No. 19-5768

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

STEVEN JUSTIN VILLALONA — PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE FOURTH DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Steven Justin Villalona, Pro-se Petitioner
(Your Name)

Reg. No.: 55457-018, FCI-1, Oakdale., A-2.
(Address)

PO BOX 5000, Oakdale, LA 71463
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

(1) What effect, if any, does the filing of a detainer have on a prisoner's right to a speedy trial under the Sixth Amendment?

(2) To what degree are the three basic demands of criminal justice under the Sixth Amendment speedy trial right "aggravated and compounded," in a case of an accused under a state charge who is imprisoned by another jurisdiction? See **Smith v. Hooey**, 393 U.S. 374 (1969).

(3) What effect does an accused's imprisonment by another state have on a **Barker v. Wingo**, 407 U.S. 514 (1972), speedy trial analysis?

(4) Does the filing of a detainer relieve prosecuting officials of the duty, under the Sixth Amendment, to provide an accused with a speedy trial?

(5) Does the denial of access to rehabilitative programs constitute oppressive pretrial incarceration in a **Barker** analysis?

(6) What constitutes an assertion of a prisoner's right to a speedy trial under the Sixth Amendment?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

INDEX TO APPENDICES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

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

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[ ] is unpublished.

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

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[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

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

The opinion of the Seventeenth Judicial Circuit, Circuit court appears at Appendix B to the petition and is

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

JURISDICTION

[ ] For cases from **federal courts**:

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

[ ] No petition for rehearing was timely filed in my case.

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

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was 05/23/2019. A copy of that decision appears at Appendix A.

[X] A timely petition for rehearing was thereafter denied on the following date: 06/18/2019, and a copy of the order denying rehearing appears at Appendix C.

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

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

TABLE OF AUTHORITIES CITED

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(1) "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial ..." U.S.C.A., VI.

(2) Interstate Agreement on Detainers Act (IAD)

STATEMENT OF THE CASE

Steven Justin Villalona, a federal prisoner, appeals from an order rendered by the Fourth District Court of Appeal of the State of Florida, affirming a final judgment ajudicating the Petitioner guilty of conspiring to traffic in cocaine and, sentencing him to a term of 15 years of imprisonment in the Florida Department of Corrections with a $265,000.00 fine. Appendix. A, p. A1, and B, p. B1-4.

COURSE OF THE PROCEEDINGS AND STATEMENT OF UNDISPUTED FACTS

On September 19, 2012, Detective LaCerra, who is employed with the Broward County Sheriff's Office (BSO), appeared in the circuit court of the 17th judicial circuit for Florida with an affidavit to arrest the Petitioner. App. F, p. F1. The affidavit received a docket number of 12-0299AF10 and was forwarded to the State Attorney's Office for further proceedings. Also, the circuit court issued a warrant to arrest.

On March 12, 2013, BSO filed a detainer and prison officials at Federal Detention Center Miami notified BSO of the Petitioner's whereabouts. On April 5th, 2013, the State Attorney's Office (SAO) filed an information charging the Petitioner with conspiracy to traffic cocaine from events which occurred on September 20th, 2011. Said information was amended on the 25th of April, 2013, with instructions to the Clerk of the Court to "NOT ISSUE CAPIAS; KEEP AF WARRANT ACTIVE # 12-299AF10. [The Petitoner] IS IN CUSTODY AND HAS BEEN SERVED ON THE WARRANT." App. F, p. F4.

The charges remained pending and caused the Petitioner to miss out on an opportunity to learn a new skill- operating a forklift, while he was incarcerated at FDC Miami. Therefore, on June 24, 2014,

the Petitioner filed a pro-se request for action on the pending charges with the clerk of the court. App. F, p. F5. Said request was not served on the SAO. As a result, the State took no action.

