

NO. 19-8209

IN THE  
SUPREME COURT OF THE UNITED STATES

DELGEN FOYE — PETITIONER(S)

VS.

NORTH CAROLINA — RESPONDENT(S)

PETITION FOR REHEARING

DELGEN FOYE

BERTIE CORRECTIONAL INST.

P.O. BOX 129 WINDSOR, N.C. 27983

## Grounds for rehearing

Ground #1. Petitioner's fifth amendment right to remain silent at trial, and not be a witness against himself to not incriminate himself, was violated by the trial court judge, to the extent that it penalized the petitioner for invoking his fifth and fourteenth amendment's to the constitution's right to remain silent at trial, this penalization had a devastating as well as a detrimental effect to the petitioner in chief to present a defence to the jury, the trial court inasmuch as refusing the petitioner the right to put on witness's to testify in his defence was prejudice to the petitioner's case, the state of north carolina through its prosecutors were allowed to present their case in its entirety, as was not the case for the petitioner, not given the constitutional right to put forth a defence in a criminal case against him, petitioner was denied the constitutional right to call witnesses in his defence, nor to present physical evidence in a criminal case against him, the trial judge during this very trial informed the petitioner's counsel that if the petitioner does not take the stand he would not allow the petitioner to use any type of defence, regardless of how much evidence was in the record the trial judge refused to instruct the jury on self-defence instructions after repeated request from petitioner's counsel before the end of the trial, this remonstrance from the trial court judge denied the petitioner any chance at a fair trial, to the extent that the trial court judge would not let the jury hear witness for the petitioner that were outside the courtroom at trial that very day, whom were also on the petitioner's witness list prior to trial, therefore violating the petitioner's sixth amendment to the united states constitution, compulsory clause, the petitioner asks this court to grant a rehearing for this petitioner on the merits of this

case, to do so shall indeed reveal to this Court that the Constitutional rights of this Petitioner were violated by the erroneous actions. Here the Petitioner refers to the - Amendment 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.

also in this ground for rehearing the Petitioner sites the <sup>5th</sup> Amendment:

the right against self-incrimination. Malloy v. Hogan:

THE DECISION. the case of Malloy v. Hogan was settled in a 5 to 4 vote for Mr. Malloy, the Supreme Court of the United States in Malloy v. Hogan ruled that the Fifth Amendment's exception from compulsory self-incrimination is indeed protected by the Fourteenth Amendment against abridgement by the state.

THE Petitioner asks that this Court grants rehearing as to this ground of the Petitioner's rehearing to this the SUPREME COURT OF THE UNITED STATES.

## GROUND #2

the Petitioner's fourteenth amendment right's were Denied and violated by the trial court. (DUE <sup>Process</sup> <sub>clause</sub>) right to a fair trial.

as mentioned in ground one the state through Prosecutor's were allowed by the trial judge to present its case in its entirety without the slightest hindrances. however in presenting its case before the trial judge the prosecution was allowed to use hearsay evidence two separate occasion both were allowed to be heard by the jury and added to the trial record. Over repeated objections from Petitioner's Counsel clearly was prejudice to the Petitioner, to the extent that the hearsay evidence that should not by law, should have been allowed to go on record as well as heard by the jury, help to mislead the jury to convict the Petitioner of first degree murder, to the extent that the Petitioner did not testify on his behalf at trial, but prior conviction's of the Petitioner, but the trial judge would not allow Petitioner the chance to present the prior bad acts of victim some known to the Petitioner some not, this denial prevented the Petitioner from exercising his constitutional right to put forth a defense in a criminal trial as well as put fourth witnesses on his behalf. the trial court judge blocked any and all chances for the Petitioner to counter the Prosecutor's case with the denial of the Petitioner's constitutional rights in the process to ensure that the Petitioner was not afforded a fair trial. for all of this unfairness of the trial court judge, this court should grant a rehearing for the Petitioner it is the hope of this Petitioner to have his whole case before this great and honorable court.

Ground 3. Petitioner's Sixth Amendment right to a fair and speedy trial.

Speedy trial: Criminal defendants have the right to a speedy trial in Barker v. Wingo, 407 U.S. 514 (<https://supreme.justia.com/cases/federal/us/407/514/>) (1972), the Supreme Court laid down a four-part case-by-case balancing test for determining whether the defendant's speedy trial right has been violated the four factors are:

1. Length of delay: Petitioner was arrested June 14, 2013. Petitioner was indicted December 9, 2013. From arrest through Indictment to conviction in total was 30 months. A delay of a year or more from the date on which the speedy trial right attaches was termed "Presumptively, Prejudicial."

2. Reason for the delay: the prosecution may not excessively delay the trial for its own advantage, but a trial may be delayed to secure the presence of an absent witness or other practical considerations (e.g., change of venue). The Petitioner did not request any delays before trial the prosecution however requested a delay to secure scientific evidence from the S.B.I Laboratory that clearly showed that the D.N.A. samples were indeed the victims and not the Petitioner, the requested delay was the second time that these samples were to be tested, an attempt to delay the trial by the prosecution, also "Prejudicial", these delays are part of the record.

