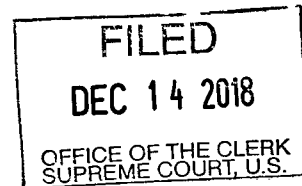


COA NO. 04-15-00655-CR

TR. CT.NO. 2014 CR 0148

PD - 095216
20-6821
NO.



IN THE SUPREME COURT
UNITED STATES SUPREME COURT

MATTHEW JAMAL JACKSON

V. PETITIONER

THE STATE OF TEXAS

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF TEXAS FOURTH DISTRICT

Matthew Jackson
12/30/2020
MR. MATTHEW JAMAL JACKSON

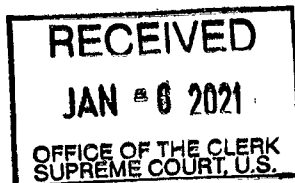
CLEMENS UNIT

11034 HWY 36

BRAZORIA, TX. 77422

TDCJ # 2028305

5T-45



State of TEXAS

County of HARRIS

On the 30TH day of December 2020, Matthew Jamal Jackson personally came before me and, being duly sworn, did state that he or she is the above person described in the above document and that he or she signed the above document in my presence as a free and voluntary act for the purposes stated.

Mayra Hernandez
Signature of Notary Public



Notary Public,

In and for the County of HARRIS State of TEXAS

My commission expires: 12-02-2024

COA NO. 04-15-00655-CR

TR. CT. NO. 2014 CR 0148

PD-0952-16

NO. _____

IN THE SUPREME COURT
UNITED STATES SUPREME
COURT

MATTHEW JAMAL JACKSON

v. PETITIONER

THE STATE OF TEXAS
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF TEXAS FOURTH DISTRICT

Mr. Matthew Jamal Jackson

Clemens Unit

11034 HWY 36

Brazoria, TX 77422

TDCT # 2028305

5T-45

RECEIVED

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SUPREME COURT, U.S.

Question Presented

Whether petitioner was denied his Constitutional Right to a Speedy Public Trial pursuant to the Sixth and Fourteenth Amendments. *Gonzales v. State*, 435 S.W. 3d 801, 815 (Tex. Cr. App. 2014).

Whether the delay of approximately 24 months between time of arrest and time of trial on Aggravated Robbery charges was presumptively prejudicial. *Maples v. Stegall*, 427 F.3d 1020 (6th Cir. 2005)

Whether petitioner asserted his Speedy Public Trial right did not abandon his request therefore; *Redd v. Sowders*, 809 F.2d 1266, 1269 (6th Cir. 1987); *Cain v. Smith* 686 F.2d 374, 384 (6th Cir. 1982).

Whether pre-trial incarceration 24 months in length was oppressive and constituted prejudice, and length of delay impaired defense because possible alibi witnesses were no longer available at trial to substantiate alibi claim.

Whether the Six Amendment, made applicable to the states through the Fourteenth Amendment guarantees a speedy public trial to the accused. See, 6th Amendment US Constitution, 14 Amendment US Constitution and Art. 1 Section 10 Texas Constitution and Art 1.05 (Vernon Supp. 2003). *Klopfer v. North Carolina*, 386 U.S. 213, 222-23, 87 S. Ct. 988, 18 L. Ed. 2d 1 (1967).

PARTIES TO THE PROCEEDINGS

Petitioner

Matthew Jamal Jackson

Clemens Unit

11034 Hwy 36

Brazoria, Texas 77422

TDCT #2028305

S-T-45

District Attorney

Nicholas Lathrop

Paul Elizondo Tower

101 W. Nueva Street

San Antonio, Texas 78205

Attorneys' For Petitioner

Petitioner Trial Counsel:

Jennifer Kay Pena

101 W. Nueva St

San Antonio, TX 78204

Assistant District Attorney

Jennifer Rossmeier Brown

Paul Elizondo Tower

101 W. Nueva Street

San Antonio, Texas 78205

Petitioner Trial Counsel:

Vincent Dennis Callahan

P.O. Box 12141

San Antonio, TX 78212

Texas State Attorney General

Ken Paxton

P.O. Box 12548

Austin, Texas 78711

Petitioner Counsel on Appeal:

James P. Sieloff

13750 San Pedro Ave. #600

San Antonio, TX 78232

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Constitutional Provisions And Statutes Involved In The Case

Statement of Case

Reasons For Granting The Writ

This case, in which the Sixth and Fourteenth of petitioner is Speedy Public Trial was denied and whether the delay of approximately 24 months between time of arrest and time of trial on Aggravated Robbery charges was presumptively prejudicial as petitioner asserted his Speedy Public Trial right did not abandon his request therefore.

