

19-8723

No. \_\_\_\_\_

Supreme Court, U.S.  
FILED

APR 11 2020

OFFICE OF THE CLERK

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

SHANE P. IRISH  
\_\_\_\_\_  
(Your Name) — PETITIONER

vs.

STATE OF OHIO  
\_\_\_\_\_  
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS OF OHIO, THIRD APPELLATE DISTRICT  
\_\_\_\_\_  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SHANE P. IRISH  
\_\_\_\_\_  
(Your Name)

729 MURLIN AVENUE  
\_\_\_\_\_  
(Address)

CELINA, OHIO 45822  
\_\_\_\_\_  
(City, State, Zip Code)

419-733-0819  
\_\_\_\_\_  
(Phone Number)

ORIGINAL

## QUESTION(S) PRESENTED

Whether the speedy trial guarantee of the Sixth Amendment to the U.S. Constitution applies to an accused serving a prison sentence on a prior offense?

Whether for speedy trial purposes under the Sixth Amendment to the U.S. Constitution, the issuance of a formal indictment engages speedy trial protection for an accused serving a prison sentence on a prior offense?

Whether the state can presume that an accused serving a prison sentence on a prior offense has waived by inaction the speedy trial protections of the Sixth Amendment to the U.S. Constitution when the state has not served said accused with the pending indictment?

## **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:

## **RELATED CASES**

State of Ohio v. Shane P. Irish, 10-17-10, Ohio Court of Appeals for the Third Appellate District. Judgment entered May 14, 2018.

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	5
CONCLUSION.....	8

## INDEX TO APPENDICES

APPENDIX A	State v. Irish, 140 N.E.3d 209 (Ct. App.)
APPENDIX B	State v. Irish, Mercer County Court of Common Pleas, Decision on Motion to Dismiss
APPENDIX C	Ohio Supreme Court Entry declining jurisdiction, Nov. 21, 2019
APPENDIX D	Ohio Supreme Court Entry denying reconsideration, Jan. 21, 2019
APPENDIX E	Ohio Revised Code § 2945.71
APPENDIX F	Ohio Revised Code, § 2941.401

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
-------	-------------

<u>Barker v. Wingo</u> , 407 U.S. 514, 525-26 (1972).....	5
<u>Dickey v. Florida</u> , 398 U.S. 30, 46 n.10 (1970).....	6
<u>State v. Hairston</u> , 804 N.E.2d 471, 474 (Ohio 2004).....	5, 6
<u>State v. O'Brien</u> , 516 N.E.2d 218, 220 (Ohio 1987).....	5
<u>State v. Ramey</u> , 971 N.E.2d 937, 941 (Ohio 2012).....	5
<u>United States v. Marion</u> , 404 U.S. 307, 320 (1971).....	7
<u>Wolff v. McDonnell</u> , 418 U.S. 539, 555 (1974).....	7

### STATUTES AND RULES

Ohio Rev. Code Ann. § 2941.401.....	5, 6
Ohio Rev. Code Ann. § 2945.71.....	5, 6, 7

### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

☐ For cases from **federal courts**:

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

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

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

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

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

- ☒ reported at State v. Irish, 140 N.E.3d 209 (Ct. App.); or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the Mercer County Common Pleas court appears at Appendix B to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

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

☐ No petition for rehearing was timely filed in my case.

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

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was November 12, 2019  
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date:  
January 21, 2020, and a copy of the order denying rehearing  
appears at Appendix D.

☐ 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).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Sixth Amendment, U.S. Constitution:

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.

Ohio Revised Code §2945.71: Appendix E

Ohio Revised Code, §2941.401: Appendix F



## **STATEMENT OF THE CASE**

I, Shane P. Irish, was serving a term of imprisonment in Ohio when on June 16, 2016, unbeknownst to me, the state indicted me for an incident that allegedly occurred before my term of imprisonment began. Despite knowing my location because they had collected DNA from me on May 10, 2016 at the prison, the state did not serve me with the June 16, 2016 indictment until June 26, 2017.

My first appointed attorney did not raise the speedy trial issue despite my desire that he do so, and after pleading no contest and being convicted, I appealed. The Ohio Third District Appellate Court reversed and vacated my conviction, by decision dated May 14, 2018, due to ineffective assistance of counsel. On remand, my newly appointed counsel raised the speedy trial issue under Ohio Revised Code §2945.71, and the trial court dismissed the case by decision dated October 12, 2018.

