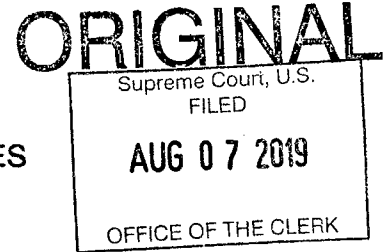


No. 19--5544

IN THE
SUPREME COURT OF THE UNITED STATES



OVERILLE DENTON THOMPSON, JR. — PETITIONER
(Your Name)

VS.

LORIE DAVIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS COURT OF CRIMINAL APPEALS

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

PETITION FOR WRIT OF CERTIORARI

OVERILLE DENTON THOMPSON, JR.
(Your Name)

McConnell Unit, 3001 S. Emily Drive
(Address)

Beeville, Texas 78102
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

Mr. Thompson has asserted his right to a speedy trial in fifteen different ways, and, has preserved his speedy trial claim for appellate review in at least three of them. Indeed, such being true, should not exclude the fact that there is actually a presumption in record that the claim has been preserved; which, of course, the state court may have come to discern had it bothered actually to consider the merits of the claim under principles well-established by this Court. Such being so raises the following two questions:

1. Did the Texas Court of Criminal Appeals err in refusing to grant Mr. Thompson's petition for discretionary review, and therefore, sanction the lower court's failure to indulge every reasonable presumption against waiver of his fundamental right to a speedy trial?
2. Even if Mr. Thompson's speedy trial claim had been procedurally defaulted, did the Texas Court of Criminal Appeals err in refusing to grant discretionary review in order that it could have fully considered whether review of the claim was warranted under the Barker default holding?

LIST OF PARTIES

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 judgement is the subject of this petition is as follows:

Petitioner is Overille Denton Thompson, Jr., TDCJ No. 2068451, McConnell Unit, 3001 S. Emily Drive, Beeville, Texas 78102.

Mr. Thompson's first appointed counsel was Tommy LaFon, SBN 11789500, 1244 Heights Boulevard, Houston, Texas 77008. Mr. LaFon was later removed and replaced by substitute/trial counsel Randy Martin, SBN No. 12099500 and co-counsel (at the actual trial only) Sorcha Landau, SBN No. 24002781, Assistant Harris County Public Defenders, 1201 Franklin Street, 13th Floor, Houston, Texas 77002.

Trial court judge in the 185th District Court of Harris County, Texas is Susan Brown. And representing the State in the trial court proceeding was prosecutor Gregory Houlton, SBN No. 24062182, and John Lewis, SBN No. 24055849, Assistant Harris County District Attorneys, 1201 Franklin Street, Houston, Texas 77002.

On direct appeal, Mr. Thompson represented himself but before was represented by Michael McEnroe, TBC No. 13589050, P.O. Box 70978, Houston, Texas 77270-0978.

The State was represented by Kim Ogg, Harris County District Attorney, in the person of Assistant District Attorney Eric Kugler, TBC No. 796910, 1201 Franklin Street, Houston, Texas 77002.

On certiorari, it is known only that the respondent is Lorie Davis, Executive Director, Texas Department of Criminal Justice, P.O. Box 99, Huntsville, Texas 77342-0099.

Ms. Davis will likely be represented by the Attorney General of Texas who is believed to be Ken Paxton, followed by Deputy Attorney General Jeffrey Mateer, and Assistant District Attorneys Adrienne McFarland and Gwendolyn Vindell, P.O. Box 12548, Capitol Station, Austin, Texas 78711.

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PETITION FOR WRIT OF CERTIORARI TO

THE TEXAS COURT OF CRIMINAL APPEALS

The Petitioner, Overille Denton Thompson, Jr., respectfully prays that a writ of certiorari issues to review the judgements below.

OPINION BELOW

The Fourteenth Court of Appeals at Houston, Texas (the lower court) affirmed Petitioner's convictions in its Cause Nos. 14-16-00413-CR and 14-16-00414-CR. The opinion is unpublished, and is reprinted in the appendix to the petition as Appendix A, *infra*. The order of the Fourteenth Court of Appeals denying rehearing is reprinted in the appendix as Appendix C, *infra*.

JURISDICTION

The Texas Court of Criminal refused discretionary review on May 1, 2019. The order refusing discretionary review is reprinted in the appendix to this petition as Appendix D, *infra*.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional and statutory provisions are involved in this case.

