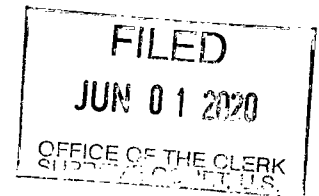


20-5506
No. _____

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

RODOLFO ANTONIO LOPEZ, JR. — PETITIONER
(Your Name)

vs.

INDIANA ATTORNEY GENERAL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF INDIANA
~~COURT OF APPEAL, STATE OF INDIANA~~
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RODOLFO ANTONIO LOPEZ, JR.

(Your Name)

ORANGE COUNTY CORRECTIONS, 3723 VISION BLVD.

~~WESTVILLE CORRECTIONAL FACILITY, 5501 SOUTH HOO WEST~~

(Address)

ORLANDO, FL 32802

~~WESTVILLE, IN 46391~~

(City, State, Zip Code)

NONE

(Phone Number)

QUESTION(S) PRESENTED

1. DID THE TRIAL COURT VIOLATE MR. LOPEZ'S RIGHT TO A SPEEDY TRIAL UNDER U.S. CONSTITUTION SIXTH AMENDMENT BILL OF RIGHTS RECOGNIZED BY THE STATE OF INDIANA UNDER INDIANA CRIMINAL RULE 4 (B)?

LIST OF PARTIES

[✓] 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: (Full ADDRESS ADDED)

CURTIS T. HILL JR. ATTORNEY No. 13999-20
INDIANA ATTORNEY GENERAL
IGCS - FIFTH FLOOR
302 W. WASHINGTON STREET
INDIANAPOLIS, INDIANA 46204-2770

RELATED CASES

LOPEZ v. STATE No. 46C01-1802-F6-149, LAPORTE CIRCUIT COURT.
JUDGMENT ENTERED Oct. 24, 2018.

LOPEZ v. STATE No. 19A-CR-00098, INDIANA COURT OF APPEALS.
JUDGMENT ENTERED Sept. 20, 2019.

LOPEZ v. STATE No. 19A-SP-02900, INDIANA COURT OF APPEALS,
JUDGMENT ENTERED Jan. 10, 2020
LOPEZ v. STATE No. 19A-CR-00098 SUPREME COURT OF INDIANA
JUDGMENT ENTERED
MAY 14, 2020.

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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☐ is unpublished.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 _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the _____ 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.

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 05/14/2020
~~9/20/2019~~
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION AMENDMENT XIV DUE PROCESS OF LAW

UNITED STATES CONSTITUTION AMENDMENT VI (1776 AMENDED 1791)

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY ~~TRIAL~~ 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 COMPEL SORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

INDIANA CONSTITUTION ARTICLE 1 SECTION 12 (AFFIRMS THE U.S. CONSTITUTION ARTICLE 1, VI)

INDIANA RULE OF CRIMINAL PROCEDURE 4 (SEE APPENDIX 1 FOR FULL TEXT)

STATEMENT OF THE CASE

I. STATE OF INDIANA ARGUMENT;

"LOPEZ NEVER OBJECTED WHEN THE TRIAL COURT SELECTED HIS TRIAL DATE... HE NEVER FILED A MOTION FOR DISCHARGE PRIOR TO TRIAL?" (SEE OPINION/ORDER)

II. THE JUDGMENT OF THE TRIAL COURT IS AFFIRMED IN THE COURT OF APPEALS OF INDIANA. (SEE OPINION/ORDER)

REASONS FOR GRANTING THE PETITION

I. U.S. SUPREME COURT BALANCING TEST

- a. LENGTH OF DELAY.
OVER 6 MONTHS FROM DATE OF INCIDENT / DATE OF INCARCERATION.
RULE 4(B)(1) 14 DAYS OVER THE ALLOWED TIME (70) SEVENTY DAYS FROM MOTION FILE DATE.
- b. REASON FOR DELAY.
STATE OF INDIANA ARGUMENT (SEE PAGE 4).
RULE 4(B)(1) "DELAY IS OTHERWISE CAUSED BY HIS ACT.. OR.. CONGESTION OF THE COURT CALENDAR."
- c. SEVERITY OF PREJUDICE OR DAMAGES SUFFERED BY DELAY. (SEE APPENDIX 1 PG 13)
- d. THE STAGE AT WHICH THE DEFENDANT ASSERTED SPEEDY TRIAL RIGHT.
 - i. DATE OF INCARCERATION 2/7/18.
 - ii. DATE OF STATE AFFIDAVIT 2/15/18.
 - iii. ASSERTION OF FILED MOTION FOR SPEEDY TRIAL 5/21/18 CLERK FILED 5/24/18.
 - iv. VERIFIED AT INITIAL HEARING 7/11/18.