Because prison officials noticed that the detainer affected the Petitioner's custody level, the Petitioner was removed from FDC Miami and placed in Federal Correctional Complex (FCC) Coleman. While there, the Petitioner renewed his request for action on the pending charge; This time, with the assistance of prision officials pursuant to the IAD on August 5, 2014. Furthermore, the request also requested that the trial court appoint counsel prior to the Petitioner being delivered, so that counsel may be familiar with the case. App. F, p. F6.

On September 24, 2014, the Petitioner was removed from FCC Coleman and booked into the Broward County Main Jail. On October 2, 2014, the Petitioner was arraigned. There, the trial court appointed the Public Defenders to the case and set a date for trial on the 8th of December, 2014. The PD demanded discovery; However, because the State was tardy, the PD filed a motion to compel discovery. App. F, p. F7

On December 2nd, 2014, the trial court held a hearing on the motion to compel and because there was conflict between counsel and the Petitioner, held a nelson hearing. There, it was agreed that the PD should be given more time to investigate the case because the State had been late in providing discovery. Although the PD wished to waive the Petitioner's right to a speedy trial, the trial court denied the request, as the Petitioner voiced a desire for a speedy trial. However, the State requested a continuance because it was a "new case" for them. (Record on Appeal (ROA) D:334-

3350). The trial court, over the Petitioner's objection, granted the State's request and set a date for trial on the 12th of January, 2015. The basis for the Petitioner objection was that the State failed to provide a just reason for the continuance. However, the trial court found that the State had not previously requested any continuances and it would be an abuse of discretion not to grant the State's request, considering it was a "new case" for them.

On December 30th, 2014, the PD again moved to compel discovery and to dismiss the charges. App. F, p. F9, and F12. A hearing was held on January 6th, 2015. There, because PD had just received word that the State had just delivered serveral disks to the office, the PD withdrew the motion to compel. However, the PD argued that the Petitioner's request for action, App. F, p. F 5, was sufficient to invoke the running of the 180 days under the IAD. The trial rejected the argument because the Petitioner's request was without serveral required documentation and not served upon the SAO. App. F, p. F15. Then the Petitioner elected to proceed as self counsel because of an conflict of interest with the PD. App. F, p. F16.

Trial was to begin on the 12th of January, 2015, however, because the Petitoner has elected to proceed as self counsel, the Petitioner needed to review the evidence which the State had just finished providing the PD. Therefore, the Petitioner waived his right to a speedy trial under Fla.R.Crim.P. 3.191. App. F, p. F17. As a result, the trial court set a status hearing for a later date.

On February 11th, 2015, the Petitioner moved to recuse Judge Bober and the court granted the motion on the 13th. App. F, p. F18.

However, the Petitioner was not removed from Judge Bober's docket until March 26, 2015, and appeared before Judge Siegel on the 30th of March. There, the Petitioner moved to substitute standby counsel which was denied by the court because the Petitioner was representing himself. App. F, p. F19 and F20.

On April 7th, 2015, the Petitioner moved to dismiss the information because of a violation of his federal constitutional right to a speedy trial and to compel the State to produce the Confidential informant's identity. App. F, p. F21. On April 29, 2015, a hearing was held on the motion to dismiss. There, the Petitioner submitted four property receipts reflecting 12 disks had been impounded (App. F, p. F22-25) throughout the investigation, the State's initial discovery (App. F, p. F26), and an warrant request form (App. F, p. F32). Based on the aforemention facts and evidence, the Petitioner argued that his right to a speedy trial was violated because the length in delay in prosecution was unreasonable, and cause him to sustain prejudice. Specifically, the Petitioner argued that the total length of the delay is 43 months, that the reason for the delay was because the State wished to subject the Petitioner to oppressive pretrial incarceration in order to increase the probability of obtaining a conviction, as the detainer did, that he asserted his right to a speedy trial under the Sixth Amendment (App. F, p. F5), and that he experienced all three forms of prejudice, because the effects of the detainer was oppressive, not knowing what would be the outcome of the pending charges cause anxiety and concern, and that he could not remember what conversations took place on September 20th, 2011, as a result of losing his phone. Furthermore, the Petitioner contended that there was

missing disks, a total of six. (There is 12 disks reflected in the property receipts and the State only produced 7). App. F, p. F60.