Whether the Sixth Amendment, made applicable to the States through the Fourteenth Amendment guarantees a Speedy public trial to the accused. See 6th Amendment US Constitution, 14 Amendment US Constitution and Art. 1 Section 10 Texas Constitution and Art 1.05 (Vernon Supp. 2003). *Klopfer v. North Carolina*, 386 U.S. 213, 222-23, 87 S.Ct. 988, 18 L.Ed. 2d 1 (1967).

OPINIONS AND ORDERS ENTERED IN PETITIONER'S CASE

- (1) Fourth Court of Appeals San Antonio, Texas
Memorandum Opinion
No. 04-15-00655-CR
From the 329th Judicial District Court, Bexar County, Texas
Trial Court No. 2014CR0148
Affirmed July 6, 2016. Appendix A.
- (2) Pro-Se petition for discretionary review was filed in Criminal Court of Appeals on 8/17/2016
COA No. 04-15-00655-CR
PD-0952-16
Tr. Ct. No. 2014CR0148. Appendix B.
- (3) Pro-Se Motion for extension of time to file the redrawn petition for discretionary review has been granted extended to Monday, January 2, 2017 on 11/18/16. Appendix C.
- (4) Pro-Se redrawn petition for discretionary review has been filed on 1/6,
COA No. 04-15-00655-CR
PD-0952-16
Tr. Ct. No. 2014CR0148. Appendix D.
- (5) This Court has granted the Pro-Se Motion to Suspend Rule 9.3(b) T.R.A.P. on 1/27/2017
COA No. 04-15-00655-CR
PD-0952-16
Tr. Ct. No. 2014CR0148. Appendix E.
- (6) Pro-Se petition for discretionary review has been refused on 2/15/17.
COA No. 04-15-00655-CR
PD-0952-16
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- (7) Pro-Se motion for rehearing was rejected for non-compliance with Rule 79.2(c) T.R.A.P on 3/3/17. Appendix G.

STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

On July 6, 2016, the Fourth Court of Appeals in San Antonio, Texas issued an opinion affirming the Judgment in Mr. Matthew Jackson case. On August 17, 2016, Mr. Matthew Jackson timely filed a petition for discretionary review raising both Federal and State Constitutional Arguments. On November 18, 2016 motion for extension to file redrawn petition for discretionary review was granted extended to Monday, January 2, 2017. Redrawn Petition for discretionary review was filed on January 1, 2017. Pro-Se Motion To Suspend Rule 9.3(b) T.R.A.P. granted on January 27, 2017. Petition For Discretionary review was refused on February 15, 2017. Pro-Se Petition For Discretionary Review Motion For Rehearing was rejected for non-compliance with Rule 79.2(c) T.R.A.P. on March 3, 2017. This petition is filed 90 days of the judgment and therefore timely. See SUP. CT. R. 13(1). This Court's jurisdiction is invoked through 28 U.S.C. § 1257.

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Art. 1 Section 10 Texas Constitution	p. 7, p. 17, p. 20

