Opinion Granting Relief). The Commonwealth appealed the PCRA Court Order to the Superior Court who found, among other things, that Petitioner "actually received appellate review of his Rule 600 motion despite pleading guilty, and [the] Court concluded that his underlying Rule 600 claim lacks merit" on direct appeal (Appendix A - Superior Court Opinion, 2-23-18, Page 6). That is untrue. When Petitioner was arrested in 2006, Rule 600 contained two speedy trial provisions, Rule 600(a)(2) mandated that trial commence within 180 days of arrest if the defendant remains incarcerated, (Appendix G - Text of Rule 600 in force at Arrest), and Rule 600(a)(3) which mandated that trial commence within 365 days of arrest if the defendant is at liberty on bail. ID.

Petitioner has been incarcerated since his arrest which make the Rule 600(a)(2) provision applicable, and, Petitioner filed a "Motion to Dismiss Pursuant to Pa.R.Crim.P. Rule 600(a)(2)" (Appendix H - Motion to Dismiss), however, on direct, the Superior Court reviewed a Rule 600(a)(3) issue (i.e.

"[i]n this case, [Petitioner] was arrested on April 22, 2006, and his case was scheduled for trial on March 5, 2007-a time period less than 365 days" - see Appendix F) which Petitioner did not raise.

According to this Court's precedent, "[t]here cannot be even the semblance of a full and fair hearing unless the state court actually reached and decided the issues of fact tendered by the defendant. -- No relevant findings have been made unless the state court decided the constitutional claims tendered by the defendant on the merits", Townsend v. Sain, 372 U.S. 293, 313-314 (1963), thus, Petitioner did not receive a full and fair hearing on the issues he preserved and raised for review.

FAILURE TO REVIEW PREJUDICE PRONG/PRESUMED PREJUDICE

The Superior Court also found that, "not only did the PCRA Court not address the prejudice prong, [Petitioner] is unable to establish it" (Appendix A - 2-23-18, Superior Court Opinion, Page 6). The Court again pointed to its belief that Petitioner received review of his issues on direct appeal to support its findings, ID, but those findings were proven to be incorrect in the subsection titled "Deprivation of a Full & Fair Hearing", *supra*.

While it was error for the PCRA Court to not address the prejudice prong of the ineffectiveness claim, Petitioner did establish prejudice. This Court has said that, "when a defendant claims that his counsel's deficient performance deprived him of a trial by causing him to accept a guilty plea, the defendant can show prejudice by demonstrating a 'reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial'". Lee V. United States, 198 L.Ed.2d 476, 485 (2017)(quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

At the Evidentiary Hearing held by the PCRA Court, Petitioner informed the Court that, "had [he] known that [he] couldn't appeal his speedy trial rights, [he] would not have taken that plea", and that "the judge -- told [him he] - could appeal that speedy trial [motion]" (Appendix J - N.T.- 3-27-17, Evidentiary Hearing, Page 11). Petitioner further explained to the Court that, "[i]f you look at the record, I wanted a jury trial. [On] the record, the jury trial was scheduled for February 2007 then it was rescheduled to March, so we could pick a jury. Then, after that, that's when they offered me this deal. Had I known that [I couldn't appeal my speedy trial issues], I would have continued the route [I was going] of taking a jury trial". ID. The record Petitioner was talking about is the Docket Sheet wherein it is abundantly clear that Petitioner informed the Court of his intention to receive a jury trial, which was originally scheduled for 2-26-07 (see Appendix K - Lower Court Docket Excerpt, Page 6).

Thus, Petitioner has established prejudice even though the PCRA Court did not address the prejudice prong, however, Petitioner believes that a presumption of prejudice is warranted in this case based on the fact that there was a total collapse of the adversarial process.

The Prosecutor made Petitioner, what the PCRA Court defined as an "illusory promise", (Appendix B - 4-27-17, PCRA Court Opinion, Page 6), that "[t]he plea court accepted a guilty plea conditioned on the Commonwealth's illusory promise to not object to an appellate claim of a pre-trial challenge even though the court was without authority to preserve what, as a matter of law, was waived", ID at 7, and that "Petitioner's counsel further mislead Petitioner when counsel failed to competently advise his client and provide sound legal advice on the impact of Petitioner's guilty plea on his pre-trial

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challenges". ID.

Thus, because "[t]he presumption that counsel's assistance is essential requires [Courts] to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial, [] there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable", and prejudicial. United States v. Cronic, 466 U.S. 648, 659 (1984).

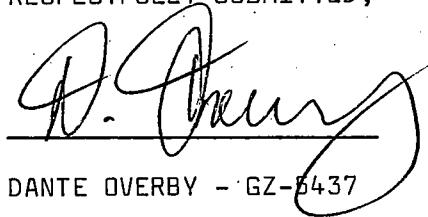
DOUBLE JEOPARDY

The PCRA Court erred in denying Petitioner's Motion to Preclude a Retrial based on Double Jeopardy, Appendix L - Lower Court Docket Excerpt, Page 17, because Petitioner's conviction is the product of Prosecutorial and judicial overreaching that prejudiced Petitioner to the point of the denial of a fair trial, and this Court's precedents are clear that retrial is barred where the error is "motivated by bad faith or undertaken to harass or prejudice the defendant". Oregon v. Kennedy, 456 U.S. 667, 670 (1982) (quoting United States v. Dinitz, 424 U.S. 600, 611 (1976); also see United States v. Jorn, 400 U.S. 470, 485 (1970) (Double Jeopardy bars retrial where "bad faith conduct by judge or prosecutor" -- threatens the harassment of an accused)). Instantly, in granting Petitioner relief, the PCRA Court found that "[t]he plea court accepted a guilty plea conditioned on the Commonwealth's illusory promise to not object to an appellate claim of a pre-trial challenge even though the court was without authority to preserve what, as a matter of law, was waived" (Appendix B - 4-27-17, PCRA Court Opinion, Page 7). From the well settled axiom that "[w]hen a defendant pleads guilty, he waives the right to challenge anything but the legality of his sentence and the validity of the

plea", Commonwealth v. Montgomery, 401 A.2d 318, 319 (Pa. 1979) and the acknowledgment that Petitioner "would have a right that most defendants won't have if [he] plead guilty" (Appendix D - N.T.- 3-5-07, Guilty Plea & Sentencing, Page 11), it is clear, in hindsight, that the learned Judge intended to mislead Petitioner into agreeing to accept the which "the Court undoubtedly knew was illegal". Commonwealth v. Terreforte, 564 A.2d 479, 483 (Pa. Super. 1989).

Thus, because Petitioner was induce into "enter[ing] a conditional guilty plea which -- the Prosecution and the Court undoubtedly knew was illegal", ID, Petitioner's conviction is the result of overreaching by the Court and Double Jeopardy bars a retrial of Petitioner under these circumstances.

RESPECTFULLY SUBMITTED,



DANTE OVERBY - GZ-5437

SCI - PHOENIX

1200 MOKYCHIC DRIVE

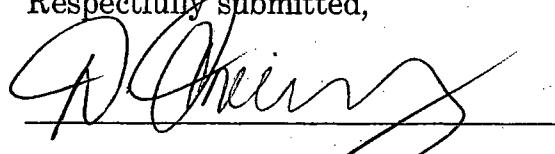
COLLEGEVILLE, PA 19426

DATE: 2-13-19

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 2-13-19