NO 20-6744

IN THE

SUPREME COURT OF THE UNITED STATES

Sinclair, Ellis Jr.-Petitioner

ORIGINAL

Vs.

United States of America-Respondent
(List of Parties)

PETITION FOR WRIT OF CERTIORARI

Fourth Circuit Court Of Appeals
(name of Court that last ruled on merits of case)

PETITION FOR WRIT OF CERTIORARI

Sinclair Ellis Jr.

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(2)

QUESTIONS

Where as the District Court has 30 days on the Speedy Trial Clock to make a ruling on a pre-trial motion under §3161(H)(1)(J). If the Distrcit Court take 90 days (without an ends-of-Justice ruling on the record) to make a ruling on a Pre-Trial motion, is 60 days of the 90 days counted by the Speedy Trial Clock?

Where as if the Speedy Trial 70 day time limit is in Question (under §3161(c)(1)) before the Petitioner enter a guilty plea, is the petitioner counsel held accountable for allowing 139 days to surpass the Speedy Trial Act Limitation.

Where as did the District Court error by not granting the Petitioner an C.O.A. when the Petitioner Speedy Trial rights was in Question?

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I Sinclair Ellis Jr. respectfully Petition for Writ of Certiorari, and ask this Honorable Court to review the Judgment of the United States District Court for the District of Maryland, and The Fourth Circuit Court Of Appeals. (for Speedy Trial Violation)

JURISDICTION

The Judgment for the United States District Court For The District of Maryland was January 27, 2020.
The Judgment for The Fourth Circuit Court of Appeals was July 24, 2020.
Under 18 USCS 1254(1),this Honorable Court has Jurisdiction.

CONSTITUTION PROVISION AND RULE INVOLVED

The **Fifth Amendment** of the United States Constitution provides no person shall be held to answer for a capital or other wise infamous crime unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger. Nor shallany person be subject for the same offense to be twice put in jeopardy of life or limb. Nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life liberty or property, with out **Due Process of Law.** Nor shall private property be taken for public use with out just compensation.

RIGHTS OF THE ACCUSED

Sixth Amendment

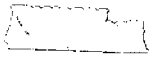
In all criminal prosecutions, the accused shall enjoy the right to a **Speedy and public Trial,** by an impartial Jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be confronted with the witnesses against him: to have compulsory process for obtaining witnesses in his favor and to have The **Assistance of Counsel for his defence.**

STATEMENT OF FACTS

Now comes the Petitioner Sinclair Ellis Jr. that states the following: The Petitioner claims that his Sixth Amendment right for effective assistance of counsel, and Speedy Trial Rights was violated. Wherefore the Petitioner will go under the umbrella in Light of Supreme Court Precedent Zedner v. United States (126 S. Ct. 1976) to show that before he entered his guilty plea, his counsel was ineffective to allow the Government to surpass the time limit of the Speedy Trial Clock.

The Petitioner has prepared this Motion for Writ of Certiorari without the benefit of professional counsel as a pro-se prisoner litigant. The Petitioner would invoke the liberal Construction of pleadings standard under Haines v. Kerner 404 US 519,520,520 (1972).

On October 25, 2016 the Petitioner was indicted for Conspiracy to Distribute and possess with intent to distribute Herion and Cocaine in violation of Title 21 USCS 841(a)(1), 21 USC §841, 846. On August 22, 2017 the Petitioner was Superseded (indictment) for Conspiracy to Distribute and possess with intent to distribute Heroin and Cocaine in violation of Title 21 USCS 841(a)(1), 21 USC §§841, 846. The Petitioner plead Guilty on February 16, 2018. The Petitioner was sentenced on April 26, 2018. Section 2255 is the proper Gatekeeper for ineffective assistance of counsel, citing Strickland v. Washington 466 US 668, 80 L. ed 2d. 674, 104 S. Ct. 2052 (1984). In Strickland the Supreme Court stated" a convicted defendant alleging ineffective assistance of counsel must show not only that counsel was not functioning as the counsel guaranteed by the Sixth Amendment so as to provide reasonably effective assistance, but also that counsel's errors were so serious as to deprive the defendant of a Fair Trial because of a reasonable probability that , but for counsel's unprofessional errors, the results would have been different. In this Motion for Writ of Certiorari the Petitioner will demonstrate the uncounted days thats in Question by the Speedy Trial Clock. Which the Petitioner counsel ignored and due to this inconsideration counsel deficient performance caused the Petitioner Prejudice. In light of Buck v Davis (citing) 137 S. Ct. 759, 197 L. ed 2d. 1 2017 US LEXIS 1429 85 u. S. l. W. 4037 fla. L.