3. Time and manner in which the defendant has asserted his right. If a defendant agreed to the delay when it works to his own benefit, he cannot later claim that he has been unduly delayed. The Petitioner first asserted his Constitutional right to speedy

457 U.S. at 532. The Barker case holds that confinement beyond a year spent in jail awaiting trial has a detrimental impact on the individual. But by asserting his Sixth Amendment Constitution to a speedy trial, time who was incarcerated 30 months awaiting trial but also waiting a trial prosecution to put a priority on cases such was the case for this petitioner in determining Prejudice. This factor also ties in to the failure of the 30 months, this is where a material factor that the court looks to. This petitioner had been incarcerated in the Craven County Jail for the entire

4. Degree of Prejudice to the defendant which the delay has caused months before.

That was already clarified to belong to the victim in this case possibly achieving anything to a delay to request analysis on STA/ANA, 30 months that he waited trial, furthermore what advantage could he part two, the petitioner in no way agreed to any type of delay during the

for a speedy trial by the petitioner)

defendant a speedy trial, on August 15, 2014 was the first date of filing 2015 petitioner filed a motion to dismiss for failure to provide RWDW serious injury; felony murder, to the extent that on September district to proceed with the defendant's trial on the charges of felony also requested the District Attorney of the County of Craven judicial filed a request for a speedy trial, pursuant to G.S. 15A-711(c), that prior to the above request for a speedy trial by a prisoner, the petitioner district to proceed with the defendant's trial for 1<sup>st</sup> degree murder requested that the District Attorney of the Craven County judicial trial on September 11, 2014, pursuant to G.S. 15A-711 (c) that

raises a presumption that there is prejudice in Petitioner's case he had been incarcerated the entire 30 ~~months~~ months since the incident took place June 14, 2013, in State v. Washington, 192 N.C. APP. 277 (2008). the Washington case brings into focus another of the Barker factors the failure of the prosecutor to investigate and compile their evidence in a timely manner. in that case as in this one, evidence was not submitted to the S.B.I timely for analysis as evidenced by the notation of the prosecution on submissions to the S.B.I. in June of 2015 two years after the Petitioner was arrested, and the alleged offence. and in this case, the discovery was distributed to the Petitioner over a ~~year~~ period of a year, basically starting some 7 months after the Petitioner's arrest, and some of it was not provided until over 2 years after the alleged incident. of course, in this case the Petitioner demanded a speedy trial some 15 months after his arrest so that factor also weighs in his favor, as does the other three, to the extent that Petitioner on September 21, 2015 filed a motion to dismiss for failure to provide defendant a speedy trial. then on December 9, 2015 the Honorable Benjamin ALford Senior Resident Judge for Superior Court of Craven County, the same Judge as the trial Judge in Petitioner's case, Denied the motion to dismiss for failure to provide Petitioner a speedy trial, by an order but did not test any of the Barker v. Wingo four factors in determining the denial on record. therefore the Petitioner ask that he is granted a rehearing to put his case before the court, to show that his rights under the constitution were violated by the trial court Judge in order to convict the Petitioner of a crime that he did not commit.

## Sixth Amendment to the United States Constitution

### Compulsory Process:

the Compulsory Process clause gives any criminal defendant the right to call witnesses in his favor, if any such witness refuses to testify, that witness may be compelled to do so by the court at the request of the defendant.

### Confrontation:

the Confrontation clause relates to the common law rule preventing the admission of hearsay, that is to say, testimony by one witness as to the statements and observations of another person to prove that the statement or observation was true. the rational was that the defendant had no opportunity to challenge the credibility of and cross-examine the person making the statements.

Conclusion: the Petitioner Delgen Foye submits this petition for rehearing in good faith and not as a delay to this court in any manner, the Petitioner has throughout this petition for rehearing demonstrated the denials of his Constitutional rights to Due Process were violated during his trial whereby the Petitioner ask this court to grant rehearing.

Respectfully submitted on this  
the 25 June 2020, Delgen Foye- Prose  
Delgen Foye

## Certificate of Counsel

I, Delgen Foye, after being first duly sworn deposes and say, that I am the Petitioner all times mentioned throughout this foregoing Petition for Rehearing; that I have read the contents thereof and know the same to be true and correct to the best of my knowledge. Thus, the grounds herein are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

I, Delgen Foye, also certify that the Petition for Rehearing is presented in good faith and not for Delay.

Respectfully Submitted 23 day of June 2021.

Delgen Foye

Sworn to and subscribed before this 23 day of June 2021.

  
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Notary Public

My Commission Expires 2-10-24

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CERTIFICATION OF COUNSEL

I Delgen Foye in this case as the above captioned Petitioner is unrepresented by counsel and is Pro-Se. I served a copy of a Petition for Rehearing to Respondents Counsel.

Clarence J. Delforge, III  
North Carolina Department of Justice  
P.O. Box 629 Raleigh, N.C. 27602

Respectfully Submitted this the 25 day  
of June 2020

Delgen Foye  
Delgen Foye PRO-SE