STATEMENT OF CASE

On September 28, 2013, Petitioner Matthew Jackson was arrested for charge of Unauthorized use of a motor vehicle and Evading Arrest Detention. These charges were dismissed on October 18, 2013. Petitioner Matthew Jackson judicial history reflects a complaint and warrant was filed October 3, 2013 but according to officials in Bastrop, County stated that it was never filed on that date. Petitioner Matthew Jackson bond was set in Bastrop County, Texas for Bexar County charge on October 21, 2013 at \$1,000 one-thousand dollars. Petitioner Matthew Jackson bond was reset to \$75,000 seventy-five thousand. Petitioner Matthew Jackson was denied Court Appointed Attorney on October 27, 2013 said warrant was returned on October 28, 2013. Reason given for denial PR officer stated that Petitioner Matthew Jackson made too much money for court appointed Attorney. Petitioner Matthew Jackson didn't receive Attorney for representation until November 24, 2013. On January 3, 2014 Application for Writ of Habeas Corpus seeking release because of delay was filed by Attorney Jennifer Kay Pena. Petitioner Matthew Jackson was indicted by the prosecutor on January 15, 2014. The State court set trial on January 17, 2014 but continued the trial until February 6, 2014. In its disposition February 7, 2014 Motion To Release Defendant and set Reasonable Bail was granted and set at \$50,000 fifty-Thousand. On March 29, 2014 in preparation for trial Petitioner Matthew Jackson Attorney Jennifer Pena filed

Motion For Production of Evidence Favorable To Accused, Defendants
 Request For Notice of State Intent, Motion For Discovery and Motion in
 Limine. The motion in limine sought to exclude Petitioner Matthew
 Jackson prior criminal record on grounds that it would prejudice
 Petitioner particularly as he planned to testify at trial. But motion
 in limine was irrelevant in regards to this issue because petitioner
 didn't have a criminal history on his background. Nothing suggests
 this motion was complicated or presented any unique issue. Motion to
 Quash indictment was filed on March 4, 2014 status conference
 set trial court again continued the trial until April 7, 2014. On
 May 29, 2014 Petitioner Matthew Jackson filed his motion for bond
 reduction hearing was granted. On July 18, 2014 Petitioner
 Matthew Jackson filed another motion for bond reduction.
 Petitioner Matthew Jackson filed motion for bond reduction on
 August 8, 2014. On August 19, 2014 motion for release Defendant &
 Set Reasonable Bail was filed and hearing held. Attorney Jennifer
 Kay Pena went on the District Attorney's computer and set petitioners
 Matthew Jackson bond at \$50,000 Fifty-Thousand as if petitioner
 never had a bond set in the system. On August 20, 2014 petitioners
 Matthew Jackson filed motion for speedy trial, motion to dismiss
 with prejudice for state is failure to prosecute and motion
 for Reduction of Bond. The state set trial date for August
 28, 2014. Motion to withdraw Attorney because of ineffective
 Assistance of Counsel was granted on August 28, 2014. The
 record should clearly reflect Petitioner Matthew Jackson invoked
 his Sixth Amendment Right in court as he spoke on the record
 as the record shows with Judge Ron Rangel in court 0399th Petitioner
 Matthew Jackson stated that his Sixth Amendment Right to a
 Constitutional Speedy Public Trial was violated and requested
 dismissal on grounds.

Because the State is violating 180 day rule. Instead Petitioner Matthew Jackson was thrown out of the courtroom. Prosecutor filed Petition For Writ Habeas Corpus and Motion Suppress 1D Testimony on August 28, 2014. Trial was continued to September 17, 2014. Trial date was set for December 11, 2014 but no trial was held. Petitioner Matthew Jackson filed Motion For Speedy Trial on April 22, 2015 no hearing was held. On June 11, 2015 Petitioner Matthew Jackson filed Motion For Violation of Sixth Amendment Right To Speedy Trial ~~no~~ hearing was held. Petitioner Matthew Jackson had no Trial Date set in the system. Petitioner Matthew Jackson also filed on June 11, 2015 motion For Speedy Trial, Police Perjury in Motion Hearing was filed on June 11, 2015. This motion is equivalent to an entrapment motion but no hearing was ever held. Trial Date was set for June 25, 2015 no trial was ever held. Petitioner Matthew Jackson filed Motion For Speedy Trial on July 31, 2015 and Writ of Habeas Corpus For Failure To Provide A Speedy Trial no hearing was held. In all Speedy Trial motions Petitioner Matthew Jackson requested dismissal for violations of the 180 day rule and his constitutional Speedy Trial Right. All plea negotiation offers were rejected by Petitioner Matthew Jackson. Petitioner Matthew Jackson asserts that under the Speedy Trial Act his constitutional rights were violated. United States v. Dejesus, 887 F.2d 114, 116 n. 1 (6th Cir. 1989); Maples v. Stegall, 427 F.3d 1020 (6th Cir. 2005). The record reflects that Petitioner Matthew Jackson objected to the prosecutions continuances. Petitioner Matthew Jackson herein isn't responsible for the court's or prosecution decision. Petitioner Matthew Jackson filed 38 thirty-eight Affidavits to the court requesting a Speedy Trial, asserting that his Sixth Amendment was violated,