The state appealed that decision, and the Third District reversed, saying that the provisions of Ohio Revised Code §2945.71 do not apply to incarcerated persons, but that ORC §2941.401, which required me to provide a written request for final disposition of the matter to the prosecuting attorney and the court in which the matter was pending, supplanted my speedy trial protection under ORC §2945.71.

I was unaware of the June 16, 2016 indictment until the attorney seeking judicial release for me in the original case informed me that I might have an outstanding indictment, so I attempted to comply with ORC §2941.401. The state did not serve me with the indictment until after I had written them that letter.

The Ohio Supreme Court declined to hear my case.

## REASONS FOR GRANTING THE PETITION

In Ohio, “the statutory speedy trial provisions of R.C. 2945.71 et seq. and the constitutional guarantees found in the United States and Ohio Constitutions are coextensive.” State v. O'Brien, 516 N.E.2d 218, 220 (Ohio 1987). Ohio Revised Code § 2945.71 explicitly limits to 270 days “after the person’s arrest” the time the state has to bring a person accused of committing a felony to trial. Ohio Rev. Code Ann. § 2945.71. In addition to this provision, Ohio Revised Code § 2941.401 provides that an incarcerated accused may send a letter to the prosecutor and the court where an outstanding indictment against him is pending in order to require the state to bring him to trial within 180 days. Ohio Rev. Code Ann. § 2941.401.

In Ohio, the state has no legal duty to notify an incarcerated accused of an indictment pending against him or even to exercise reasonable diligence to locate him subsequent to a grand jury issuing an indictment. State v. Hairston, 804 N.E.2d 471, 474 (Ohio 2004).

For both federal and Ohio purposes, the state may not presume that an accused waived his speedy trial right. Barker v. Wingo, 407 U.S. 514, 525-26 (1972); State v. Ramey, 971 N.E.2d 937, 941 (Ohio 2012).

For federal purposes, an incarcerated defendant not having service of an indictment sits “in much the same position as an accused imprisoned in one

## REASONS FOR GRANTING THE PETITION

jurisdiction who is unaware that another jurisdiction has formal charges outstanding against him[,]” and “[t]he latter has been held to have the protection of the Speedy Trial Clause.” Dickey v. Florida, 398 U.S. 30, 46 n.10 (1970).

In my case, however, the Ohio appellate court newly decided – and the Ohio Supreme Court declined to consider – that Ohio Revised Code § 2941.401 entirely supplants Ohio Revised Code § 2945.71 for incarcerated persons, so that speedy trial time under Ohio law does not begin to run for an imprisoned accused until he sends a letter to the prosecutor and court in which the matter is pending. The accused has this burden even if he does not know of the indictment against him and despite the state having no duty to serve it on him. Hairston, 804 N.E.2d at 474. And because that section supplants the default provision in Ohio Revised Code § 2945.71, the state effectively deems the accused to have implicitly waived speedy trial time by virtue of imprisonment.

If this Court declines to accept this case, the state of Ohio will, as in my case, presume that accused incarcerated persons have waived their speedy trial right simply due to ignorance. This contravenes not only this Court’s repeated holdings concerning the waiver of fundamental rights but also Ohio’s ostensible treatment of Sixth Amendment protections as coextensive with its statutory protections under

## REASONS FOR GRANTING THE PETITION

Ohio Revised Code § 2945.71, because this Court has held that “a formal indictment . . . or else the actual restraints imposed by arrest and holding to answer a criminal charge . . . engage the particular protections of the speedy trial provision of the Sixth Amendment[,]” Wolff v. McDonnell, 418 U.S. 539, 555 (1974), and “a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime.” United States v. Marion, 404 U.S. 307, 320 (1971). That is, the indictment itself engages speedy trial protections under the Sixth Amendment for a person already under restraint. But under the statutory provisions of Ohio law as construed in my case, the indictment does not trigger speedy trial protection for incarcerated accused persons.

For the foregoing reasons, petitioner requests this Honorable Court grant the petition for a writ of certiorari.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Shane P. Irish, Shane P. Irish

Date: ~~April 9th~~ <sup>S-I</sup> April 10th, 2020  
April 9th, 2020