U.S. Const., Amend. 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 to be informed of the nature and cause of 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.

U.S. Const., Amend. XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Tex. R. App. P. 33.1

(a) In general. As a prerequisite to presenting a complaint for appellate review, the record must show that:

(1) the complaint was made to the trial court by a timely request, objection, or motion that:

(A) stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context; and

(2) the trial court:

(A) ruled on the request, objection, or motion, either expressly or implicitly.

Tex. R. Evid. 103

(d) Fundamental Error in Criminal Cases. In a criminal case, nothing in these rules precludes taking notice of fundamental errors affecting substantial rights although they were not brought to the attention of the court

Tex. R. Evid. 201

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

STATEMENT OF THE CASE

Mr. Thompson was convicted of possession with intent to deliver $4\frac{1}{2}$ grams of heroin ^① and felon in possession of a firearm. The jury assessed a penalty of 80 years in prison for the heroin offense and a concurrent-maximum 10 years in prison for the firearm offense. App. B (29 CR1: 87-88; 30 CR1: 82-83). His convictions were affirmed on direct appeal. Thompson v. State, unpublished, App. A. A motion for en banc reconsideration was filed but relief was denied, App. C. Mr. Thompson then filed a petition for discretionary review in the Texas Court of Criminal Appeals but the petition was refused. App. D.

This case, hereinafter "the controlled buy case," originally involved three indictments for heroin, felon in possession of firearm, and amphetamine. App. F (i-iii) (29 Supp. CR1: 13; 30 Supp. CR1: 13; 67 Supp. CR1: 3). ^② A trial date was set for June 2, 2015. App. G (i-ii) (29 Supp. CR1: 25-27). However, on May 19, 2015, a mere fourteen days in advance of the set trial, the State charged Mr. Thompson for the alleged August 6th, 2014 murder of complainant Meredith Daniels ^③; yet, asserted in the accompanying DIMS report that Ms. Daniels was its sole key witness to the alleged offense. App. H; App. I (RR16: St. Exh. 120). At such point, the controlled-buy-case trial was suspended and delayed an initial ninety days from the set June 2nd, 2015 trial date; thus, enabling the State to gain a murder indictment on August 14, 2015, this time, charging Mr. Thompson for the alleged August 3rd, 2014 murder of complainant

1. Appendix F (iv) is Laboratory Report No. 4 and it factually shows that Mr. Thompson's conviction for the heroin offense is based on his possession of 4.4695, or a rounded $4\frac{1}{2}$ grams. App. F (iv) (RR16: St. Exh. 85, p. 2).
2. Appendix F (iii) is a true copy of the January 16th, 2015 indictment charging the amphetamine offense and it is substantively identical to the official record entry, (67 Supp. CR1: 3).
3. Appendix H is a true copy of the May 14th, 2015 murder complaint and it is substantively identical to the official record entry, (67 Supp. CR1: 4).

Jose Sustaita, Jr. App. J. ⁽⁴⁾

Thereafter, the State three times attempted to bring the murder case to trial on March 1, 2016, March 8, 2016, and March 23, 2016. App. P (RR2: 19-20); App. K (i-iii) (29 Supp. CR1: 184-185; RR5: 25-27; RR6: 4-7-12); see also App. R at 12 n.8. However, on March 29, 2016, the State acquiesced to the murder-case trial and announced its return to the previous election of trying the controlled buy case as its case-in-chief. App. L (i) (RR 7: 13). Accordingly, a new trial date of April 26, 2016 was set for the controlled buy case, App. L (ii) (RR7: 14), its second only trial-date setting since June 2, 2015. But still the actual trial did not occur until May 3, 2016; subsequently, resulting in the May 6th, 2016 trial court judgements. See supra at p.4.

On direct appeal, in overruling Mr. Thompson's sole point of error and affirming the trial court judgements, the lower court concluded that it did not have to review Mr. Thompson's speedy trial claim because he "never obtained an adverse ruling on his pro se motions to dismiss." App. A at 1, 5. Seeking reconsideration en banc, Mr. Thompson argued that: (1) his claim was actually preserved in three different ways already presented to but never fully considered by the panel justices, App. E at 4, 8-11, 14; (2) the extraordinary circumstances of the case warrants review of his claim where implicated are two of the Barker default situations, id. at 2, 12; and (3) the panel failed to actually reach and decide the issues of fact tendered to establish the judge's bias or lack of impartiality. Id. at 13-14.