In response, the State argued that the Petitioner was the reason for the delay in prosecution, because he is serving time in a federal prison. Id. at F50-51. The State conceded that this case was a "five years, four years case." Id. at F57. However, the State argued that the running of the speedy trial rights do not start until the defendant "is actually arrested." Id. F54. The State also posited that the Petitioner never requested a speedy trial, and "[a]s a matter of fact, [...] he did waive them." Id. at F57. Lastly, the State contended that the Petitioner suffered no prejudice, because "[a]ll the discs that the State has in their property, all the discs that the police have in their property [has been] handed over today (7 disks)." Id. at F60.

The Petitioner explained to the court that when a defendant waives his right to a speedy trial under Fla.R.Crim.P. 3.191, the waiver causes the Sixth Amendment right to a speedy trial to be engaged. F61. With that, the trial court denied the motion and issued an order placing 7 disks within the Petitioner's property. Id. at F62, F71, and F72. The Petitioner sought the PD assistance in filing a petition for a writ of prohibition in the Fourth District Court of Appeal, however they declined to assist. Therefore, the Petitioner elected to proceed as self counsel on interlocutory appeal. On June 30th, 2016, the 4th DCA denied the petition. App. D. Also, the 4th DCA denied a motion for rehearing. App. E.

In preparation for trial, the Petitioner retained a Private Investigator, who was able to locate an additional 2 disks the State had impounded into evidence. Cf. App. F, p. F72 with F74. Also,

the Petitioner retained a translator to translate the audio and visual recordings into english, but was unable to have them introduced at trial.

On November 28, 2016, a jury trial was held. (ROA T:1). During cross examination of Det. Lacerra, he stated that he could not remember if other members of his investigation were also recording evidence (ROA T:382), how many recordings he downloaded (Id. at 390), or how many disks were produced during the scope of the investigation (ROA T:412). Det. Lopez, who allegedly assisted Det. Lopez in this investigation stated that "[he was] speaking [to the Petitioner] just generally. I don't recall exactly how it went in this case." (ROA T: 489). Det. Sanchez who assisted in the investigation stated that he could not remember if the informant had a recorder on the date of the alleged offense. (Id. at 713).

Ultimately, the jury returned a verdict of guilty, and an appeal to the 4th DCA was taken. There, the Petitioner argued several issues, including the trial court's error in denying the motion to dismiss on speedy trial ground. The State substantively raised the same argument as it did before the trial court, and the 4th DCA summarily denied the appeal without an opinion. App. A. Also, the 4th DCA denied a motion for rehearing on the speedy trial issue. App. C.

Now the Petitioner requests that this Honorable Court review the merits of this cause.

REASONS FOR GRANTING THE PETITION

This Honorable Court should adjudicate the merits of this cause because by doing so, this Court advances important societal interests in the swift disposition of criminal prosecutions, and provides guidance to the courts on how to apply the **Barker v. Wingo**, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972) analysis to a situation where an accused is incarcerated in a different jurisdiction.

First, the expeditious resolution of criminal prosecutions serves important interests of society. Generally, in that unreasonable delays contribute to large backlogs of cases, increase expenses associated with incarceration of pretrial detainees, provide a greater opportunity for persons on pretrial release to commit other crimes, diminish prospects for rehabilitation, and increase the likelihood that prosecution witnesses will become unavailable or that their memories will fade. **Barker v. Wingo**, **supra**. Moreover, an accused is guaranteed the right to a speedy trial to prevent undue and oppressive pretrial incarceration, to minimize the anxiety accompanying public accusation, and to limit the possibility that a long delay will hamper the defendant in presenting his defense. **See**, **e.g.**, **Smith v. Hooey**, 393 U.S. 374 (1969).

