19-5638 ORIGINAL

Case No._____

IN THE
SUPREME COURT OF THE UNITED STATES

JEFFREY EUGENE LEE,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Florida
(Case No. SC 18-1530; Florida District Court of Appeal No. 2D18-1335)

PETITION FOR A WRIT OF CERTIORARI

Prepared by:

Jeffrey Eugene Lee, pro se
Reg. o. 42287-019
Federal Correctional Complex
U.S. Penitentiary - Coleman 2
P.O. Box 1034
Coleman, FL 33521-1034

QUESTIONS PRESENTED

I.

IN THE WAKE OF THE QUESTION LEFT OPEN BY THE COURT IN BETTERMAN v. MONTANA, 136 S.CT. 1609 (2016), DOES THE DUE PROCESS CLAUSE CREATE AN ENTITLEMENT TO A REASONABLY PROMPT SENTENCING HEARING AND, IF SO, WHAT IS THE ANALYTICAL STANDARD TO DETERMINE WHEN DELAY IN SENTENCING VIOLATES DUE PROCESS?

II.

ONCE A CRIMINAL PROSECUTION BEGINS AND AN INDIGENT DEFENDANT'S RIGHT TO COUNSEL HAS ATTACHED, MAY THE STATE'S SUBSEQUENT SUSPENSION OF THE SENTENCING PROCEEDING INCLUDE THE SUSPENSION OF THE RIGHT TO THE ASSISTANCE OF COUNSEL — SO THAT THE STATE ITSELF DICTATES THE AVAILABILITY OF COUNSEL'S ASSISTANCE BASED UPON ITS DECISION TO RESUME THE PROCEEDINGS, IF EVER?

LIST OF PARTIES

All parties appear in the caption of the case on the cover-page.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court **Rule 29.6,** Petitioner hereby provides notice that there is no corporation associated with this case, so that there is no parent or publicly held company owning 10% or more of the corporations stock.

LIST OF PROCEEDINGS

Pursuant to Supreme Court **Rule 14,** Petitioner hereby advises that the following proceedings are related to the instant petition, beginning with the most recent:

1. Petition for Discretionary Review, Supreme Court of Florida. LEE v. STATE, No. SC 18-1530. **CF. Appendix C** Judgment denying review on January 22, 2019.

2. Appeal, Second District Court of Appeal for the State of Florida. LEE v. STATE, No. SD 18-1335. **CF.(Appendix E).** Judgment dismissing appeal on July 19, 2018.

3. Motion to Dismiss Outstanding Charges, Pinellas County Circuit Court, Clearwater, Florida. STATE v. LEE, Case Nos. CRC88-00977CFANO ; CRC88-00978CFANO ; CRC88-06114CFANO. **CF.(Appendix I).** Judgment denying Motion to Dismiss Outstanding Charges on January 30, 2018.

Each of the above proceedings involved separate Motions for Appointment of Counsel, which were denied. Proceedings No. 2 and 3 above also involved motions for reconsideration, as set forth in the appendices.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page:

Cases: U.S. Supreme Court

Federal: Page:

State:

Statutes:

U.S. Constitution:

DECISIONS BELOW

The Judgment of the Supreme Court of Florida denying Mr. Lee's Petition for Discretionary Review and Motion for Appointment of Counsel appears at **Appendix A**, and is unpublished.

The Judgment of Second District Court of Appeal for the State of Florida dismissing Mr. Lee's Appeal and denying his Motion for Appointment of Counsel appears at **Appendix B**, and is unpublished

STATEMENT OF JURISDICTION[1/]

The Judgment of the Supreme Court of Florida denying Mr. Lee's Petition for Discretionary Review and Motion for Appointment of Counsel was filed on **January 22, 2019.** SEE: **Appendix A** (Judgment Order).

The instant Petition for a Writ of Certiorari is timely filed because, prior to the 90-day deadline following the Judgment of the Supreme Court of Florida, Mr. Lee filed a Motion for Extension of Time to File Petition for a Writ of Certiorari with the United States Supreme Court that was granted by Justice Thomas ... who extended the time to and including **June 21, 2019.** SEE: **Appendix H** (Order). Mr. Lee affirms that he timely mailed the instant Petition for a Writ of Certiorari on **June 19, 2019.** SEE: PROOF OF SERVICE/AFFIDAVIT OF MAILING submitted herewith.

This Honorable Court has jurisdiction to entertain this cause pursuant to 28 U.S.C. §§1254 and 1257. Petitioner invokes this Court's discretionary review based on any other basis of jurisdiction deemed proper by the Court.

1/ Lee, proceeding pro se, respectfully requests the Court to liberally construe his pleadings so as best to achieve substantial justice. HAINES v. KERNER, 404 U.S. 519, 520-521 (1972).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fifth and Sixth Amendments to the United States Constitution, which are applicable to the States under the Fourteenth Amendment, and state:

AMENDMENT V

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

AMENDMENT VI

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

AMENDMENT XIV

"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.**" (Section 1) (emphasis added).

STATEMENT OF THE CASE

A.) Nature of the Case.

This case involves important constitutional questions in relation to a criminal defendant's fundamental rights to due process and the assistance of counsel, as guaranteed by the Fifth and Sixth Amendments to the United States Constitution.

First, Petitioner asks the Court to decide whether the Due Process Clause creates an entitlement to a reasonably prompt sentencing hearing and, if so, what is the analytical standard to determine when delay violates due process? In BETTERMAN v. MONTANA, 136 S.Ct. 1609 (2016), this Court held that a criminal defendant's right to a speedy trial did not extend to the sentencing portion of the proceedings. However, the Court left open the question of whether the Due Process Clause establishes an entitlement to a reasonably prompt sentencing. Indeed, a number of the Justices agreed that, in an appropriate case, the Court should decide this question and articulate a standard for determining when delay in sentencing violates due process. Id., 136 S.Ct. at 1618. Petitioner respectfully urges that the State of Florida's failure to sentence him for his **1988** conviction — nearly **30-years** — presents as an appropriate case for the Court to decide these issues. The length of delay in Petitioner's case is representative of and encompasses the type of due process interests that the majority of criminal defendants experience when subjected to exorbitant delay in sentencing.