petitioner requested new counsel, because of delay petitioner has suffered prejudice, 180-day rule violated, lost of witnesses and his main witness because of death Patrick Powell. Petitioner Matthew Jackson defense was totally impaired. Petitioner Matthew Jackson suffered from Post Traumatic Stress Disorder during trial therefore petitioner suffered from memory lost and anxiety. Petitioner Matthew Jackson was denied speedy trial by bad-fith there was never a gun in petitioner possession when he was arrested nor, was a revolver in petitioner's discovery until trial. Petitioner Matthew Jackson had looked at his discovery when his counsel was Attorney Jennifer Pena and no revolver was ever in his discovery. The prosecution planned fabricated evidence to make a case to exigent circumstances, consistently holding that 'exigent circumstances do not meet the Fourth Amendment standards if the Government deliberately creates. Parker v. State, 206 S.W. 3d 593, 598 n. 21 (Tex. Crim. App. 2006) (quoting United States v. Coles, 437 F.3d 361, 366 (3d Cir. 2006); Adame v. State, 37 S.W. 3d 141, 143-144 (Tex. App.-Waco 2001, pet granted 8-1-01); Kentucky v. King, 131 S. Ct. 1849 (2011)). Prosecution withheld other evidence petitioner's iPhone 5, \$5819.00, Black Toshiba Computer and Nursing book. Investigator Jason Vizcarra testified that he located a revolver and cell phone days later October 1, 2013. But never tested the revolver for prints the iPhone 5 was withheld. Petitioner contends that the iPhone 5 belonged to him and the revolver was planned fabricated evidence by the prosecution a scheme structured to obtain a conviction. This is the main reason for the State delaying trial. As a professional it is

an obligation to follow the proper procedures. Prosecution questioned Investigator Jason Vizcarra why he didn't test the revolver for petitioner's prints his excuse was it was raining. It was not raining perjury was committed for the prosecution. Petitioner Matthew Jackson conviction was based on evidence known to be false. Miller v. Pate 386 U.S. 1 (1967). Prosecutor knowingly used perjured testimony by Investigator Jason Vizcarra to obtain conviction which is misstatement of material facts to obtain conviction. Napue v. Illinois 360 U.S. 264 (1959); Berger v. United States, 295 U.S. 78 (1935). Petitioner Matthew Jackson conviction was obtained as a result of prosecutorial misconduct. Darden v. Wainwright, 477 U.S. 168 (1986) Petitioner Matthew Jackson had been in confinement over 714 days waiting for trial, and at all times the Petitioner Matthew Jackson was ready for trial. Petitioner's Judicial History reflects that he filed numerous Motion's For Speedy Trial. Record reflects bad faith by the State on March 20, 2015 petitioner receives a letter from Attorney Vincent D. Callahan stating that his case had been dropped from the docket in favor of a very lengthy docket when the judges call last chance docket. Petitioner Matthew Jackson rejected courts plea offer. Petitioner received a letter February 27, 2014 from Attorney Vincent D. Callahan saying he had received petitioner's letter postmarked February 19, 2015 stating "It would be unwise to demand a Speedy Trial in your case because the evidence against you is overwhelming; why rush to judgment? A finding of bad-faith delay "renders relief almost automatic. Zamorano, 84 S.W. 3d at 649.