With respect to diminishing the prospects for rehabilitation, each year more than 700,000 individuals are released from state and federal prisons. Another 9 million cycle through local jails. When reentry fails, the social and economic cost are high -- more crime, more victims, more family distress, and more pressure on already strained state and municipal budgets. Because reentry intersects with health and housing, education and employment, family, faith

and community well being, many federal agencies are focusing on initiatives for the reentry population. See, www.nationalreentryresourcecenter.org/reentry-council.

However, a formidable wall to rehabilitation exists in the manner in which prosecuting officials employ detainers to prosecute prisoners in different jurisdictions. In **Smith v. Hooey**, **supra**, this Court appreciated the opinion of a former Director of the Federal Bureau of Prisons, in that,"it is in their effect upon the prisoner and our attempts to rehabilitate him that deainers are most **corrosive**." **Id.** at 393 U.S. 379 (emphasis added by Petitioner). What is more, is that there is no judicial oversight with respect to the filing of detainers, although "a prisoner who has had a detainer lodged against him is seriously disadvantaged by such action." **United States v. Mauro**, 436 U.S. 340, 353 (1978). Furthermore, this Court noted the problems detainers cause as follows:

> Detainers, informal aides [sic] in interstate and intrastate criminal administration, often produce serous adverse sideeffects. The very informality is one source of the difficulty. Requests to an imprisoning jurisdiction to detain a person upon his release so that another jurisdiction may prosecute or incarcerate him may be filed goundlessly, or even in bad faith, as suspected by the appellant in this case. The accusation in a detainer need not be proved; no judicial officer is involved in issuing a detainer. as often happens, the result of the then unestablished charge upon which the detainer in this case rested was that the detainee was seriously hampered in his quest for a parole or commutation.

Id. at 436 U.S. 340, n.25 (citing **Pitts v. North Carolina**, 395 F.2d 182, 187 (1968). Given the far reaching benefits to society in rehabilitating prisoners and swiftly resloving untried charges, this

Court should review the merits of this cause.

Next, in **Hooey**, **supra**, this Court held that the three basic demands of criminal justice protected by the Sixth Amendment guaranty of a speedy trial (as made obligatory upon the states by the fourtheenth Amendment), (1) to prevent undue and oppressive incarceration prior to trial, (2) to minimize anxiety and concern accompanying public accusation, and (3) to limit the possibilitites that long delay will impair the ability of an accused to defend himself, are both **aggravated and compounded** in the case of an accused under a state charge who is imprisoned by another jurisdiction. However, the lower courts are without guidance with respect to what degree are the three basic demands "aggravated and compounded," in the context of the **Barker** analysis.

Lastly, the argument which the State placed before the trial court and adopted by the trial court in denying the motion to dismiss, was that the Petitioner was "the basis for the cause of the delay in this case as he was [...] sentenced to 15 years in federal prison." App. F, p. F50-51. Therefore, the trial court sharply departed from federal law in that "a prosecuting authority is not relieved of its obligation to provide a defendant a speedy trial just because he is in custody elsewhere." **Mauro**, 436 U.s. 340 at 358. Furthermore, the Fourth Disctrict Court of Appeal (4th DCA) agreed with the trial court's ruling. Such an application of the law only serves to subvert this Court's intent in **Hooey** and cancel the effect of this Court's holding in **Klopfer v. State of N.C.**, 386 U. S. 213 (1967).

In sum, if sentences are truely imposed with an eye towards rehabilitating prisoners into society and prosecuting authorities

are not relieved of thier duty to provide defendants with a speedy trial, just because they are incarcerated in a different jurisdiction, then this Court should verify that the road to rehabilitating prisoners is passable, and that the State of Florida realizes the Sixth Amendment mandates that in all criminal prosecutions, the accused **shall enjoy** the right to a speedy trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Steven Justin Villalona, Pro-se Petitioner.
Reg. No.: 55457-018
FCI-1, Oakdale., Unit, A-2.
PO BOX 5000
Oakdale, LA 71463

Date: 08/26/2019