Second, Petitioner asks the Court to decide whether, once an indigent criminal defendant's right to counsel attaches, may the State of Florida's subsequent suspension of sentencing be construed as including the suspension

of the right to the assistance of counsel as well — so that the State of Florida itself dictates the availability of the assistance of counsel based on its own decision to pursue sentencing, if ever? Petitioner submits that the State's actions constitute an impediment and denial of a criminal defendant's right to the assistance of counsel as guaranteed by the Sixth Amendment and mandated by this Court's precedents. Because it is through counsel that all of a criminal defendant's rights are exercised and protected, the right to the **assistance** of counsel to advocate for the due process interests inherent in sentencing is fundamental. If the assistance of counsel is a fundamental component **at** sentencing because of the unique due process interests associated with this aspect of the criminal proceedings, then it necessarily follows that the **assistance** of counsel to advocate the defendant's interests to be afforded a sentencing that is reasonably timely and meaningful is equally fundamental.

Petitioner's case demonstrates in the extreme that the State of Florida is conditioning the availability of the assistance of counsel upon an indeterminate sentencing proceeding so that the defendant is left alone amidst the criminal proceedings without any advocate to exercise or protect his due process interests associated with sentencing actually occurring. The Petitioner's repeated requests for the assistance of counsel have been summarily denied by the State Court, State Appellate Court, and the Supreme Court of Florida. Because the right to the **assistance** of counsel between conviction and sentence is equally fundamental, it is critically important for this Court to address this circumstance and affirm that this fundamental right to the assistance of counsel — which may not be denied directly — is not done so indirectly.

This case is compelling because the State of Florida's courts are applying the law in a manner that directly conflicts with the Fifth and Sixth Amendments to the United States Constitution and this Court's own decisions, representing an unacceptable departure from the usual course and principles of judicial proceedings. As such, this case raises significant questions of federal law and issues of importance beyond the particular facts and parties involved, that touch closely the fair administration of justice. Criminal defendants and other litigants have a reasonable expectation that the due process protections afforded them by the Constitution and this Court's precedents will be abided by and enforced. Moreover, both the public and criminal defendants alike have a substantial interest in the congruent and consistent application of this Court's precedents, establishing federal law, amongst our domestic courts. Based upon the points and authorities set forth herein, Petitioner respectfully beseeches this Honorable Court to grant certiorari review and vacate the prior judgment.

B.) **Salient Summary of Background Facts.**[2/]

The circumstances occasioning the instant petition are predicated on an outstanding criminal proceeding that has remained pending for 31 years now. In 1988, in Pinellas County, Florida, Petitioner Jeffrey E. Lee, ("Lee"), was arrested and charged with drug trafficking and other substantive offenses. SEE: Pinellas Co., Florida Criminal Case Nos. CRC88-00977CFANO ; CRC88-00978CFANO ; CRC88-06114CFANO. SEE ALSO: **Appendix C** (AMENDED Brief on Jurisdiction, at 1); **Appendix E** (Informal Appeal Brief, at 5-6).

2/ For the sake of brevity, Petitioner Lee would incorporate here as if fully set forth, the background facts and procedural history in his Motion to Dismiss Outstanding Charges filed in the Pinellas Co. Circuit Court in October 2017 (**Appendix I**); Informal Appeal Brief (**Appendix E**); Brief on Jurisdiction (**Appendix C**).

On October 17, 1988, in accord with a proffered plea agreement of the State of Florida, Petitioner Lee entered a plea of guilty. As reflected in the plea colloquy hearing transcript from that date, it was understood that Lee would receive a 2-year sentence of imprisonment, based on a conviction for the lesser offense of possession of cocaine. However, the Court had explained to Lee that if he had committed any new offense prior to sentencing the State would be permitted to seek a higher penalty at sentencing. Lee remained out on bail. CF. **Appendix C** , at 1-2; **Appendix E**, at 5-8; **Appendix I**, at 1-5.

Prior to the State sentencing, however, Lee was charged by federal indictment in a drug conspiracy. SEE: UNITED STATES v. JEFFREY EUGENE LEE, Case No. 8:89-CR-00004-17-TGW (M.D. Fla.). Lee never appeared at his State sentencing. Upon his arrest by federal authorities, the State had elected to allow the federal charges to be resolved first and had agreed that it would sentence him thereafter. Following Lee's federal trial, conviction and sentencing he went off to federal prison with a sentence of LIFE. Lee has remained in federal prison ever since. **Notably,** Lee's LIFE sentence was exclusively predicated upon the State conviction that he was never sentenced for. After the federal conviction the State never pursued sentencing Lee as was agreed to under the terms of the plea agreement and October 1988 plea colloquy hearing. The State was still required to sentence Lee under the agreement since the only consequence of his new federal offense was that the State could seek a greater penalty, not that it was relieved from any sentencing. The Pinellas County, Florida Circuit Court Docket in the above-referenced State case(s) documents a 30-year history of attempts by Lee to obtain sentencing. **The State has maintained that Lee**

will be sentenced when he completes his federal LIFE sentece. Lee has argued that this was unfair and violates due process because the State knows his LIFE sentence will never permit for release. Lee has also requested the assistance of counsel, which has always been denied by the State Court. On a few occassions, after proceeding pro se for years and years, at significant hardship to Lee's family, he managed to temporarily hire an attorney to file a single motion. But soon returned to being pro se when there was no more money to continue paying for the representation.

Beginning in October 2017, Petitioner Lee filed a Motion to Dismiss Outstanding Charges in the Pinellas Co. Circuit Court. **Appendix I.** In conjunction with this motion, Lee filed a separate Motion for Appointment of Counsel, explaining that he should be entitled to the assistance of counsel in the open, partially prosecuted criminal proceedings. SEE: **Appendix K.** **Notably,** the Motion for Appointment of Counsel was specifically stated to be a request for counsel in conjunction with the Motion to Dismiss **and** the outstanding charges. The State Court, in denying the Motion to Dismiss Outstanding Charges then denied the request for counsel as moot.