All these letters were forward to the Court 0379th the record reflects on petitioners judicial history. Petitioner's Uncle Patrick ~~Powell~~ was an alibi witness ~~who~~ would have been available for a timely trial but he died. This is considered Prima Facie Evidence of prejudice under the Speedy Trial Clause. On October 1, 2015 / 95k Attorney Vincent D. Callahan if I can see my discovery to make sure no evidence was planned in my discovery before trial. His statements was its not in court and he couldn't find my file. I was kicked out of court for making a loud outburst. Misplacing and withholding petitioners file denied Due Process and violated petitioners right to a speedy trial. The government deliberate attempted to delay trial in order to hamper the defense. Which is prosecutorial negligence and misconduct. Petitioner Matthew Jackson was in Bexar County Detention without a trial date set in the system. So, Petitioner filed lawsuits in United States District Court Western District of Texas on June 17, 2015 Case No: 5:15-cv-00509 and for Speedy ~~Public~~ Trial Violations In The United States District Court For The Western District of Texas Austin Division on September 15, 2015 Case No: A-15-CA-786-RP. I was finally granted a court hearing for October 1, 2015 trial was set for October 6, 2015.

The right to a Speedy Trial is guaranteed by the Sixth Amendment of the United States Constitution and applies to the states through the Fourteenth Amendment. U.S. Const. Amends. VI, XIV; Klopfer v. North Carolina, 386 U.S. 213, 222-23, 87 S. Ct. 986, 18 L. Ed. 2d 1 (1967).

Additionally, our own state constitution and code of criminal procedure guarantee an accused's right to a speedy public trial. TEX. CONST. ART. I, § 10; TEX. CODE. CRIM. PROC. ANN. ART. 1.05 (Vernon Supp. 2003), (citing Pointer v. Texas, 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923 (1965)).

In Barker v. Wingo, 407 U.S. 514, 530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972), the Supreme Court articulated four factors that must be considered in determining whether the right to a speedy trial has been violated: (1) whether the delay was uncommonly long; (2) the reason for the delay; (3) whether the defendant asserted his right to a speedy trial; and (4) whether prejudice resulted to the defendant. No one of these factors constitutes a "necessary or sufficient condition to the finding of a deprivation of the right of Speedy trial." Barker, 407 U.S. at 533, 92 S. Ct. 2182. "Rather, they are related factors and must be considered together with such other circumstances as may be relevant." *Id.*

Length of the Delay

The length of the delay is a threshold requirement. If the length of the delay is not "uncommonly long," then judicial examination ends. Doggett v. United States, 505 U.S. 647, 652, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992). The length of the delay is measured from the date of the indictment or the date of the arrest, whichever is earlier. United States v. Marion, 404 U.S. 307, 320, 92 S. Ct. 455, 30 L. Ed. 2d 468 (1971);

Redd v. Sanders, 809 F.2d 1266, 1269 (6th Cir. 1987), (citing U.S. v. Marion 404 U.S. 307, 320, 92 S. Ct. 455, 463, 30 L. Ed. 2d 468 (1971)); Dillingham v. United States, 423 U.S. 64, 65, 96 S. Ct. 303, 303, 46 L. Ed. 2d 205 (1975)).

A delay approaching one year is presumptively prejudicial and triggers application of the remaining three factors, Doggett, 505 U.S. at 652 n. 1, 112 S. Ct. 2686. Here, Petitioner Matthew Jackson suffered a delay of approximately twenty-five (25) months between his arrest and the date of his trial. We find that on the facts of this case, the twenty-five month delay is more than "ordinary." See Zamora, 84 S.W.3d at 648. Twenty-Five month delay between arrest and trial was presumptively prejudicial. Petitioner Matthew Jackson's speedy trial rights were violated under Barker v. Wingo factors by 25-month delay that was most attributable to state. Maples v. Stegall 427 F.3d 1020 (6th Cir. 2005). Most delays of eight months or longer are considered presumptively unreasonable and prejudicial. Doggett v. United States, 505 U.S. 647, 651, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992); see Schenck, 996 S.W.2d at 312; Pierce v. State, 921 S.W.2d 291, 294 (Tex. App. Corpus Christi 1996, no pet.)

Reason For Delay

Because of disputes in the reasons for delay in the case, we have to apply an abuse-of-discretion standard to this factor. See Moreno, 987 S.W.2d at 200. Petitioner argues that the reason for the delay was the state collusion with Bastrop County Sheriff's Department Investigator Jason Vizcarra. State never had a case petitioner contends that the cell phone was his and the revolver was planned fabricated evidence by the prosecution a scheme structured to obtain a conviction this is the main reason for the state delaying trial.