Because such arguments were rejected by the lower court and upheld by the highest court's refusal to grant discretionary review, Mr. Thompson now timely seeks certiorari in this Court.

4. Appendix J is a true copy of the August 14th, 2015 murder indictment and it is substantively identical to the official record entry, (67 Supp. CR1: 5).

REASONS FOR GRANTING THE PETITION

REASON ONE: THE TEXAS COURT OF CRIMINAL APPEALS ERRED IN REFUSING TO GRANT MR. THOMPSON'S PETITION FOR DISCRETIONARY REVIEW, AND THEREFORE, SANCTIONED THE LOWER COURT'S FAILURE TO INDULGE EVERY REASONABLE PRESUMPTION AGAINST WAIVER OF HIS FUNDAMENTAL RIGHT TO A SPEEDY TRIAL.

This Court made clear in Johnson v. Zerbst, 304 U.S. 458 (1938), that itself and lower "courts indulge every reasonable presumption against waiver of fundamental constitutional rights and... do not presume acquiescence in the loss [of such] fundamental rights. Id. at 464, 465. In fact, such is the same standard that the lower court reasonably was expected to apply in assessing whether Mr. Thompson preserved his right to a speedy trial or waived the error. See Barker v. Wingo, 407 U.S. 514, 525-26 (1972). Such is true because "the right to a prompt inquiry into criminal charges is fundamental and the duty of the charging authority (including the trial court judge) is to provide a prompt trial." Id. at 527 n. 26 (citing Dickey v. Florida, 398 U.S. 30, 37-38 (1970)). In the present case, however, when the lower court willfully misstated facts by excluding relevant-presented information in order to reject other presumptions against the waiver of Mr. Thompson's right to a speedy trial, it actually "cast a burden on the accused [which] is wholly at war with the standard of proof of waiver of [a fundamental constitutional] right" as laid down by the Court. See Carnley v. Cochran, 369 U.S. 506, 514 (1962).

Indeed, had the lower court applied the correct standard for determining waiver, there is a significant likelihood that it would have found Mr. Thompson's speedy trial claim, or the actual issue presented regarding the trial judge's admission on record for egregiously triggering

the delay, preserved for appellate review in multiple ways. Moreover, had the Texas Court of Criminal Appeals granted discretionary review, it would have found the error preserved in the same ways but also by an uncontradicted fact in record. Specifically, in rebuttal to an April 26th, 2016 motion for a 45-day continuance in order to obtain his own counsel, the trial court judge stated, "Mr. Thompson, you have been begging to go to trial on this case for months." App. M (RR9:10).

The key word "beg" may be defined as: "2. to ask (someone) to give or do something; implore ... 5. to ask humbly or earnestly." RANDOM HOUSE Webster's Unabridged Dictionary, 2d Ed. at 188 (2001). In addition, the key word "ask" may be defined as: "3. to try to get by using words; request ... 4. to solicit from; request of ... 5. to demand; expect ... 7. to call for; need; require ... 11. to request or petition (usually fol. by for)." Id. at 123. As such, there clearly is a presumption in record that the error was preserved for appellate review because, with the judge's clarification that she knew Mr. Thompson had been 'begging to go to trial on this case for months,' it is clear that the context of Mr. Thompson's complaint was "sufficiently clear provide the trial judge and opposing counsel an opportunity to address and, if necessary, correct the purported error." *Ford v. State*, 305 S.W. 3d 530, 533 (Tex. Crim. App. 2009); *Pena v. State*, 353 S.W. 3d 797, 807 (Tex. Crim. App. 2011).^⑤

The presumption that Mr. Thompson invoked his right to a speedy trial by 'begging [the judge] to go to trial on this case for months' is affirmatively established in record.