II. CASE SPECIFIC

- a. SPEEDY TRIAL CONFIRMATION
THE STATE OF INDIANA PROSECUTION AND JUDGE CONFIRMED, VOLUME 11 OF 11 TRANSCRIPT OF INITIAL HEARING JULY 11, 2018, PAGE 17, LINE 15,
"DO YOU STILL WANT TO HAVE THE SPEEDY BENCH TRIAL ON AUGUST 16?"
IN JACKSON V. STATE, 663 N.E. 2d 766, 767 (Ind. 1996)
"THE ONUS IS ON THE STATE NOT THE DEFENDANT TO EXPEDITE THE PROSECUTION." Id. at 769.

III. THAT THIS PETITION SERVES ONLY AS PROOF THAT THE LAW OF THE LAND OF THE UNITED FORTY EIGHT STATES OF AMERICA AND THE COMMON WEALTH OF RICH PORT (PUERTO RICO), THE GOVERNMENT FOR WHICH THE PETITIONER IS IMPRISONED BY, IS NOT UPHELD IN BOTH STATE GOVERNMENT CONSTITUTION AND OF THE FEDERAL GOVERNMENT CONSTITUTION AND AMENDED LAWS AS WRITTEN.

- a. CASE LAW THAT WILL NEVER BE REVIEWED BY THE SUPREME COURT;
 - i. 46CO1-1411-F6-000429 WRITTEN PLEA DEAL BY UNDUE INFLUENCE.
 - ii. 2016-CF-006170-A-0 PENDING TRIAL FROM 5/2016.
 - iii. 71D08-1801-F5-000010 DISMISSED WITHOUT TRIAL 14 MONTHS AFTER DATE OF INCARCERATION. (SEE APPENDIX 1 PG 21-22)
- 2/7/2018 - 3/28/2019 142 DAYS OF DETAINMENT UNACCOUNTED
AND UN-RECOGNIZED BY THE STATE OF INDIANA.

"IV. AN ACCUSED UNREPRESENTED BY COUNSEL MAY BE EXCUSED FOR FAILING TO ASSERT THE RIGHT TO A SPEEDY TRIAL." STATE V. WORDEN. 25 OHIO MISC. 2d 15, 25 OHIO B. 237, 469 NE. 2d 245 (1985).

PREJUDICE FROM DELAY; THE PENDANCY OF INDICTMENT MAY SUBJECT HIM TO PUBLIC SCORN AND DEPRIVE HIM OF EMPLOYMENT AND ALMOST CERTAINLY WILL FORCE CURTAILMENT OF HIS SPEECH ASSOCIATIONS AND PARTICIPATION IN UNPOPULAR CAUSES. KLOPPER V. NORTH CAROLINA 386 U.S. 213, 222 18 L. ED. 2d 1, 87 S. CT. 988, 4 OHIO OP. 2d 168 (1967).

THAT PREJUDICE SHOULD BE ASSESSED IN LIGHT OF THESE INTERESTS THE LAST BEING THE MOST SERIOUS (PREJUDICE FROM DELAY). "BECAUSE THE INABILITY OF A DEFENDANT ADEQUATELY TO PREPARE HIS CASE SKEWS THE FAIRNESS OF THE ENTIRE SYSTEM." NOR WAS THE COURT OBLIVIOUS TO THE NON-JUDICIAL CONSEQUENCES OF PRETRIAL INCARCERATION. "FINALLY, EVEN IF AN ACCUSED IS NOT INCARCERATED PRIOR TO TRIAL, HE IS STILL DISADVANTAGED BY RESTRAINTS ON HIS LIBERTY AND BY LIVING UNDER A CLOUD OF ANXIETY, SUSPICION AND OFTEN HOSTILITY." BARKER V. WINGO. 407 U.S. 514, 532, 33 L. ED. 2d 101, 92 S. CT. 2182 (1972).

THE CATEGORICAL RULE REQUIRING A DEFENDANT TO PROVE ACTUAL PREJUDICE IN ALL CIRCUMSTANCES IS UNSUPPORTABLE... THE EXPRESS LANGUAGE OF THE SIXTH AMENDMENT IS QUITE EXPLICIT: EVERY CRIMINAL DEFENDANT ENJOYS AN UNEQUIVOCAL AND UNCONDITIONAL RIGHT TO A SPEEDY TRIAL." COMMONWEALTH V. CLARK 443 Pa. 318, 279 A. 2d 41, 49 (1971).

"ARREST IS A PUBLIC ACT THAT MAY SERIOUSLY INTERFERE WITH THE DEFENDANT'S LIBERTY, WHETHER HE IS FREE ON BAIL OR NOT, AND THAT MAY DISRUPT HIS EMPLOYMENT, DRAIN HIS FINANCIAL RESOURCES, CURTAIL HIS ASSOCIATIONS, SUBJECT HIM TO PUBLIC OBLOQUY AND CREATE ANXIETY IN HIM, HIS FAMILY, AND HIS FRIENDS." UNITED STATES V. MARLOW, 404 U.S. 307, 320, 30 L. ED. 2d 468, 92 S. CT. 455 (1971).