As a professional it is an obligation to follow the proper procedures. Prosecution questioned Investigator Jason Vicaria why, he failed to test the revolver for petitioners prints his excuse was it was raining. It was not raining he committed perjury on the stand for the prosecution. Petitioner Matthew Jackson conviction was based on evidence known to be false. Miller v. Pate 386 U.S. 1 (1967). Prosecutor knowingly used perjured testimony by Investigator Jason Vicaria to obtain conviction. Napue v. Illinois 360 U.S. 264 (1959); Berger v. United States, 295 U.S. 78 (1935). Petitioner Matthew Jackson conviction was obtained as a result of prosecutorial misconduct. Darden v. Wainwright, 477 U.S. 168 (1986). The State did not explain why, it didn't test the revolver for petitioners prints and failed to give explanation on why petitioners iPhone 5, \$5819.00, Toshiba computer and college nurse book were not placed into evidence. Which petitioner ~~feels~~ would all prove his innocent. The State failed to disclose evidence favorable to the accused in direct violation of petitioner Fifth, Sixth and Fourteenth Amendments of the Constitution. Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 514 U.S. 419 (1995); Penn v. Richie, 480 U.S. 39 (1987); Giglio v. United States, 405 U.S. 150 (1972). A finding of bad-faith "renders relief almost automatic. Zamora v. 84 S. W. 3d at 649.

The prosecutor and the court have an "affirmative constitutional obligation" to try the petitioner in a timely manner. Atkins v. Michigan, 644 F.2d 543, 547 (6th Cir.), cert. denied, 452 U.S. 964, 101 S. Ct. 3115, 69 L. Ed. 2d 975 (1981); Dickey v. Florida, 398 U.S. 30, 38, 90 S. Ct. 1564, 1569, 26 L. Ed. 2d 26 (1970); Smith v. Hooey, 393 U.S. 374, 89 S. Ct. 575, 21 L. Ed. 2d 607 (1969). This "constitutional duty" is not satisfied unless "a diligent good faith effort" has been made to try the petitioner Matthew Jackson promptly. Moore v. Arizona, 414 U.S. 25, 26, 94 S. Ct. 188, 189, 38 L. Ed. 2d 183 (1973). On appeal, the prosecution has the burden of explaining the cause for pre-trial delay. Unexplained delay is weighed against the prosecution. See United States v. Jackson 542 F.2d 403, 407 (7th Cir. 1976); United States v. Avalos, 541 F.2d 1100, 1116 (5th Cir. 1976), cert. denied, 430 U.S. 920, 97 S. Ct. 1656, 52 L. Ed. 2d 363 (1977); United States v. Lockett, 526 F.2d 1110, 1111 (7th Cir. 1975); Jones v. Morris, 590 F.2d 684, 686 (7th Cir.), cert. denied 440 U.S. 965, 99 S. Ct. 1513, 59 L. Ed. 2d 780 (1979); Morris v. Wyrick, 516 F.2d 1387, 1390 (8th Cir.), cert. denied, 423 U.S. 925, 96 S. Ct. 268, 46 L. Ed. 2d 251 (1975); Georgiadis v. Superintendent, Eastern Correctional Facility, 450 F. Supp. 975, 980 (S.D.N.Y.), aff'd, 591 F.2d 1330 (2d Cir. 1978).

The unavailability of a material witness will justify a reasonable delay. See Barker, 407 U.S. at 531, 92 S. Ct. at 2192. However, the prosecution's efforts to ensure the attendance of witnesses, particularly where witnesses have been absent on a previous occasion, should also be considered. United States v. Calloway, 505 F.2d 311, 316 (D.C. Cir. 1974). A defendant's speedy trial rights do not depend on how convenient the trial date is to potential witnesses. Strunk v. United States, 412 U.S. 434, 439 n.2, 93 S. Ct. 2260, 2263, n.2, 37 L. Ed. 2d 56 (1973). Moreover, an absent-witness whose testimony is merely cumulative or of slight importance cannot justify a delay. Dickey, 398 U.S. at 57, 90 S. Ct. at 1578; Arrant v. Wainwright, 468 F.2d 677, 680, n.1, 681 (5th Cir. 1982), cert. denied, 410 U.S. 947, 93 S. Ct. 1369, 35 L. Ed. 2d 613 (1973).