5. Indeed, the lower court relies heavily also on a Texas Court of Criminal Appeals' decision in *Marin v. State*, 851 S.W. 2d 275 (Tex. Crim. App. 1993), to hold or conclude that "the right to a speedy trial is a right to be implemented upon request." *Guevara v. State*, 985 S.W. 2d 590, 593 (Tex. App. Houston [14th Dist.] 1999, pet. ref'd) (citing *Marin*, id. at 279). As such, Mr. Thompson's invocation of his right to a prompt disposition of the controlled buy case and his objections to the delay of the June 2nd, 2015 trial date, should have been sufficient for error-preservation purposes.

dating as far back as May 8, 2015, nearly one year (exactly 353 days or 11 months and 20 days) prior to the second trial - date setting of April 26, 2016, Mr. Thompson had wrote a letter directly to the trial judge asserting in relevant part that he "earnestly [sought] disclosure and justice in this matter," made a request for a "personal recognizance bond" based on the State's potential unreadiness to proceed to the set June 2nd, 2015 trial date, declared his "innocence," and announced that he was "competent and very ready for trial." App. N (29 Supp. CR1: 28-29). The judge denied the letter as a motion/request for personal recognizance bond on May 12, 2015. Id. (29 Supp. CR1: 28, 31). As such, the judge was given notice of Mr. Thompson's speedy trial interest ⁶ supporting that "the specific grounds [of his complaint] were apparent from the context" and the ruling made on the letter as a motion/request is an implicit denial of that complaint. See Tex. R. App. P. 33.1 (a)(1)(A), (a)(2)(A); *Pena, supra*.

In direct objection to the suspension and delay of the June 2nd, 2015 trial date of the controlled buy case, Mr. Thompson wrote another letter directly to the judge on June 11, 2015, a mere nine days after the suspension. App. O (29 Supp. CR1: 93-94). ⁷ In the letter, Mr. Thompson stated in relevant part: "I face a new allegation for Murder. I humbly beg of you to please 'throw a dog a bone.' ~~IF~~ I am in trial phase for Cause Numbers 1446657, 1445929 and 1445930. Allow me please to dispose of these old matters so that I may appropriately focus on the new." Id. (29 Supp. CR1: 93). Thereafter, on June 24, 2015, the judge signed and dated an order to the clerk

6. See, e.g., *Cantu v. State*, 253 S.W.3d 273, 283, n.47 (Tex. Crim. App. 2008) (citing *State v. Flores*, 951 S.W.3d 134, 142 (Tex. App. - Corpus Christi 1997, no pet.)).

7. Mr. Thompson hand-delivered the letter to jail officials on or about June 11, 2015 and, for reasons not known to him, the jail mailed the letter or sent it out for delivery on June 17, 2015. App. O (29 Supp. CR1: 94). However, it is clear that after receiving the letter, the judge did forward it to the district clerk for filing on June 23, 2015. Id. (29 Supp. CR1: 93).

authorizing the filing of the letter and accompanying motions for a given purpose.⁸

As a result, the record supports that the judge sufficiently understood the context of the complaint in Mr. Thompson's request for a minimum of 10 months in advance of her having made the April 26th, 2016 remark, see *supra* at p. 7; thus, the trial judge knew clearly what Mr. Thompson wanted and why he was entitled to it. See *Tex. R. App. P. 33.1 (a)(1)(A)*; *Neal v. State*, 256 S.W.3d 264, 279 (Tex. Crim. App. 2008); accord *Ford*, 305 S.W.3d at 533. Consequently, the June 24th, 2016 order to the clerk directing the mere filing of Mr. Thompson's papers for the given reason was an implicit denial of the complaint. See *Tex. R. App. P. 33.1 (a)(2)(A)*; *Pena*, 353 S.W.3d at 807.

On November 23, 2015, while reviewing Mr. Thompson's September 1st, 2015 pretrial petition for writ of habeas corpus, the judge *sua sponte* commenced her own hearing on which party was responsible for the delay. App. P (RR2: 16-20).⁹ During the impromptu hearing, Mr. Thompson objected to the delay of the controlled-buy-case trial initially set for June 2, 2015 and argued that first counsel facilitated the delay in order to assist the State gain a tactical advantage over him, the accused. *Id.* (RR2: 17-18). On the other hand, the judge gave three conflicting reasons for the delay, before ultimately admitting that

8. Texas courts are free to disregard *pro se* motions filed while a defendant is represented by and, therefore, are actually free to not even acknowledge them. See *Robinson v. State*, 240 S.W.3d 919, 922 (Tex. Crim. App. 2007). However, in the present case, the trial court judge failed to disregard the June 11, 2015 *Pro se* letter because, by ordering the clerk to file it along with other papers, such had the actual effect of acknowledging it; therefore, putting the judge on notice of its contents.

