No. 20-5722

IN THE

SUPREME COURT OF THE UNITED STATES

Stanley Carter – PETITIONER

vs.

Wendy Kelley – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

Stanley Carter, ADC#111939

Post Office Box 970

Marianna, Ar. 72360

(870)-295-4700

QUESTION(S) PRESENTED

1. Does a Criminal defendant have a Fourteenth Amendment Constitutional Protection against the arbitrary deprivation by a state of one's State created liberty interest in State Statutory laws related to procedures regarding a Speedy Trial?

2. Under this Court's reasoning in **Paul vs. Davis, 424 U.S. 693, 710-711 (1976)** , is there any doubt that State law may confer rights and privileges which, once granted, may not be denied or withheld without violating due process?

3. Pursuant to this Court's holding in **Klopter vs. North Carolina, 386 U.S. 213, 87 S. Ct. 988 (1967) and Smith vs. Hooey, 393 U.S. 374 (1969),** does the Fourteenth Amendment to the U.S. Constitution – made applicable to the States via Sixth Amendment – guarantee the right to a Speedy Trial pursuant to a Stat's Criminal Trial Procedures outlining Speedy Trial directives.

List of Parties

1. Ms. Wendy Kelley, Secretary – Arkansas Department of Correction.

2. Mr. Dexter Payne, Director – Arkansas Department of Correction.

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Petition for Writ of Certiorari

The Petitioner herein, Stanley Carter, respectfully prays that a Writ of Certiorari issue to review the Judgment below.

Opinions Below:

The opinion of the lower Federal District Court appear at **Appendix-A** to this Petition and is cited as **Carter vs. Kelley, No. 5:17-CV-00069-JTR**, in The U.S. Dist. Court, Eastern Dist. of Arkansas-Pine Bluff Division; (2019).

The order of the lower Federal District Court appear at **Appendix-B** to this Petition and is cited as **Carter vs. Kelley, No.5:17-CV-00069-JTR**, in the U.S. Dist. Court, Eastern District of Arkansas-Pine Bluff Division; (2019).

The Judgment of the lower Federal District Court appear at **Appendix-C** to this Petition and is cited as **Carter vs. Kelley, No. 5:17-CV-00069-JTR**, in the U.S. District Court, Eastern District Court, Eastern District of Arkansas-Pine Bluff Division (2019).

The Judgment of the U.S. Court of Appeals for the Eighth Circuit appear at **Appendix-D** to this Petition and is cited as **Carter vs. Kelley, No; 19-1876 (2020)**.

The order of the U.S. Court of Appeals for the Eighth Circuit denying rehearing appear at **Appendix-E** to this Petition and is cited as **Carter vs. Kelley, No: 19-1876 (2020)**.

The mandate of the U.S. Court of appeals for the Eighth circuit, in accordance with the Judgment of 2-6-2020, appear at **Appendix-F** to this Petition and is cited as **Carter vs. Kelley, No. 19-1876 (2000)**.

Jurisdiction:

This date on which the U.S. Court of Appeals for the Eighth Circuit issued it's order denying Petitioner's Petition for Rehearing was March 20th, 2020 and a copy of that order appears at **Appendix-E**.

The date on which the U.S. Court of Appeals for the Eighth Circuit issued it's Mandate regarding the aforementioned order was March 27th, 2020. **See: Appendix-F**.

The Jurisdiction of this Court is invoked per **28 U.S.C.A. 1257 (a) Constitutional and Statutory Provisions Involved:**

1. The United States Constitutional Amendment #14 Due Process and Equal Protection Clauses.

2. The United States Constitutional Amendment #6.

3. United States Code Annotated, Title 28, Sec. 2254.

4. Arkansas Rules of Criminal Procedure #28>

5. Arkansas Code Annotated 16-10-130

Statement of the case:

On July 24, 2013, a Crittenden County Jury convicted Petitioner on three counts of Rape. On Sept. 16, 2013, Petitioner received a Life Sentence and Two 50-Year sentences.

In his direct appeal, Petitioner argued that the Trial Court erred in denying his motion to dismiss based on a violation of Rule 28.1 of the Arkansas Rules of Criminal Procedure (the Arkansas' Speedy Trial Rule).