Aggrieved, Petitioner Lee then appealed to the Second District Court of Appeal for the State of Florida. SEE: **Appendix E** (Informal Appeal Brief). Lee's brief explained the State's failure to sentence him for 30-years ... and explained that the State Court had wrongly denied his Motion for Appointment of Counsel as moot because counsel was requested in conjunction with the outstanding charges as well. Id., at 29. Without any opinion, the State Appellate Court summarily dismissed Petitioner Lee's appeal as being predicated upon a "non-final, non-appealable order". **Notably,** Lee had also filed a Motion for Appointment of Counsel with the Appellate Court

explaining that he should be provided with the assistance of counsel on appeal **and** in relation to the outstanding charges as well. The State Appellate Court denied this motion and the appeal. SEE: **Appendix B, D.**

Finally, Petitioner Lee sought discretionary review in the Supreme Court of Florida. SEE: **Appendix C.** LEE v. STATE, No. SC 18-1530. Lee sought review of the lower trubunal's denial of the assistance of counsel in relation to the outstanding criminal proceedings in Pinellas Co., Florida **and** the denial of a motion for the assistance of counsel on appeal in the Second District Court of Appeal for the State of Florida, including the outstanding criminal proceeding in Pinellas Co. Lee had also explained the State's exorbitant delay in sentencing violated due process and was inexplicably intertwined with the denial of the assistance of counsel because the State was conditioning any availability of counsel upon the sentencing hearing it was delaying. **Notably,** Lee also filed a separate Motion for Appointment of Counsel in the Supreme Court of Florida. **Appendix G.** On January 22, 2019 the Supreme Court of Florida entered an Order denying discretionary review. **Appendix A.** The Motion for Appointment of Counsel had likewise been denied.

The instant Petition for a Writ of Certiorari now timely follows.[3/]

3/ The Court granted Lee's Motion for Extension of Time to file his petition, requiring him to do so by June 21, 2019, which he has complied with. SEE: Affidavit of Mailing; Proof of Service

Law and Arguments in Support of Granting Certiorari

QUESTION ONE

IN THE WAKE OF THE QUESTION LEFT OPEN BY THE COURT IN BETTERMAN v. MONTANA, 136 S.CT. 1609 (2016), DOES THE DUE PROCESS CLAUSE CREATE AN ENTITLEMENT TO A REASONABLY PROMPT SENTENCING HEARING AND, IF SO, WHAT IS THE ANALYTICAL STANDARD TO DETERMINE WHEN DELAY IN SENTENCING VIOLATES DUE PROCESS?

In BETTERMAN v. MONTANA, 136 S.Ct. 1609 (2016), the Court held that the Sixth Amendment speedy trial guarantee did not apply to the 14-month delay in sentencing. This Court stated that the defendant had not advanced any due process claim and expressed no opinion on how he might have fared under that more pliable standard. Indeed, while recognizing that "Due process serves as a backstop against exorbitant delay" in sentencing, this Court expressly left open the question of whether the Due Process Clause creates an entitlement to a reasonably prompt sentencing — and what the proper analytical standard is to determine whether sentencing delay violates due process. BETTERMAN, 136 S.Ct. at 1617-1618. **Notably,** several Justices stated in BETTERMAN that the Court should consider these open questions in an appropriate case. BETTERMAN, 136 S.Ct. at 1618.

Petitioner Lee respectfully submits that his case is appropriate for the Court to address the important due process questions left open in BETTERMAN because the exorbitant delay in sentencing by the State of Florida — **31 years** — encompasses the type of due process concerns that would be experienced by the majority of criminal defendants. Given the type of extreme delay involved in Petitioner's case, this Court's interests and purposes would be well served.

In 1988, in Pinellas County, Florida, Petitioner Lee pled guilty to possession of cocaine and adjunct consolidated offenses pursuant to a plea agreement. Under the agreement, as stipulated at the October 17, 1988 plea hearing, it was understood that Lee would be subject to a 2-year term in State prison. However, because Lee was being permitted to remain on bond until sentencing, it was further stipulated that if Lee committed a new offense prior to sentencing then the State could seek a greater penalty **at sentencing**. SEE: **Appendix C** (AMENDED Brief on Jurisdiction, at 1-2); **Appendix E** (Informal Appeal Brief, at 5-8); **Appendix I** (Motion to Dismiss Outstanding Charges, at 1-5).

Prior to the State sentencing, Lee was indicted federally in a drug conspiracy. Lee became a fugitive. When he was later arrested by federal authorities, the State of Florida agreed to allow the federal criminal proceedings to occur before sentencing Lee. **However**, after Lee was convicted of the federal charges and sentenced to LIFE in prison, **the State then maintained that it would sentence Lee when he completed his federal sentence.** So far, the State has not sentenced Lee for 31-years, completely relieving itself of any obligation to do so.

Since 1992, Lee has repeatedly requested the State to sentence him. Lee has made repeated filings in the State court(s) requesting to be sentenced or withdraw his plea or dismiss the outstanding charges. Lee has explained that the State remained obligated to sentence him. Unless the State sentenced him Lee explained that he could not even appeal to the State appellate court or pursue postconviction remedies. Lee's judgment had to be final through sentencing. The circumstance is not harmless because Lee's federal LIFE sentence is the **direct** result of the Florida State prior drug conviction.

No matter what filing or argument Lee has made over the past several decades, the State continues to maintain that he will be sentenced when he completes his federal LIFE sentence —which it knows full well that LIFE is LIFE under federal law without possibility of any parole, that Lee cannot appeal in Florida or file postconviction remedies unless he is sentenced, and that Lee's federal LIFE sentence is predicated exclusively on the State drug conviction prior for which he has never been sentenced. **Notably**, as detailed under "Question Two," infra, the State additionally conditions the availability of the assistance of counsel upon Lee's completing his federal LIFE sentence. Lee's attempts to present this situation to the Florida State courts has not resulted in judicial review or remedy. Petitioner Lee remains unsentenced despite the apparent due process interests. In light of the due process questions left open in BETTERMAN, and occasioned by the circumstances of Petitioner's case, it is respectfully submitted that the Court should affirm that: **(A)** sentencing delay implicates the protections of the Due Process Clause; and **(B)** is therefore susceptible to an appropriate analytical standard to determine inordinate delay that violates due process. Each of these issues are addressed here, in turn:

A.) Sentencing delay implicates the protections of the Due Process Clause.

Petitioner respectfully submits that the Court should affirm that the protections of the Due Process Clause establish an entitlement to a reasonably prompt sentencing hearing. The Fifth Amendment to the United States Constitution states, in pertinent part, "No person shall be [...] deprived of life, liberty, or property without due process of law," and applies to the States through the Fourteenth Amendment. SEE: WILLIAMSON CTY.