9. In truth, the judge egregiously was attempting to fix the record with evidence to negate the State's degree of culpability for the delay by establishing falsely that Mr. Thompson was the responsible party. However, the ploy backfired, resulting in the development of an evidentiary record from which a court reasonably can apply the *Barker* analysis. See *Guevara*, 985 S.W. 2d at 593.

she made the egregious "call" that triggered the delay for a fourth conflicting reason - to protect Mr. Thompson's "due process rights." *Id.* (RR2:17-19). As such, it is clear that the judge knew clearly what Mr. Thompson wanted and why he was entitled to it. See Tex. R. App. P. 33.1 (a)(1)(A); *Neal*, 256 S.W. 3d at 279. Further, the setting of the murder case for a March 1st, 2016 trial, instead of the controlled buy case⁽¹⁰⁾ was implicitly a denial of Mr. Thompson's objections. See Tex. R. App. P. 33.1 (a)(2)(A); *Pena*, 353 S.W. 3d at 807.⁽¹¹⁾

On February 10, 2016, Mr. Thompson filed a motion to disqualify judge. App. B (29 Supp. CR1: 191-196). In that motion, he objected to the delay of the controlled-buy-case trial based on the willful misrepresentation of first appointed counsel as apparently directed by the trial judge and the judge's November 23rd, 2015 admission that counsel's "erroneous action" of facilitating the delay "was in fact her idea." *Id.* (29 Supp. CR1: 192).⁽¹²⁾ Though perhaps not artful, as the basis for recusal, it is clear that Mr. Thompson had factually alleged that the judge was biased because she willfully effectuated the prejudicial delay of the controlled-buy-case trial by violating his right to effective assistance of counsel for the purpose of "assist[ing] the State in its cause." *Id.*

10. App. P (RR2: 19-20).

11. In addition, the judge's failure to fully review the September 1st, 2015 pre-trial petition by conducting the impromptu hearing, itself, may constitute an implied denial of Mr. Thompson's objections regarding the delay which were made in the petition. The pre-trial petition is further discussed *infra* at p. 16. 12. The lower court willfully misstates, or otherwise purposefully distorts, the facts presented by Mr. Thompson by excluding this relevant portion of the recusal basis in order that it could arrive at the erroneous conclusion that "[t]he motion was not based on the denial of a speedy trial." App. A at 6. Yet, one of the court's own findings in the case used to decide against Mr. Thompson, supports the proposition that an objection to a delay is substantively a speedy trial complaint. See *Guevara*, 985 S.W. 2d at 592.

In this manner, it is clear that the judge knew what Mr. Thompson wanted and why he was entitled to it. Neal, 25 S.W. 3d at 279. Mr. Thompson's complaint supports a reasonable inference that he wanted to disqualify the judge for the violation of his due process and hopefully obtain an impartial judge who would timely conclude the controlled buy case before he was irreparably harmed by the delay. See Tex. R. App. P. 33.1 (a)(1)(A); Neal, 25 S.W. 3d at 279. ⁽¹³⁾ Thus, having had reasonably specific notice of Mr. Thompson's complaint objecting to the prejudicial delay in regards to the judge's role in triggering it, it is clear that an implicit ruling was made when the judge denied the motion to disqualify and filed an order declining to recuse. ⁽¹⁴⁾ See Tex. R. App. P. 33.1 (a)(2)(A); Pena, 353 S.W. 3d at 807.

Another presumption against waiver not fully considered by the lower court is Mr. Thompson's argument regarding the trial judge's lack of impartiality. App. R. at 9-10. Specifically, Mr. Thompson presented six factual allegations in order to establish the judge's lack of impartiality, that is, that the judge willfully triggered the delay of the controlled buy case for the purpose of advancing the State's interest in the murder-case prosecution. Id. As such, the court's failure to actually reach and decide those six issues of fact tendered by Mr. Thompson has necessarily resulted in the lack of a full and fair hearing while the case was on direct appeal. See Townsend v. Sain, 372 U.S. 293, 313 (1963).

Consequently, the lower court erred in finding that Mr. Thompson's point "lacks merit" and that he "has not established how any judicial bias could have impacted his speedy-trial complaint." App. A at 5-6, because where there is judicial bias or lack of impartiality, a violation of the neutrality requirement has surely occurred. See Marshall v. Jerico, Inc., 446 U.S. 238, 242 (1980). Such means,

13. As a common-law basis for disqualification, it was clearly proper for Mr. Thompson to seek the trial judge's mandatory recusal where it can be shown that her bias or lack of impartiality was of such character that it denied him due process. See McClenan v. State, 661 S.W. 2d 108, 109 (Tex. Crim. App. 1983).