Assertion of the Right To Speedy Trial

The third factor to consider is whether the accused asserted the right to a speedy trial. We give this factor "strong evidentiary weight." See Barker, 407 U.S. at 531, 92 S.Ct. 2182; Haney v. State, 977 S.W.2d 638, 642 (Tex.App.-Fort Worth 1998, pet. re. f'd). Failure to assert the right makes it difficult for an accused to prove the denial of a speedy trial. Scheweck, 996 S.W.2d at 313. Further, if an accused asserts the speedy trial right but requests a dismissal instead of a trial, the claim is attenuated. *Id.* Similarly, a failure to assert the right in a timely and persistent manner suggests that the accused did not really want a speedy trial. See Moreno, 987 S.W.2d at 200. Failure to assert or lack of persistence in pursuing a speedy trial weights against the accused. See Sinclair v. State, 894 S.W.2d 437, 440 (Tex.App.-Austin 1995, no pet.) (per curiam).

Furthermore, "the longer delay becomes, the more likely a defendant who wished a speedy trial would be to take some action to obtain it. Thus, inaction weights more heavily against a violation the longer the delay becomes." Dragon, 96 S.W.3d at 314 (quoting G. Dix & R. Dawson, Texas Criminal Practice and Procedure, § 23.40 (2d ed. 2001)). However, the fact that one resetting is attributable to the accused is conduct is not dispositive of the speedy trial issue. See Zambrano, 84 S.W.3d at 650 & n. 31.

Prejudice

The final factor to consider is whether the delay prejudiced the accused. Barker, 407 U.S. at 532, 92 S.Ct. 2182. We assess prejudice in light of the interests a speedy trial is designed to protect. *Id.* The right to a speedy trial is designed to prevent; (1) oppressive pretrial incarceration; (2) anxiety over the pending charges; and (3) impairment of an accused's ability to present a defense. *Id.*; Harris, 827 S.W. 2d at 957; Schenckl, 996 S.W. 2d at 313. The burden is on the accused to make a prima facie showing of prejudice. Schenckl, 996 S.W. 2d at 313. Only "some showing" of prejudice, not "actual prejudice," is required. Munoz, 991 S.W. 2d at 826 (citing Harris v. State, 489 S.W. 2d 303, 308 (Tex. Crim. App. 1973)).

Once the accused makes a "prima facie showing of prejudice," the burden shifts to the State to prove "that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay." Munoz, 991 S.W. 2d at 826 (quoting Ex parte McKenzie, 491 S.W. 2d 122, 123 (Tex. Crim. App. 1973)).

The ability of an accused adequately to prepare and present a defense "skews the fairness of the entire system."

Barker, 407 U.S. at 532, 92 S.Ct. 2182. Accordingly, we weight the effect of delay on the accused's defense just as we weigh any other form of prejudice recognized by Barker. Pierce, 921 S.W. 2d at 295.

Excessive delay presumptively compromises the reliability of a trial matter, identify. *Id.* Thus, under certain circumstances, the state's egregious persistence in failing to prosecute the accused is sufficient to warrant relief even without a showing of actual prejudice. *Id.*

Accordingly, in the absence of proof of actual prejudice, presumptive prejudice may, in proper combination with the other Barker factors, carry an accused's Sixth Amendment claim. *Id.*

When the government's negligence causes delay and when presumed prejudice is uncontroverted, the accused should be afforded relief on speedy trial grounds. *Id.* at 296.