REG'L PLANNING COMM'N v. HAMILTON BANK OF JOHNSON CITY, 473 U.S. 172, 176 n.1 (1985). SEE ALSO: SAN DIEGO GAS & ELECTRIC CO. v. SAN DIEGO, 450 U.S. 621, 623 n. 1 (1981). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" SEE: MATHEWS v. ELDRIDGE, 424 U.S. 319, 333 (1976)(citing and quoting ARMSTRONG v. MANZO, 380 U.S. 545, 552 (1965); GRANNIS v. ORDEAN, 234 U.S. 385, 394 (1914)). Inherent within the concept of due process is fairness. SEE: ZINERMON v. BURCH, 494 U.S. 113, 125 (1990)("The Due Process Clause also encompasses[...]a guarantee of fair procedure.").

Petitioner Lee submits that any potential for the loss of liberty has Fifth Amendment significance. Because the liberty interests associated with sentencing are subject to the protections of the Due Process Clause, a defendant is entitled to a fundamental right to be heard "at a **meaningful time** and in a meaningful manner." ARMSTRONG, 380 U.S. at 552(emphasis added). In the context of sentencing, the due process fundamental of "**at a meaningful time**" is most fairly interpreted as requiring a reasonably prompt hearing. The expectation that the sentencing hearing will produce a fair and meaningful result diminishes with the passing of time. The right to be heard and present facts or evidence in mitigation becomes less significant. Indeed, the opportunity to present certain facts or evidence in mitigation may be lost all together. Moreover, any potential prejudice to the defendant as a result of inordinate delay will only become greater. For example, in Petitioner's case, the State's inordinate delay of sentencing has prevented finality that is required for him to have the ability to appeal or pursue any post-conviction remedy. Here, Petitioner is unable to challenge the prior drug conviction by the State that is the direct predicate mandating his federal

LIFE sentence. The State's delay in sentencing has also had a detrimental effect upon Petitioner's incarceration because the increase to his custody level has deprived him of opportunities to participate in rehabilitative programming — in addition to being housed in higher security institutions with less privileges. In the extreme, Petitioner's right to the assistance of counsel has been held by the State to be available **only** if or when the State pursues sentencing. Petitioner's case demonstrates the type of prejudice that criminal defendants are vulnerable to without an authoritative statement of this Court that the Due Process Clause creates an entitlement to a reasonably prompt sentencing hearing. The Court's holding to this effect would be consistent with its presupposition in BETTERMAN that, "[D]ue process serves as a backdrop against exorbitant delay[,]" and that the defendant "retains an interest in a sentencing proceeding that is fundamentaly fair." BETTERMAN, 136 S.Ct. at 1617-1618. SEE ALSO: BETTERMAN, 136 at 1617 n. 10 (citing to federal and state rules requiring the imposition of sentence without unnecessary delay, including Florida — Fla.R.Crim.P. 3.720 (2016)). **Notably,** a former justice of this Court, Justice Harlan, had often urged that procedural delay in criminal proceedings "should be judged by principles of procedural fairness required by the Due Process Clause[.]" SEE: DICKEY v. FLORIDA, 398 U.S. 30, 39 (1970)(Harlan, J., concurring, and referring to his concurring opinion in KLOPFER v. NORTH CAROLINA, 386 U.S. 213, 226 (1967), and his separate opinion in SMITH v. HOOEY, 393 U.S. 374, 383 (1969)). Because unnecessary delay in sentencing implicates the basic fundamental principles of the Due Process Clause, it is respectfully submitted that the Court should find that it entitles a defendant to a reasonably prompt sentencing hearing.

B.) An appropriate analytical standard to determine whether sentencing delay violates due process is set forth in BARKER v. WINGO, 407 U.S. 514 (1972).

Assuming that the Court determines that the Due Process Clause creates an entitlement to a reasonably prompt sentencing hearing, Petitioner would respectfully submit that the Court's precedent in BARKER v. WINGO, 407 U.S. 514 (1972) establishes a sufficient analytical standard to determine when delay in sentencing violates due process. Although BARKER had occasion to address inordinate delay of a defendant's Sixth Amendment right to a speedy trial, the four-factor test that it articulated has been applied by courts in a variety of contexts to determine whether instances of delay violate due process. Indeed, in BETTERMAN, 136 S.Ct. at 1618 & n. 12, the Court recognized that a majority of the circuits have already applied the BARKER standard to sentencing delay, citing UNITED STATES v. SANDERS, 452 F.3d 572, 577 (6th Cir. 2006)(collecting cases). In BETTERMAN, this Court recognized that a defendant "retains an interest in a sentencing proceeding that is fundamentally fair[,]" and implied that the considerations of BARKER were relevant to such a determination. BETTERMAN, 136 S.Ct. at 1618 (citing UNITED STATES v. $8,850 IN U.S. CURRENCY, 461 U.S. 555, 562-565 (1983)(relying on the considerations articulated in BARKER v. WINGO, 407 U.S. 514, 530 (1970)). Petitioner submits that, because courts are already well familiar with the BARKER test and it has proven to be an effective standard in a variety of contexts, including sentencing delay, this Court's purposes would be well served by adopting this standard to determine whether sentencing delay in a particular case violates due process.

In BARKER, 407 U.S. at 530, this Court articulated a four-factor test of relevant considerations for determining whether delay in the criminal

proceedings violates due process. The factors to be considered are: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of the [due process] right; and (4) the prejudice to the defendant. "The BARKER balancing inquiry provides an appropriate framework for determining whether the delay here violated the due process right to be heard at a meaningful time[,]" and the factors to be considered are guides in balancing the interests of the defendant and the State to assess whether the basic due process requirement of fairness has been satisfied in a particular case. SEE: 8,850 IN U.S. CURRENCY, 461 U.S. at 564-565. As explained below, the four-factor test in BARKER is an appropriate analytical standard to determine whether sentencing delay violates due process in Petitioner's case:

Length of the delay

Petitioner submits that the interval between his 1988 guilty plea and sentencing is extreme. The State's delay of sentencing is presently in its **31st year.** Petitioner submits that such extraordinary delay is sufficient to trigger a due process inquiry, exceeding the thresholds of reasonableness and fairness. **CF.** DOGGETT v. UNITED STATES, 505 U.S. 647, 652 n. 1 (1992) (delays exceeding 1-year are generally found to be presumptively prejudicial). **CF. ALSO:** BARKER, 407 U.S. at 533 (finding delay between arrest and trial of over 5-years to be "extraordinary").