14. App. Q (29 Supp. CR1; 196-197)

of course, that Mr. Thompson certainly may have been "deprived of his interests [in a speedy trial] in the absence of a proceeding in which he may have present[ed] his case with assurance that the arbiter [was] not predisposed against him." Id. Thus, the lower and highest state courts' duty to fully review the six complaints alleging judicial bias or lack of impartiality was invoked; however, in this particular case, their failure to do so means that they actually failed to fully indulge the judicial-bias presumption against the waiver of Mr. Thompson's fundamental constitutional right to a speedy trial, as well. See Barker, 407 U.S. at 525-26; Johnson, 304 U.S. at 464. ⁽¹⁵⁾

As a result, in light of the other unconsidered presumptions against waiver raised in Mr. Thompson's motion for en banc reconsideration and his petition for discretionary review, certiorari should be granted because the state court has clearly cast a burden on Mr. Thompson which is wholly at war with the standard of proof of waiver laid down by this Court in Johnson v. Zerbst and Barker v. Wingo.

15. The state courts may have further erred where, in fact, they reasonably could have taken notice of the alleged bias or lack of impartiality as well as the impact such error had on Mr. Thompson's right to a speedy trial and other interest (i.e., his right to effective assistance of counsel) under Texas Rule of Evidence 103(d). See, generally, Tex. R. Evid. 103(d); Blue v. State, 41 S.W. 3d 129, 131 (Tex. Crim. App. 2000) (citing Marin, 851 S.W. 2d at 278).

REASON TWO: EVEN IF MR. THOMPSON'S SPEEDY TRIAL CLAIM HAD BEEN PROCEDURALLY DEFAULTED, THE TEXAS COURT OF CRIMINAL APPEALS STILL ERRED IN REFUSING TO GRANT DISCRETIONARY REVIEW IN ORDER THAT IT COULD HAVE FULLY CONSIDERED WHETHER REVIEW OF THE CLAIM WAS WARRANTED UNDER THE BARKER DEFAULT HOLDING.

In *Barker v. Wingo*, the Court set out three situations in which courts may excuse a procedurally defaulted speedy trial claim: "a situation in which the defendant has been represented by incompetent counsel, has been severely prejudiced, or even cases in which the continuances were granted *ex parte*." *Barker*, 407 U.S. at 536. Indeed, the Court further admonishes that "[b]arring [such] extraordinary circumstances, a court should be reluctant to rule that a defendant has been denied his constitutional right to a speedy trial where the record indicates that the defendant did not want a speedy trial." *Id.* However, *Barker* does not appear to direct state and federal courts to any specific case(s) that may be referenced for further guidance, nor has Mr. Thompson's limited access to the courts produced a better result; thus, strongly suggesting that this question of federal jurisprudence has not been, but should be, fully settled by the Court. As such, it is reasonably conceivable that the Texas Court of Criminal Appeals may have found itself ill-positioned to decide this important question of federal law without further guidance from the Court, and therefore, had to refuse discretion review with respect to that federal question.

Throughout his pleadings, Mr. Thompson certainly has set forth sufficient factual allegations to excuse his procedurally defaulted speedy trial claim, that is, if in fact the error is unpreserved. For but a few examples:

1. Despite having been put on notice in regards to his conflict of interest on May 12, 2017, first counsel still willfully failed to satisfy his ethical obligation of promptly advising the

court of when the conflict had arisen. See Cuyler v. Sullivan, 446 U.S. 335, 346 (1980).⁽¹⁶⁾

Furthermore, the judge willfully failed to conduct a prompt inquiry on record into the factual basis of Mr. Thompson's rather substantial complaint about first counsel's conflict of interest. See Holloway v. Arkansas, 435 U.S. 475, 484 (1978). In this manner, the judge and first counsel both violated Mr. Thompson's right to effective assistance of counsel by forcing him to enter an incompetent waiver of the right for 111 days from May 12, 2015 to August 31, 2015. Cf. Glasser v. United States, 315 U.S. 60, 71 (1942). Thereafter, the judge merely allowed counsel to remove himself by motion to withdraw as attorney of record. App. S (29 Supp. CR1: 152).