On April 7th, 2016 the Ark. Sup. Ct. concluded that the Ark. Speedy Trial Rule was not violated and affirmed Petitioner's conviction. ***See: Carter vs. State, 2016 Ark. 152***.

On March 20, 2017, Petitioner initiated a Federal Habeas Action in The U.S. Dist. Court for the Eastern Dist. of Arkansas-Pine Bluff Division, asserting the following claims:

Claim 1: Trial counsel, Mr. Hair, was ineffective by failing to adequately interview, subpoena, and call key defense witnesses.

Claim 2: Mr. Hair was ineffective by failing to request a continuance or otherwise object to the Amended Criminal Information Filed on the day before trial.

Claim 3: Mr. Hair was ineffective by failing to timely inform Petitioner of exonerating DNA evidence and failing to seek independent experts to review the DNA evidence.

Claim 4: Mr. Hair was ineffective on direct Appeal by failing to argue the insufficiency of the evidence to support his convictions,

Claim 5: Petitioner's convictions should be dismissed because the trial court did not follow the strict commands of **Ark. Rule of Criminal Procedure 28.3 (b) (1)**.

Claim 6: Petitioner's convictions violated his Sixth Amendment right to a Speedy Trial, as Applied to his State trial under the Fourteenth Amendment's Due Process Clause.

Also, Petitioner asserted that he was actually innocent, partially relying on a sworn Affidavit dated April 5th, 2018 and submitted as an Amendment / Supplement to the initial Habeas pleading.

The lower district court rejected each of the aforementioned claims on the merits. **See: Appendexes-A through C**.

After submitting a certificate of Appealability to the United States Court of Appeals for the Eight Judicial Circuit-same was denied by a 3-Judge panel. **See:Appendic-D**

Thereafter, The Petitioner requested for a rehearing en banc, which was also denied. **See: Appendix E**

In accordance with the Judgment at Appendix-D, The Appeals Court issued the formal mandate on March 27, 2020. ***See: Appendix-F***

Reasons For Granting Petition

The United States Supreme court and all of the lower courts have repeatedly held that pro se pleading are to be liberally construed. **Rhines vs. Weber,** 544 U.S. 269 (2005). "If Habeas Corpus is to continue to have meaningful purpose, it must be accessible . . . to the mass of uneducated, unrepresented prisoners." **Liebman, Federal Habeas Corpus Practice and Procedure § 15.2 (c)(ii)(5th Ed. 2005). See Jones vs. Jerrison,** 20 F. 3d. 849, 853 (8th Cir. 1994) (given liberal standard for interpreting pro se petitions and District Court's consequent obligation "to analyze all alleged facts to determine whether they state a federal claim, **"Magistrate erred in dismissing what appeared to be state law-based claim for relief rather than constructing it as a cognizable federal due process claim): Williams vs. Lockhart,** 849 F. 2d. 1134, 1138 (8th Cir. 1988) (pro se litigant's allegations should be liberally construed to include allegations of apparent facts); **Brown vs. Roe,** 279 F. 3d. 742, 745-46 (9th Cir 2002)

("pro se Habeas Petitioner does occupy a unique position in the law. . . .Petitioners are to be afforded 'the benefit of any doubt'"); **Green vs. United States,** 260 F. 3d. 78, 83 (2nd Cir. 2001) (it is well settled that pro se litigants generally are entitled to liberal construction of their pleadings, which should be read 'raise the strongest arguments they suggest'". [T]he courts have recognized the need to interpret pro se petitions creatively to determined if they encompass valid federal claims, or sua sponte to invite amendments; and in all cases, the courts have exercised greater tolerance for vague and conclusory claims than they would in cases involving represented petitioners." As illustrated below, this case heavily warranted a mandatory evidentiary hearing in the District Court prior to the Magistrate's forty-five page memorandum opinion because several points were never slightly developed in State Court. The Magistrate ruled on all of the Petitioner's claims on their merits before being fully developed. **See U.S. ex rel. McNair vs. State of New Jersey,** 492 F. 1307, 1309 (3rd Cir. 1974); **U.S. ex rel. Davis vs. Yeager**, 453 F. 2d. 1001, 1005 (3rd Cir. 1971); **Bibby vs. Tard,** 741 F. 2d. 26, 30 (3rd Cir. 1984); **Paine vs. Massie,** 339 F. 3d. 1194, 1205 (10th Cir. 2003); **and Conaway vs. Polk,** 453 F. 3d. 567, 590 (4th Cir. 2006).