Reason for the delay

With respect to the reason for the inordinate delay in sentencing, Petitioner submits that the State of Florida is responsible. Despite its obligation to sentence Petitioner Lee under the specific terms of the plea

agreement and October 17, 1988 plea colloquy, and in combination with the Petitioner's 25-year history of making routine filings to the Court expressing his due process interests, the State has maintained that it will sentence Petitioner **after** he completes his federal LIFE sentence. SEE: **Appendix C** (AMENDED Brief on Jurisdiction, at 1-2); **Appendix E** (Informal Appeal Brief, at 1-5); **Appendix F** (Mot. for Reconsideration of Appeal Dismissal, at 1-3, 5); **Appendix J** (Mot. for Reconsideration of Order Denying Mot. to Dismiss Out-Standing Charges, at 1, 13-15). No matter what kind of due process interest Petitioner Lee has asserted to obtain disposition of the outstanding criminal proceedings, the State maintains, without citation to authority, that he will be sentenced when he completes his federal LIFE sentence.

For several reasons, the State's view that Petitioner's federal incarceration somehow obviates its obligation to sentence Petitioner, is in direct conflict with this Court's precedent and the fundamental rights of due process. This Court has long recognized that a defendant's incarceration in another jurisdiction does not at all relieve the State from its obligation to timely and meaningfully resolve outstanding criminal matters when a defendant asserts his substantive interest. SEE: SMITH v. HOOEY, 393 U.S. 374(1969); DICKEY v. FLORIDA, 398 U.S. 30, 33 (1970). SEE ALSO: BETTERMAN, 136 S.Ct. at 1615 n. 5 (citing HOOEY).

"Whether delay in completing a prosecution ... amounts to an unconstitutional deprivation of rights depends upon the circumstances[,]" and "[t]he delay must not be purposeful or oppressive." POLLARD v. UNITED STATES, 352 U.S. 354, 361 (1957). In Petitioner's case, it is clear that the State has made no effort whatsoever to pursue sentencing. None. Here, the State's action has been egregiously persistent in depriving Petitioner

of his fundamental due process interests. Indeed there appears to be no regard for Petitioner's asserted substantive interests, only a myopic insistence that the State's constitutional obligation to safeguard and protect such interests will occur **after** Petitioner completes his federal LIFE sentence. As an initial matter, the State's position is totally disingenuous because it knows that Petitioner's LIFE sentence under federal law means just that, LIFE ... without possibility of parole. Petitioner's federal LIFE sentence will **never** be "completed." So what the State is actually saying is that it will **never** fulfill its obligations to sentence Petitioner because it has contrived an impossibility to relieve itself of the entire matter. As explained under "Question Two," infra, the State has also conditioned Petitioner's right to the assistance of counsel upon the occurrence of the State sentencing actually happening. This Court has well held in rejection of such circumstances that due process requires that procedures must "not [be] a sham or pretense." JOINT ANTI-FACIST REFUGEE COMM. v. MCGRATH, 341 U.S. 123, 164 (1951). Because the State and State Court knows full well that no sentencing, and hence no meaningful opportunity to exercise fundamental due process rights, will ever occur under the conditions it has set, it must be concluded that such action is deliberate and purposeful. Indeed, given the length of delay it may be safely concluded that the State is plainly intent upon absolving itself of any obligation. **Notably**, the State's prosecution had already been occurring first, prior to the federal charges, and the State permitted the federal prosecution to proceed anyway.

Petitioner submits that the State's unwillingness to sentence him has been oppressive, to say the least. Petitioner has explained to the

State and State Court that the failure to sentence him deprives him of any opportunity to ever appeal or pursue postconviction relief. Unless Petitioner's conviction results in sentencing, it is not a final judgment. Petitioner has explained that this is depriving him of his rights of due process because his federal LIFE sentence is directly predicated upon, and the result of, the outstanding and unliquidated prior drug conviction. Here, Petitioner is prevented from being able to challenge the State drug conviction which, in turn, serves to ensure that his federal LIFE sentence will remain unchanged. The State knows all of this, and yet it ignores the Petitioner's due process interests in this regard. That the State will ever sentence Petitioner is mere pretense and an arguable sham under the known circumstances. This falls well short of fair and meaningful due process. **CF.** DOGGETT v. UNITED STATES, 505 U.S. 647, 656 (1992)(citing BARKER, 407 U.S. at 531, and stressing that official bad-faith in causing deliberate delay that is oppressive would be weighed heavily against the government, and a bad-faith delay that is negligently lengthy would present an overwhelming case for dismissal)). "Condoning prolonged and unjustifiable delays in prosecution would both penalize many defendants for the State's fault and simply encourage the government to gamble with the interests of criminal [defendants.]" DOGGETT, 505 U.S. at 657. **CF. ALSO:** BARKER, 407 U.S. at 531 n. 32 (citing POLLARD, 352 U.S. at 361; UNITED STATES v. MARION, 404 U.S. 307, 399 (1971)). **Notably,** for the past 9-years, Petitioner has been housed in a federal prison that is within a 45-minute drive of the Pinellas County Courthouse. **CF.** HOOEY, 393 U.S. at 381 (recognizing that the Federal Bureau of Prisons would have made a prisoner available to the State if requested to do so). **CF.** DOGGETT, 505 U.S. at 38 (recognizing that "no valid reason for the delay existed; it was exclusively for the convenience of the State.").

Defendant's assertion of his right

Petitioner submits that the Pinellas County, Florida criminal docket report is replete with the filings he has made in an attempt to assert his due process rights in relation to the outstanding criminal process. SEE: STATE OF FLORIDA v. JEFFREY EUGENE LEE, Criminal Case Nos. CRC88-00977 CFANO ; CRC88-00978CFANO ; CRC88-06114CFANO. Although filed subsequent to the Supreme Court of Florida's judgment occasioning the instant petition, Petitioner would ask this Court to also take judicial notice of his Motion for Appointment of Counsel to Represent him in Filing a Motion to Withdraw the Guilty Plea **and** the Motion for Reconsideration that was filed after the Pinellas County Court's denial Order. The State Court record makes apparent that Petitioner has been diligent in asserting his rights repeatedly over the years in various pleadings. **CF. Appendix C** (AMENDED Brief on Jurisdiction to the Supreme Court of Florida, at 2)(explaining that the Petitioner has attempted to obtain due process for nearly 30-years in relation to the outstanding and partially prosecuted 1988 state charge, and the result of which has been a consistent denial over the years based on the State's position that Petitioner will receive due process when he completes his federal LIFE sentence).