During the course of the 111 day forced waiver, first counsel sought only to advance the State's interest in obtaining a murder conviction to the detriment of Mr. Thompson by facilitating the prejudicial delay of the controlled buy case in that: (i) he failed to object to the June 2nd, 2015 trial suspension but only agreed to it, (ii) he failed to challenge the insufficient notice of the May 14th, 2015 murder complaint by requested examining trial or motion to quash,⁽¹⁷⁾ and (iii) he failed to object to an initial-prejudicial 90 days of delay from June 2, 2015 to August 31, 2015 which provided the State with 87 days to fraudulently alter the insufficient murder complaint for indictment purposes on August 14, 2015. See App. R at 4, 14-15, n.12. As a result, it is clear that first counsel was incompetent because he clearly had an actual

16. In addition to putting the judge, prosecution, and first counsel on notice of his speedy trial interest in the May 8th, 2015 letter to the judge denied as a motion/request for personal recognizance bond on May 12, 2015, see supra at pp. 7-8, Mr. Thompson also put them all on notice regarding first counsel's conflict of interest by making a substantial complaint which advised in relevant part, inter alia: "I believe [first counsel]... is conspiratorially working with [the] prosecution in hopes of securing a plea of guilt. I also believe that he is and has been from the onset, deliberately trying to obscure [my]... view of the facts [etc.]" App. N (29 Supp. CR1: 28).

17. See, e.g., Adams v. State, 707 S.W. 2d 900, 901 (Tex. Crim. App. 1986).

conflict of interest. See *Odelugo v. State*, 443 S.W. 3d 131, 136 (Tex. Crim. App. 2015). Moreover, it is clear his actions of advancing the state's interest to the detriment of his client were exceedingly unreasonable because such actions were not "based, quite properly on [the] informed strategic choices made by the defendant [Mr. Thompson or] on information supplied by [him]." *Strickland v. Washington*, 466 U.S. 668, 691 (1984). ⁽¹⁸⁾

2. Likewise, substitute counsel knew, or reasonably should have known, that Mr. Thompson was seeking a prompt conclusion of the controlled-buy-case prosecution due presumably to his own "independent examination of the facts, circumstances, pleadings, and laws involved." *Id.* at 680 (reviewing Fifth Circuit decision regarding counsel's duty to conduct "reasonably substantial investigation") (citations omitted). Accordingly, those pleadings reviewed by substitute counsel should have included, *inter alia*: (i) the May 12th, 2015 denial of the motion/request for personal recognizance bond giving conflict notice as well as Mr. Thompson's interest in a speedy resolution of the controlled buy case, see *supra* at p. 8 and n.6; (ii) the June 24th, 2015 implicit denial of Mr. Thompson's letter to the judge humbly "begging to go trial on this case..." see *supra* at pp. 8-9; (iii) the filing of Mr. Thompson's *Pro se* motions to dismiss for denial of the right to a speedy trial objecting to the

18. Other proof that first counsel was not acting on the strategic choice of Mr. Thompson to conclude the controlled buy case at the June 2nd, 2015 trial date is Mr. Thompson's declaration for intent and readiness for jury trial. App. T (i). Mr. Thompson was trying to serve the declaration on first counsel through the State Bar of Texas in order to ensure delivery of the same which was previously mailed to counsel on or about May 11, 2015. *Id.* (ii). Because the declaration was filed with the Bar on May 19, 2015 - two weeks before the expected trial and the very same day Mr. Thompson was charged by the State for murder, and, because the Bar is a reasonably reliable and credible source, Mr. Thompson made a request in his *Pro se* appeal for the lower court to take notice of the declaration under Texas Rule of Evidence 201 (b), (d). As such, and in the interest of justice, he now respectfully asks this Court to take notice of the contents of Appendix T under its own rules and discretion.