The petitioner convictions should be vacated for a speedy trial violation because the State Court's did not follow the strict commands of Arkansas Rule of Criminal Procedure 28.3 and the 6th Amendment to the Federal Constitution via the 14th Amendment's due process clause. The United States Supreme Court held in 1967 in the case of **Klopfer vs. North Carolina**, 386 U.S. 213, 87 S. Ct. 988, 18 L. Ed. 2d. 1; that the 14th Amendment to the U.S. Constitution made applicable to States the 6th Amendment guarantee of right to speedy trial citing **Gideon vs. Wainwright, 372 U.S. 335, 83 S. Ct. 792 (1963)** and **Pointer vs. Texas,** 380 U.S. 400, 85 S. Ct. 1065 (1965); explaining that various provisions of the Bill of Rights are made applicable to the

States by virtue of the 14th Amendment and the **Klopfer** Court held that the right to a speedy trial is as fundamental as any of the rights secured by the 6th Amendment **Klopfer, supra. *233, **993**.

In the aforementioned case the High Court found the Criminal Procedure condoned in **Klopfer** by the Supreme Court of North Carolina clearly denied him the right to a speedy trial. *See also **Smith vs. Hooey,** 393 U.S. 374 (1969)* (the basis of the decision thus appears to have been the speedy trial guarantee contained in the State Constitution). In other words, State law/rules. This is highly debatable among reasonable jurist among the various Federal Circuit Courts. Today, each of the 50 States guarantees the right to a speedy trial to its citizens. *See: The Right to a Speedy Trial*, 50 Col. L. Rev. 845, 847 (1957); Cf. Note, the lagging right to a speedy trial, 51 Vs. L. Rev. 1587 (1965). This, the history of the right to a speedy trial and its recursion in America clearly establishes that it is one of the most basic rights preserved by the U.S. Constitution.

Scrutinizing the dissenting part of the opinion handed down in Petitioner's direct appeal and comparing that analysis with the trial record in this case two things are obvious: 1. Not only was a contemporances record not made at the time that trial counsel asked for a continuance due to his wife's purported illness, but there was not even a fact-finding inquiry made into if he (trial counsel) was even married with children, whom said doctor was who made a medical prediction as to Mr. Hair and the kids getting the flu as well, (in which it was later found out that Mr. Hair nor his kids ever contracted the flu) 2. This issue would've been a major issue on a petition for rehearing of the majority opinion finding to affirm Petitioner's convictions and potentially asking the High Court for oral arguments to be had before the same court because appellate counsel never had an opportunity to rebut this counter argument in the State's brief that the Supreme

Court chose to adopt. As it currently stands, being that trial counsel made such an unfounded request to the trial court it's logical to assert that it would've seemed a bit unorthodox for Mr. Hair to file a Writ of Prohibition to the State's Supreme Court on a speedy trial violation grounds by the trial court not making a proper record per **Rule 28.0 (h)**, when such a valid record would've consisted of the reasons dealing with his wife's alleged illness, Thus, the only prudent way to raise such a claim in State Court was during direct review proceedings indeed, appellate counsel, Mr. Short, deprived Petitioner of his normal venue in which to raise an effective assistance of trial/appellate counsel claim, under **Rule 37.1** due to clear abandonment of petitioner during his direct review proceedings. . . .

The Arkansas Supreme Court held on October 5th, 1992 in the case of **Thompson vs. Erwin,** 310 Ark. 533, 537; 838 S.W. 2d. 353, 355 that to promote a more circumspect compliance with the statute A.C.A. 16-10-130, the issuance of Administration Order V (5) was necessary A.C.A. 16-10-130 provides that all courts in this State, shall, in the absence of extraordinary circumstances, give precedence to trial of criminal cases over other matters, civil and criminal, when the alleged victim is under the age of fourteen. Effective immediately when a case affected by 16-10-130 is not tried within nine months following arraignment, the Circuit Judge before whom the case is pending will inform the Administrative Office of the Courts in writing the reason or reasons the case has not been tried. Thereafter, in intervals of ninety (90) days the trial court will inform the office of the court as to the status of the case. During the pendency of the case no continuance shall be granted on motion of either the State or the defendant except upon written order detailing the reasons for, and the duration of, the delay. [Adopted Effective October 5, 1992].