Prejudice to the Defendant

As to the fourth and remaining BARKER factor, prejudice, this Court has recognized that if the first three BARKER factors weigh heavily against the State, the defendant need not show actual prejudice to succeed in showing a violation of due process. SEE: DOGGETT, 505 U.S. at 651-652. This Court has held that, "[T]he presumption that ... delay has prejudiced the accused intensifies over time." Petitioner respectfully urges that the

length of the delay and the reason for the delay are intolerable under the fundamental mandates of the Due Process Clause. Because the length of the delay is extraordinary, the reason for the delay is the fault of the State so as to be both purposeful and oppressive, and Petitioner has repeatedly expressed his due process interests, prejudice show be presumed at this juncture.

Rather than making any effort at all to pursue sentencing, the State has put all of its effort and resources into absolving itself from any obligation to ever sentence Petitioner and allow him the opportunity for due process, since it has implemented what is the functional equivalent of an **indefinite suspension** of the criminal proceedings. **CF.** KLOPFER v. NORTH CAROLINA, 386 U.S. 213, 227 (1967)(noting that the State's process "in effect allows the State prosecuting officials to put a person under the cloud of an unliquidated criminal charge for an indeterminable period, violates the requirement of fundamental fairness assured by the Due Process Clause[.]").

By such bad-faith, the State's deliberate deprivation of sentencing prevents Petitioner from the very basic and fundamental due process protections. Petitioner has not been permitted any opportunity to be heard within a meaningful time and manner in mitigation of the sentence to be imposed. As previously explained, Petitioner's inability to be sentenced prevents him from any opportunity to appeal his conviction and sentence, nor is postconviction a possibility, simply because his conviction and sentence are required to constitute a final judgment. While the inability to appeal is an apparent unfairness in itself, the circumstance has heightened significance since Petitioner's State conviction is the direct cause

of his federal LIFE sentence that the State requires him to complete before it will ever sentence him. But it is apparent that Petitioner's interests are simply greater than any advanced by the State, if indeed there is any valid interest. There are also many other examples of the prejudice Petitioner has experienced by the State's inordinate delay in sentencing. The outstanding State criminal matter has the effect of increasing Petitioner's security level in the Federal Bureau of Prisons. Petitioner is housed in higher security facilities where he is unable to participate in rehabilitative programming and other opportunities. Petitioner has also lived under an abiding sense of anxiety and frustration because of the cloud of the unresolved State criminal matter. It has been a continual preoccupation for him for the past 25-years and a source of stress. This Court has recognized the potential harm that a criminal defendant might experience amidst inordinate delay in the criminal process. SEE: HOOEY, 393 U.S. at 378-379; BARKER, 407 U.S. at 532-533 & n. 33; DOGGETT, 505 U.S. at 654(collecting cases). Indeed, in HOOEY, 393 U.S. at 379, this Court readily recognized the depressive effect upon even one who is **already** incarcerated, citing KLOPFER, 386 U.S. at 221-222. As explained under "Question Two," infra, Petitioner has additionally been deprived of the assistance of counsel throughout the extraordinary period of delay because the State has conditioned the availability of counsel upon the sentencing hearing itself. Petitioner has been left without appointment of counsel despite repeated requests to the Pinellas County Circuit Court, the Florida Court of Appeals, and most recently the Supreme Court of Florida. All of the consequences visited upon Petitioner are directly attributable to the State's unreasonable, unfair, unnecessary, deliberate and oppressive delay

in sentencing. For more than 25-years, Petitioner's repeated attempts to get the State to recognize his due process interests in sentencing and a final disposition continue to be received with an apparent yawn and a shrug, and the State has made absolutely no good-faith effort to pursue sentencing. Indeed, Petitioner has yet to receive even a meaningful due process analysis by the Florida State Courts in which his interests and the State's are weighed.

In sum, Petitioner respectfully submits that the four-factor test under BARKER, 407 U.S. at 530-533 establishes an appropriate and sufficient analytical standard to determine whether a delay in sentencing violates due process, and that under the BARKER standard the State of Florida's inordinate delay in sentencing violates the fundamental requirements of the Due Process Clause. (1) The extraordinary 31-year delay between Petitioner's conviction and the yet-to-occur sentencing is sufficient to trigger a due process inquiry; (2) the State is to blame; (3) the Petitioner repeatedly asserted his due process rights to sentencing and final disposition; and (4) the inordinate delay between conviction and the yet-to-occur sentencing presumptively prejudiced Petitioner. Petitioner respectfully urges that the circumstances of this particular case warrant a dismissal of the outstanding criminal matter so as to eliminate the potential for any further consequences to Petitioner. CF. MORRISSEY v. BREWER, 408 U.S. 471, 481 (1972)(On a case-by-case basis, "due process is flexible and calls for such protections as the particular situation demands."). The interests of due process would not be best achieved if the State of Florida is yet permitted to impose a sentence upon Petitioner that is predicated upon the unfair, purposeful, unnecessary, and oppressive delay.

QUESTION TWO

ONCE A CRIMINAL PROSECUTION BEGINS AND AN INDIGENT DEFENDANT'S RIGHT TO COUNSEL HAS ATTACHED, MAY THE STATE'S SUBSEQUENT SUSPENSION OF THE SENTENCING PROCEEDING INCLUDE THE SUSPENSION OF THE RIGHT TO THE ASSISTANCE OF COUNSEL — SO THAT THE STATE ITSELF DICTATES THE AVAILABILITY OF COUNSEL'S ASSISTANCE BASED UPON ITS DECISION TO RESUME THE PROCEEDINGS, IF EVER?

Petitioner Lee respectfully contends that the State of Florida's inordinate delay in sentencing has Sixth Amendment significance. A corollary of the State of Florida's 31-year delay in sentencing is that Petitioner has been denied any assistance of counsel following the entry of his guilty plea in 1988. The State's suspension of sentencing has made the availability of any assistance of counsel contingent upon a sentencing hearing actually occurring. In effect, the State itself is dictating the availability of the assistance of counsel based upon its decision to resume the criminal proceedings, if ever.