June 2nd, 2015 trial suspension along with the State's reason for delaying the controlled-buy-case prosecution as the mere addition of the murder charge made just 13 days (actually 14 days) prior to the June 2nd trial date. App. U (i-ii) (29 Supp. CR1: 120-123; 30 Supp. CR1: 118-121); and (iv) Mr. Thompson's September 1st, 2015 pre-trial petition for writ of habeas corpus in which he complains loudly in regards to the prejudicial suspension and delay of the controlled-buy-case trial along with the egregious role that first counsel played in the violation. App. V at 2-9, 11-12, 14-15, 17 and Preamble Affidavit, 2, Affidavit, 2, Affidavit II. 2-3. ⁽¹⁹⁾

Counsel's review of these pleadings, amongst other things, should have triggered his constitutional function to assist Mr. Thompson in the exercise of his Sixth Amendment right to a speedy trial because clearly such action would have been reasonable as based, quite properly, on the informed strategic choice of Mr. Thompson to seek an early conclusion of the controlled buy case and on his considerable objections to the delay. See *Strickland*, 466 U.S. at 691. As a result, substitute counsel's failure to assist Mr. Thompson in this regard, quite clearly, rendered his representation incompetent.

Thus, the extraordinary circumstances of this case shows cause to excuse the allegedly defaulted speedy trial claim because the factual allegations tendered by Mr. Thompson implicates

19. Appendix V though bearing a November 17th, 2015 jurat on pertinent pages, App. V at 21 and Preamble Affidavit, 3, Affidavit, 2, Affidavit II. 3, is a substantively identical copy of the actual September 1st, 2015 pre-trial petition for writ of habeas corpus in every conceivable manner. Because Mr. Thompson unsuccessfully but diligently sought to supplement the record with such relevant omitted trial court document through the district clerk and lower court, he made a request in his Pro se appeal for the lower court to take notice of said document, as well as the officially filed document, under Texas Rule of Evidence 201 (b), (d). The document was actually presented to the trial court on November 23, 2015 and, therefore, is relevant to matters of preservation. As such, and in the interest of justice, Mr. Thompson now respectfully asks this Court to take notice of the contents of Appendix V under its own rules and discretion.

the first Barker default situation in which he was represented by not one but two incompetent attorneys during relevant times of the proceeding, *Barker*, 407 U.S. at 536. But,

3. when then the trial court judge admitted on record that it was she (not first appointed counsel) who made the egregious "call" to suspend and delay the controlled-buy-case trial, see *supra* at pp. 9-10, it was made known, irregardless of her good or bad faith, that the judge "severely prejudiced" Mr. Thompson's ability to promptly dispose of the controlled buy case and otherwise defend himself by "interfer[ing] in certain ways with the ability of [first] counsel to make independent decisions on how to conduct the defense." *Strickland*, 466 U.S. at 686. Indeed, the judge's and counsel's action of forcing Mr. Thompson to enter an incompetent waiver of his right to effective assistance of counsel for 111 days - until he was substantially harmed by the unreasonableness of first counsel's actions - tends only to compound the error because, in fact, it was such conduct that facilitated the delay. See *supra* at pp. 13-14 and n.16.

Consequently, whether it was the result of deliberate intent or negligence, it is clearly improper to allow the State, here in person of the trial judge, to hamper Mr. Thompson's defense by violating his right to counsel in order to trigger a prejudicial delay of the controlled buy case as an intentional device to advance other State interests in the concurrent murder-case prosecution. Cf. *United States v. Marian*, 404 U.S. 307, 324 (1971). ⁽²⁰⁾

Thus, the extraordinary circumstances of this case shows cause to excuse the allegedly defaulted speedy trial claim where, this time, the factual allegations tendered by Mr. Thompson implicates the second Barker default situation in which he was "severely prejudiced" in certain ways by the trial judge's official interference, *Barker*, 407 U.S. at 536.

As a result, certiorari should be granted in order to fully settle this important question of federal law.

20. Furthermore, because the right to effective assistance of counsel is "waivable only," Mr. Thompson reasonably should have been able to complain on appeal (even if for the first time) about the trial judge's violation of the right and the impact of such fundamental error on his ability to proceed to an early conclusion of this case. See *Mendez v. State*, 138 S.W.

3d 334, 341 (Tex. Crim. App. 2004) (citing *Maria*, 851 S.W.2d at 280).

CONCLUSION

For these reasons, a writ of certiorari should be granted.

Respectfully submitted,

By: Overille Denton Thompson, Jr.

Overille Denton Thompson, Jr.

Pro se Petitioner

TDCJ No. 2068451

McConnell Unit

3001 S. Emily Drive

Beeville, Texas 78102

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 26, 2019.

Overille Denton Thompson, Jr.

(signature)