In doing such, the Arkansas Supreme Court noted that "the rights of an accused to a fair trial, included time to prepare, are founded on the highest sanction under law, the Constitution." **Thompson vs. supra** at *536. With Chief Justice Holt stating in a concurring opinion that "Justice delayed is justice denied." The basis of the **Thompson** holding basically held that the [victim] of a crime under A.C.A. 16-10-130 does not have enforcement powers to expedite an excused criminal trial proceedings – however, albeit the State's high Court was silent as to if the accused under A.C.A. 16-10-130 did have such an enforcement power, the language of the ruling is strong enough to imply that any rights endowed therein belonged to the trial court to implement. **D. *535**. Nonetheless, such requirements were not met by the trial court; were not addressed by trial or appellate counsel(s); and this State created liberty interest is enforceable by the 14th Amendment's equal protection and due process clauses and by no account did the Petitioner waive such a jurisdictional issue proceedings or during his proceedings under direct review.

And most certainly, petitioner can't be at fault for not having an initial review collateral attack proceeding in the trial court under Rule 37 due to Mr. Short's abandonment. As it currently stands, on November 5th, 2015, appellate counsel wrote a responsive letter to Petitioner's inquiry concerning A.C.A. 16-10-130; in which he ill advised Petitioner that such a State law "is designed to benefit the alleged victim not you." See Exhibit #5 of Habeas Brief In Support. As this Court should take judicial notice, the **Thompson** decision was handed down in 1992 appellate and trial counsel should've been aware of same. . . The right to an accused to counsel is beyond question a fundamental right. See **Gideon vs. Wainwright,** 372 U.S. 335, 34 83 S. Ct. 792 (1963) ("The right of one charged with a crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.") Without counsel the

right to fair trial itself would be of little consequences, see **United States vs. Cronic,** 466 U.S. 468, 653, 104 S. Ct. 2039 (1984); **United States vs. Ash,** 413 U.S. 300, 307-308 (1973); **Angersinger vs. Hamlin,** 407 U.S. 25, 31-32 (1972); **Gideon, supra,** at 343-45 **Johnson vs. Zerbst,** 304 U.S. 458, 463-63 (1938); **Powell vs. Alabama,** 278 U.S. 45, 68-69 (1932), for it is though counsel that the accused secures his other rights. **Maine vs. Moulton**, 474 U.S. 159, 168-70 (1985); **Cronic, supra,** at 653; *See also* Schaefer, Federalism and State Criminal Procedural, 70 Harv. L. Rev. 1, 8 *(1956) ("of all the rights that an accused person had, the right to be represented by counsel is by far the most persuasive, for it affects his ability to assert any other rights he may have"). The constitutional guarantee of counsel however, "cannot be satisfied by mere formal appointment," **Avery vs. Alabama,** 308 U.S. 444, 446 (1940). "An accused is entitled to be assisted by an attorney, where retained or appointed, who plays the role necessary to ensure that the trial is fair." **Strickland vs. Washington, supra** at 686; **Cronic, supra** at 654; and this right extends to the representation of the direct review of conviction to the State's highest appellate court. *See* **Evitts vs. Lucey** 469 U.S. 387, 396 (1985) (due process requires effective assistance of counsel during first appeal as right.) **PA vs. Finley,** 481 U.S. 551, 555 (1987) (right to appointed counsel during first appeal as of right. *See also* **Kimmelman vs Morrison,** 477 U.S. 365 (1986).