But Petitioner contends that his Sixth Amendment right to the assistance of counsel applies pervasively between conviction and sentence. Because the Sixth Amendment is deemed to provide for the assistance of counsel to protect and assert a defendant's substantive interests <u>at</u> the sentencing hearing, then it must encompass the availability of such advocacy when, as in Petitioner's case, inordinate delay in sentencing implicates the same interests. Petitioner maintains a present Sixth Amendment right to receive the advocacy of counsel to convey to the Court that his fundamental rights to be heard in a meaningful and fair sentencing hearing are being denied by the State's inordinate delay. Respectfully, this Court's

review is necessary to affirm that an indigent defendant's fundamental right to the assistance of counsel, which may not be denied by the State directly, is not done so indirectly.

The Sixth Amendment mandates that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense." U.S. Const. Amend. VI. Accordingly, this Court has held that an indigent defendant has an absolute right to have counsel appointed to represent his interests. SEE: GIDEON v. WAINWRIGHT, 372 U.S. 335, 342, 344-345 (1963). SEE ALSO: JOHNSON v. ZERBST, 304 U.S. 458, 467 (1938)("Since the Sixth Amendment constitutionally entitles one charged with crime to the assistance of counsel, compliance with this constitutional mandate is an essential jurisdictional prerequisite to a federal [or State] court's authority to deprive an accused of his life or liberty."); LACKAWANNA COUNTY DIST. ATTORNEY v. CROSS, 532 U.S. 394, 404 (2001)(holding unequivocally that failure to appoint counsel is a "unique constitutional defect" of a jurisdictional nature, deserving of special treatment). The Sixth Amendment right to the assistance of counsel is made obligatory upon the States through the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, GIDEON, 372 U.S. at 340, 342, and the right attaches upon initiation of the criminal prosecution. SEE: KIRBY v. ILLINOIS, 406 U.S. 682, 689-690 (1972); ROTHGERY v. GILLESPIE CNTY., 554 U.S. 191, 213 (2008).

This Court has long recognized that the right to be represented by counsel is among the most fundamental of rights. GIDEON, 372 U.S. at 344. **"[I]t is through counsel that all other rights of the accused are protected:** 'Of all the rights that [Petitioner Lee] has, the right to be represented

by counsel is by far the **most pervasive, for it affects his ability to assert any other rights he may have.**'" PENSON v. OHIO, 488 U.S. 75, 84 (1988)(cit. omit.)(emphasis added). Indeed, "[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard **by counsel**." POWELL v. ALABAMA, 287 U.S. 45, 68-69 (1932) (emphasis added).

Petitioner Lee's Sixth Amendment right to the assistance of counsel attached in 1988, when he was charged for violations of State law in the Pinellas County, Florida Circuit Court. As previously explained herein, at **5-6, 10**, Petitioner was permitted to remain on bail until sentencing ... but was subsequently indicted and then arrested by federal authorities in conjunction with a federal drug conspiracy. **Notably**, although the State's case against Petitioner was only partially prosecuted and outstanding, it permitted the federal prosecution to proceed first and expressed its intention to sentence Petitioner afterwards. Once Petitioner was convicted federally and received a sentence of LIFE imprisonment, however, the State changed its mind. While Petitioner was in federal prison, his appointed counsel in the State matter was withdrawn in 1993. SEE: (Docket Report, Pinellas Co., Florida, STATE v. LEE, Case Nos. CRC88-00977CFANO ; CRC88-00978CFANO ; CRC88-06114). From 1993 to the present, despite a docket that is replete with filings from Petitioner asserting his rights to a final disposition, counsel, and other substantive interests — which the State Court and State would entertain — Petitioner's right to the assistance of counsel has not been honored. Petitioner has been forced to proceed pro se all these years, with the exception of a few instances when Petitioner's family

managed to save enough money to hire a local attorney for the limited purpose of filing a single motion. However, obtaining the attorney was a significant hardship for Petitioner's family and the attorney was soon off the case when there was no money to continue the representation. The couple instances of Petitioner's family obtaining an attorney was not meaningful and only a minimal attempt to get the State to resume the criminal proceedings after nearly 20-years of unhelpful pro se filings. Indeed, the Petitioner has had no access to Florida State law or court procedures available in the federal prisons so that it was an arduous process to even litigate meaningfully. The State of Florida has not been willing to provide Petitioner with any assistance of counsel since 1993, even when Petitioner filed pro se motions to withdraw the guilty plea, which is considered to be a "critical stage" of the criminal proceedings. **CF.** PAGAN v. STATE, 110 So.3d 3, 5 (Fla. 2d DCA 2012)(holding motion to withdraw plea is a "critical stage" of the proceedings, entitling defendant to the Sixth Amendment right to representation and assistance of counsel); GARCIA v. STATE, 915 So.2d 779, 780 (Fla. 2d DCA 2005)(same). The State of Florida just totally disregards Petitioner's right to the assistance of counsel, which this Court has held not to even depend upon a request by the defendant. SEE: BREWER v. WILLIAMS, 430 U.S. 387, 404 (1977)("[T]he right to counsel does not depend upon a request by the defendant."); CARNLEY v. COCHRAN, 369 U.S. 506, 513 (1962)("[W]here the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request."). Over the years, when Petitioner has attempted to appeal from the Orders denying his pro se assertions of his rights, he has never once been permitted to obtain a merits review in the State Court of Appeal, as

each of the appeals are always dismissed as an appeal from a "non-final, non-appealable Order." So Petitioner is unable to even obtain review of the State's inordinate sentencing delay or the withholding of the assistance of counsel. The most recent example of this is set forth in Petitioner's attempt to obtain discretionary review by the Supreme Court of Florida. SEE: **Appendix C** (AMENDED Brief on Jurisdiction in Support of Petition for Discretionary Review, LEE v. STATE, No. SC 19-1530). **CF. ALSO: Appendix E** (Informal Appeal Brief, LEE v. STATE, No. SD 18-1335). Petitioner also requested the Second District Court of Appeal and Supreme Court of Florida to appoint counsel. These Court's denied Petitioner the assistance of counsel, and did not provide any merits review or direct the Pinellas County, Florida Circuit Court and State of Florida to provision Petitioner with the assistance of counsel. SEE: **Appendix A** (Judgment Denying Petition for Discretionary Review); **Appendix B** (Judgment dismissing appeal). It is now apparent that the Florida State courts have been unwilling to review Petitioner's claim that the State is indirectly depriving him of his right to the assistance of counsel by making the availability of any assistance contingent upon an inordinately delayed and indeterminate sentencing hearing. The records of the State court proceedings make clear that the State of Florida itself dictates the availability of the assistance of counsel by making a criminal defendant's Sixth Amendment right contingent upon the occurrence of the sentencing hearing that it has the authority to determine. All the while, however, the defendant is left alone, without any assistance of counsel to assert and protect his substantive interests to obtain sentencing.