In Buck"states" When the District Court denies relief on the merits a prisoner satisfies this standard by demonstrating that reasonable Jurists would find that the District Court assessment of the Constitutional claims is debatable or wrong. see Slack v. Danial 529 US 473, 484, 120 S. Ct. 1595 146 L. ed. 2d. 542, (2000) also see Miller-El v Cockrell 537 US 322, 336-38 123 S. Ct. 1029 154 L. ed. 2d. 931 (2003). Welch v. United States 136 S. Ct. 1257, 1265 194 L. ed. 2d. 387 (2016). When the District Court denied the Petitioner Application for C.O.A. pursuant to 28 USC§2253(c)(2) the foundation of the District Court Ruling was not about the days in Question concerning the Speedy Trial Clock presented by the Petitioner, but the Court ruled in favor of the Government Statement that the Petitioner waived his Speedy Trial rights when he plead guilty. When the Petitioner was going through the Pre-Trial process he was unaware that his right to a Speedy Trial was in Question and counsel concern was foreclosed. In Zedner v. United States citing- 547 US 489, 502, 126 S. Ct. 1976 164 L. ed. 2d. 749 2006 US LEXIS 4509. The Supreme Court Stated" this Court rejects the District Court reliance on § 3162(a)(2) which provides that a defendant whose trial doe's not begin on time is deemed to have waived the right to move for dismissal if that motion is not filed prior to trial or entry of a guilty plea. That section makes no mention of **Prospective waivers**, and there is no reason to think that Congress wanted to treat prospective and retrospective waivers similarly. Allowing prospective waivers would seriously undermine the Act because in many cases, the prosecution, defense, and court would all like to opt out, to the detriment of the public interest. Section 3162(a)(2) retrospective waiver does not pose a comparable danger, because the prosecution and the court cannot know until the trial starts or the guilty plea is entered whether the defendant will forgo moving to dismiss they retain a strong incentive to make sure the trial begins on time. To prove a claim of ineffective assistance of counsel a defendant must show that counsel's performance was deficient and (2) that the deficient performance prejudiced the defense (Strickland v. Washington). Under the second prong of the Strickland test in the context of a conviction following a guilty plea, a defendant can show prejudice only by demonstrating a reasonable probability that but for counsels errors he would not have plead guilty and would have insisted on going to trial citing Lee v. United States 137 S. Ct. 1958, 1965 198 L. ed. 2d. 476 (2017)