THE SUPREME COURT HELD THAT THE PROTECTED RIGHT "IS ACTIVATED ONLY WHEN A CRIMINAL PROSECUTION HAS BEGUN AND EXTENDS ONLY TO THOSE PERSONS WHO HAVE BEEN 'ACCUSED' IN THE COURSE OF THAT PROSECUTION." THE COURT CONCLUDED THAT THE RIGHT WOULD ATTACH FROM "EITHER A FORMAL INDICTMENT OR INFORMATION OR ELSE THE ACTUAL RESTRAINTS IMPOSED BY ARREST AND HOLDING TO ANSWER A CRIMINAL CHARGE." UNITED STATES V. MARLOW, 404 U.S. 307, 30 L. ED. 2d 468, 92 S. CT. 455 (1971).

"DIFFERENT WEIGHTS SHOULD BE ASSIGNED TO DIFFERENT REASONS." GREATER WEIGHT WILL BE GIVEN TO DELIBERATE DELAY, INTENDED TO PREJUDICE THE DEFENSE, LESS SIGNIFICANT ARE DELAYS RESULTING FROM NEGLIGENCE, OVER CROWDED COURTS, OR UNDERSTAFFED PROSECUTORS. EVEN IN THESE CASES, HOWEVER, THE DELAY SHOULD NOT BE IGNORED, BECAUSE IT IS ARE NEVER THELESS ATTRIBUTABLE TO THE GOVERNMENT.

"UNDUE AND OPPRESSIVE INCARCERATION PRIOR TO TRIAL." BARKER V. WINGO 407 U.S. 514, 531, 33 L. ED. 2d 101, 92 S. CT. 2182 (1972).

IF THE ACCUSED IS DETAINED IN A PRISON WITHIN THE JURISDICTION OF THE COURT, OBTAINING HIS PRESENCE FOR TRIAL SHOULD OCCASION NO DIFFICULTY. THE PROBLEM PRESENTED WHEN THE ACCUSED IS INCARCERATED IN ANOTHER STATE OR IS THE TARGET OF BOTH STATE AND FEDERAL PROSECUTIONS WAS THE SUBJECT OF TWO SUPREME COURT DECISIONS. SMITH V. HOOEY AND DICKEY V. FLORIDA.

BARKER V. WINGO THE SUPREME COURT REJECTED THE SUGGESTION THAT THE RIGHT TO A SPEEDY TRIAL SHOULD BE LIMITED TO THOSE CASES IN WHICH THE ACCUSED HAS MADE A DEMAND TO GO TO TRIAL, BECAUSE SUCH A READING WOULD BE INCONSISTENT WITH THE GENERAL PRINCIPLES GOVERNING THE WAIVER OF CONSTITUTIONAL RIGHTS. "THAT FAILURE TO ASSERT THE RIGHT WILL MAKE IT DIFFICULT FOR A DEFENDANT TO PROVE THAT HE WAS DENIED A SPEEDY TRIAL."

THAT SECTION II. FOR REASONS GRANTING THE PETITION IS THE FINAL RESOLUTE TO THIS CASE. THE FINDING ABSTAINED FROM BOTH THE STATE OF INDIANA AS APPELLEE IN THE BRIEF OF APPELLEE AND BY THE STATE OF INDIANA COURT OF APPEALS OPINION NEITHER ACKNOWLEDGE THE FACT THAT THE GOVERNMENT CONFIRMED "SPEEDY BENCH TRIAL" AT THE INITIAL HEARING OF JULY 11 2018.

ON AUGUST 16th, A SPEEDY BENCH TRIAL HAD BEEN SET AND IS ATTRIBUTED TO THE GOVERNMENT FOR FAILING TO SET A PROPER SPEEDY TRIAL ACCORDING TO THE COURT CALANDER. BY USE OF THE TERM "SPEEDY BENCH TRIAL", THE COURT AND PROSECUTION CONFIRMS SPEEDY TRIAL OF WHICH WAS SET OUTSIDE OF THE SPEEDY TRIAL TIME FRAME. FURTHERMORE, THE GOVERNMENT DOES NOT ACKNOWLEDGE AS TO WHY THE DATE OF TRIAL WAS SET OUTSIDE OF THE SPEEDY TRIAL TIME FRAME WITH THE FACTORS OF MOTION FILED AND THE TERM "SPEEDY BENCH TRIAL" CONFIRMED.

MR. LOPEZ RESPECTFULLY REQUESTS THAT THIS COURT FIND THAT HIS RIGHTS UNDER INDIANA CRIMINAL RULE 4 (B) HAVE BEEN VIOLATED THAT THIS COURT REVERSE HIS CONVICTIONS AND DISCHARGE HIM FROM CUSTODY AND FOR ALL OTHER JUST AND APPROPRIATE RELIEF.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

RODOLFO ANTONIO LOPEZ, JR.

Date: September 26, 2019