Petitioner submits that, more than 30-years on, the State's myopic view that his right to the assistance of counsel is contingent upon when the State decides to hold a sentencing hearing, remains as practically and fundamentally flawed as when it was first contrived. In truth, the State's having made Petitioner's right to the assistance of counsel contingent on an indeterminate sentencing hearing amounts to a sham and mere pretense because the State has simultaneously maintained that Petitioner will be sentenced when he "completes" his federal LIFE sentence — which is a sentence that will never be complete. The State knows, and has actually known all along, that Petitioner will never complete his federal LIFE sentence since under federal law a LIFE sentence has no possibility of parole. So, in this instance, the State has knowingly perpetrated a series of contingencies that it knows full well will in fact never occur under the known circumstances. Petitioner's right to be heard in a meaningful and fair sentencing hearing has been made contingent upon the unreasonable and irrational potential for Petitioner to complete an unending federal LIFE sentence — while his fundamental right to the assistance of counsel has been made contingent upon when the State sentencing hearing occurs. Petitioner respectfully urges that when the State knows that it is making a fundamental right contingent upon an impossible or unrealistic circumstance, it has rendered a defendant's rights meaningless and ineffectual. **CF.** JOINT ANTI-FACIST REFUGEE COMM. v. MCGRATH, 341 U.S. 123, 164 (1951)(explaining that due process requires that a procedure must "not [be] a sham or a pretense."). From its inception, the State's process presented an impossible potential for Petitioner's rights to be realized in any meaningful sense, while precluding the potential for advocacy of counsel. The State's process has

not been harmless. As was previously explained under "Question One," at **10-11**, Petitioner's federal LIFE sentence is the direct result of the State's prior drug conviction that he has yet to be sentenced for. Unless the State sentences Petitioner, he has no ability to seek appellate review or pursue post-conviction remedies because there is no final judgment. The Petitioner posits that, given the length of the inordinate delay and the substantial rights implicated, it appears that the State is all the more resolved to never sentence him since these circumstances present the potential for a meritorious appeal that would then jeopardize the State's conviction and also affect Petitioner's federal sentence.

Petitioner submits that the State should not be permitted to just abort the criminal process and set up obstacles to his ability to obtain "the guiding hand of counsel at every step in the proceedings against him," since it results in a denial of due process. SEE: BROOKS v. TENNESSEE, 406 U.S. 605, 612 (1972(cit. omit.). While this Court has long recognized that a defendant is entitled to the assistance of counsel at all critical stages of the criminal process, UNITED STATES v. WADE, 338 U.S. 218, 224-225 (1967), and that sentencing is a critical stage, MEMPA v. RHAY, 389 U.S. 128, 134 (1967), Petitioner urges that the pervasive nature of the right to the assistance of counsel at such "critical stages" assumes an equally important role when the State seeks to implement an unfair process of inordinate delay because the very same substantive rights and interests are at stake. This Court has explained its "critical stage" decisions by focusing on the consequences of the particular stage, and in particular on consequences for the defendant's ability to receive a fair process. **CF.** MEMPA, 389 U.S. at 134; WADE, 388 U.S. at 227. In Petitioner's case, the right to the assistance

of counsel at the "critical stage" of sentencing would be meaningless where the State itself implements an indefinite suspension of the "critical stage," and thus would dictate the availability of the right to the assistance of counsel. This "critical stage in the proceeding is one where the accused require[s] aid in coping with legal problems or assistance in meeting his adversary, and the substantial rights of the accused may be affected." SEE: UNITED STATES v. ASH, 413 U.S. 300, 311-313 (1972); MEMPA, 389 U.S. at 134-135. **CF.** ROTHGERY, 554 U.S. at 212 n. 14 (citing ASH). Because of the substantive interests inherent in sentencing, the State's inordinate delay itself serves to signal the critical importance of the need for the assistance of counsel in the period preceding sentencing. The State has made it so. The Petitioner's ability to obtain a meaningful sentencing requires the assistance of counsel as incident to his right to such assistance in the sentencing hearing itself because the State has pushed the need for such assistance outside the scope of sentencing by forcing Petitioner to assert his substantive interests in being provided with a meaningful sentencing hearing. Because of the State's own delay and contingencies, Petitioner faces "significant consequences" and "the guiding hand of counsel" is "necessary to assure a meaningful [protection of his rights and interests.]" **CF.** BELL v. CONE, 535 U.S. 685, 696 (2002); POWELL, 287 U.S. at 69; WADE, 388 U.S. at 225.

Because it is "**through counsel**" that all of Petitioner's rights are protected, PENSON, 488 U.S. at 84, and any right to be heard would be "of little avail if it did not comprehend the right to be heard **by counsel**[,]" POWELL, 287 U.S. at 68-69, the pervasive nature of the fundamental right to the assistance of counsel establishes that Petitioner should not be

left alone to confront purposeful and oppressive inordinate delay that has been implemented by his adversary the State. The indigent defendant's right to the assistance of counsel "is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty [...] and stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not still be done." JOHNSON v. ZERBST, 304 U.S. 458, 462 (1938).

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Petitioner Lee respectfully prays this Honorable Court grants his Petition for a Writ of Certiorari and appoints counsel to represent his interests.

I, JEFFREY EUGENE LEE, declare under the penalty of perjury, pursuant to 28 U.S.C. §1746, that the foregoing is both true and correct.

Dated this 19th day of June, 2019.

Respectfully Submitted,

Jeffrey E. Lee, pro se
Reg. No. 42087-019
Federal Correctional Complex
U.S. Penitentiary-Coleman 2
P.O. Box 1034
Coleman, FL 33521-1034