Now the Petitioner will reflect back to the record. In the District Court order on January 27, 2020 the court stated" on January 4, 2017 the Government filed an unopposed motion to exclude time from Speedy Trial Act computations from November 1, 2016 through and including February 1, 2017. The Court granted the motion based upon the parties need to review discovery to prepare for trial and on going plea discussions. AS a result, the Court made specific findings that the Ends-of-Justice were served by granting the motion. In United States v. Martin (2019 U.S. Dist LEXIS 63969 Fourth circuit) an Opinion by Senior Judge David A. Faber stated" the Government asks that time spent in plea negotiations be excluded by the court (citing cases holding that ends-of-justice continuances maybe appropriate for plea negotiations). In so doing the United States is infact asking the court to grant an ends-of-justice continuance after the fact. This the court cannot do. What a District Court may not do is allow the deadline to expire and then later attempt to rationalize the delay as having been required by the interests of Justice. see United States v. Moss 217 f.3d 426, 433 (six circuit 2000). also see United States v. Henry 538 f.3d at 304-06, 2008. The Fourth circuit Court of Appeals rejected the District court attempting to make ends-of-justice findings approximately three months after granting continuance where stated findings were not supported by record. The Act requires that when a District Court grants an Ends-Of-Justice continuance it must set forth in the record of the case, either orally or in writing, its reasons for finding that the ends-of-justice are served and they out weigh other interests (18 USC §3161(H)(8) Zedner) Now the Petitioner will present the facts from the Court Docket Sheet (see Appendix-B, exhibit-A) to reflect the days in Question concerning Speedy Trial violation. The Petitioner made his initial appearance on October 13, 2016. The District Court didnot start the Speedy Trial clock until the last co-defendant (Maria Smith) made her initial appearance in Maryland District Court on November 1, 2016. In the District Court order, the Court Quoted the Government **capricious** statement, **The** Government claim that he filed a motion on January 4, 2017 (which this record is not founded on the court docket) to exclude time from the Speedy trial clock from November 1, 2016 (before January 4) and February 1, 2017 (after January 4) Furtheremore in the District Court order, the Judge made an ends-of-justice ruling that excluded 63 days from the Speedy Trial clock. This Bribourism action by the Government and

district court went against the Speedy Trial Acts demands. (citing) United States v. Johnson 29 F.3d 940-5th/11th circuit. In Johnson the Court of Appeals stated"If no hearing is required a motion (18 USCS §3161(H)(1)(f) allows exclusionary time for a prompt disposition of the motion. Only that time needed for a prompt disposition however is excluded under § 3161(H)(1)(f). The point at which time will no longer be excluded is determined by 18 USCS §3161(h)(1)(J) which permits an exclusion of 30 days from the time a motion is actually under advisement. There after the fact that a motion is pending or is other wise unresolved does not toll the speedy trial clock. Now the Petitioner will continue to demonstrate the days that was in Question from the Speedy Trial Clock which was ignored by The District Court and to show ineffective assistance of counsel. The last co-defendant allegedly made her initial appearance (Maria Smith) on November 1, 2016 moreover the Government filed a motion on January 4, 2017 to exclude time from the Speedy Trial Clock from November 1, to February 1, 2017 from Nov. 1, 2016 to January 22, 2017 thats 82 days thats in question from the Speedy Trial Clock. On January 23, 2017 co-defendants- Marc Williams, Maria C. Smith and Yesenia filed motions. (no motions were filed by Petitioner counsel) Consent Motion by Maria Smith on February 9, 2017 order granting motion for Maria on Feb. 24, 2017. Maria plea agreement motion to be sealed March 9, 2017. Yesenia Plea agreement motion to be sealed April 6, 2017. Sinclair Ellis Jr. Motion to withdraw by attorney on may 1, 2017 . (uncounted days) On August 24, 2017 Sinclair Ellis Jr. was appointed counsel. No other motions was filed on the record by co-defendants or Petitioner until January 6, 2018. Thats 127 days plus 82 days equal 209 days subtract 70 days limitation equals 139 days thats inviolation of the Speedy Trial Act §3161(c)(1)

REASON FOR GRANTING WRIT OF CERTIORARI

On behalf of the Petitioner's Fifth Amendment right to Due Process and the Petitioner Sixth Amendment Right to a Speedy Trial and right to Effective Assistance of counsel. The Petitioner pray that this Honorable Court will take inconsideration of the evidence from the Court Docket Sheet that show the 139 days that surpassed the 70 day Speedy Trial clock. And that the Petitioner counsel's performance was deficient for not objecting that the Petitioner Speedy Trial rights are in Question Wherefore the Petitioner is asking this Honorable Court to G.V.R this matter back to the District Court to hold a Hearing on Whether the indictment be dismissed with Prejudice or Without Prejudice.