Independent Ineffective Assistance of Trial and Direct Review Counsel That was Raised in the Lower District Court Level

Trial Counsel Mr. Hair was ineffective by failing to timely inform Mr. Carter of and prepare with exonerating DNA evidence. It was post-trial on or about August 23, 2013, the counsel Hair came to the jail and informed Petitioner that DNA testing was conducted on the

victim's underwear; that the first two tests revealed nothing while the third and forth tests showed DNA evidence from another male. Counsel Hair never informed Mr. Carter of this information prior to the trial or in fact discusses and information with Mr. Carter he had knowledge of and was in his possession, statements, DNA analysis, failing to provide this information shows prejudice and ineffective assistance counsel. Mr. Carter's timely discovery request were not complied with and prejudiced resulted. Access to data, mythology and actual results are crucial. Mr. Carter's due process rights were genes so it had to come from Petitioner of a male in his family. Petitioner was never allowed to have his own forensic analysis expert whom was capable of doing DNA testing to test on his behalf. *See* **Holsomback vs. White,** 133 F. 3d. 1382, (11th Cir. 1998); and **Adams vs. Bertrand,** 453 F. 3d. 428, (7th Cir. 2006).

This was testing done by the woman doctor that did the rape kit. The Arkansas State Crime Lab exonerated Petitioner with inconclusive testing and said there was DNA from another male but they don't know who that male was. This partial DNA was supposedly found in Shanerika's, the five year old panties. The doctor that did the rape kit found no injuries on any of the girls. These children had been taken from their Mother for child neglect previously; there were seven children in all. Carla Smith had 5 children, Laura Smith had 2, Samantha Smith, their Grandmother, had went through the courts and got custody of 3 of them; Asiah, Aniya and Shanerika. Carla Smith is a known prostitute and drug addict; Laura Smith is an alcoholic and drug addict. They constantly stayed in trouble at school and at day care. After the second day of trial, when Court was adjourned, and Mr. Hair said what he said Petitioner felt that he was not being given a fair trial. He left on the morning of the 24th of July, 2013, drove to Grand Rapids, Michigan to see his 2 children and 2 grandkids because he didn't know when he would see them again. He turned himself into the downtown Grand Rapids Police Department around 4:30 – 5:00

p.m. on July 25th, 2013; they extradited him back within that week. The aforementioned illustration was outlined by petitioner in the lower District Court. An evidentiary hearing was warranted to fully develop these facts in the District Court due in part to appellate counsel's abandonment.

Standard of Review

The Standard of review for purpose of 28 U.S.C. § 2254 (d) (1) has been satisfied in this case. Under this provision, Federal Habeas relief may not be awarded as to any claim that a state court had adjudicated on the merits "unless the adjudication of the claim.....resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States." In **Williams vs. Taylor,** 529 U.S. 362, 412 120 S. Ct. 1495 (2000), the U.S. Supreme Court held that clearly established Federal law, as determined by the Supreme Court refers to the holding, as opposed to dicta, of the Court's decisions as of the time of the relevant state court decision. A decision is "contrary to" a Supreme Court holding if the State Court "contradicts the government law set forth in the U.S. Supreme Court's cases", or if the state court "confronts a set of facts that are materially indistinguishable from a decision of the Supreme Court and nevertheless arrives at a different result." Id. at 405-406. A decision "involved an unreasonable application" of clearly established Federal law if the state court "identifies the correct governing legal rule from the Supreme Court's cases by unreasonably extends a legal principle from U.S. Supreme Court precedent to a new context where it should not apply or unreasonable refuse to extend that principle to a new context where it should apply." Id. at 407. After a thorough review of the facts and facts on law in this case, this court will see that the Arkansas Court's adjudication on the speedy trial claim,

resulted in decisions that was contrary to, or involved an unreasonable application of clearly established Federal law. Petitioner has made such a showing herein and in the lower District Court, and in the C.O.A. before the 8th Cir. Court of Appeals.

CONCLUSION:

The Constitutional magnitude of this case is crystal clear: If the State of Arkansas is allowed to circumvent the Federal Constitutional right to a Speedy Trial; then there is not Equal Protection under the law and other States will eventually do the same.....The Petition for Writ of Certiorari should be granted.

Dated: June, 18th, 2020

Respectfully Submitted: Stanley Carter

Stanley Carter – Pro se
ADC #111939
P.O. Box 970
Marianna, Ark. 72360