Presumptive prejudice is "part of the mix of relevant facts, and its importance increases with the length of delay." Dragoo, 96 S.W.3d at 315 (quoting Doggett, 505 U.S. at 655, 112 S. Ct. 2686). If the presumptive prejudice is neither extenuated, as by the defendant's acquiescence, nor persuasively rebutted, the defendant is entitled to relief. Doggett, 505 U.S. at 658, 112 S. Ct. 2686. The Sixth Circuit recognizes a request for bail as the functional equivalent of the request for a speedy trial. Redd v. Sowders, 809 F.2d 1266, 1271 (6th Cir. 1987); Cain v. Smith, 686 F.2d 374, 384 (6th Cir. 1982).

On February 7, 2014 Motion To Release Defendant And Set Reasonable Bail was held. On May 29, 2014 Motion For Bond Reduction was filed the record reflects. On July 16, 2014, July 18, 2014, August 8, 2014 and September 5, 2014 Motions For Bond Reductions were filed the record clearly reflects.

Petitioner Matthew Jackson filed Motion For Speedy Trial on August 20, 2014, April 22, 2015, June 11, 2015 and July 31, 2015. Motion For Violation of Sixth Amendment Right To Speedy Trial was filed on June 11, 2015

Court of Habeas Corpus Failure To Provide A Speedy Trial was filed on July 31, 2015. Petitioner requested no continuances. In these motions, Petitioner cited a violation of Texas 180 day rule and asserted that delays in bringing the case to him. Also, August 20, 2014 Petitioner filed Motion To Dismiss with prejudice for State's Failure To Prosecute. Petitioner was arrested on September 28, 2013 in Bostup, County Texas for charges of unauthorized use of motor vehicle and evading arrest on the same

circumstances charges were dismissed on October 18, 2013. Petitioner Matthew Jackson ~~defendant~~ states a complaint and warrant was filed October 3, 2013 but it never was filed. Petitioner Matthew Jackson bond was set in Bostup County, Texas by Magistrate Judge for Bexar County charge of Aggravated Robbery on October 21, 2013 at \$1000. Petitioner Matthew Jackson was transfer to Bexar County Detention Center on October 28, 2013

The length of the delay is measured from the date of the indictment or the date of the arrest, whichever is earlier. United States v. Marion, 404 U.S. 307, 320, 92 S. Ct. 455, 30 L. Ed. 2d 468 (1971); Redd v. Sowders, 809 F.2d 1266, 1269 (6th Cir. 1987). Petitioner Matthew Jackson has clearly asserted his right to a speedy public trial. This Sixth Circuit has recognized a request for ~~good~~ as an assertion of a speedy trial right Redd v. Sowders, 809 F.2d 1266, 1271 (6th Cir. 1987) ("A request for reduction of bail is equivalent to a request for a speedy trial.") ; Cain v. Smith, 686 F.2d 374, 384 (6th Cir. 1982). In this case, in petitioner bond motions, Petitioner cited specifically to the Texas rule requiring that the accused be brought to trial. Petitioner Matthew Jackson inform his Attorney Vincent D. Callahan that he wanted to testify but was ignored and ran out of the courtroom with the jury. Government conduct which amounts to a substantial interference with a witness' [s] free and unhampered determination to testify will violate due process." United States v. Foster, 128 F.3d 949, 953 (6th Cir. 1997). A finding of "bad-faith delay" renders relief almost automatic. Zamorano, 84 S.W. 3d at 649. In this case (1) the delay was uncommonly long; (2) the reason for the delay weighs in favor of the Petitioner; (3) Petitioner's timely, repeated, and vigorous assertion of Petitioner's speedy trial right weighs strongly in his favor, and (4) Petitioner Matthew Jackson was prejudiced by the delay. Considering all the factors together, Petitioner Matthew Jackson was denied his right to a speedy public trial.

Petitioner's brief that was denied stated that petitioner filed six (6) pretrial motions, pro-se, for violation of right to a speedy trial. CCR Vol 1, 205-208; August 20, 2014; (CCR Vol 1, 242-245; January 2, 2015); CCR Vol 1, 278-281; April 22, 2015; (CCR Vol 1, 316-319; June 11, 2015); CCR Vol 1, 341-343; June 29, 2015; (CCR Vol 1, 381-383; July 31, 2015). The trial court failed to hold a hearing. Petitioner was arrested on September 28, 2013 (CCR Vol 1, 124), indicted on January 15, 2014 (CCR Vol 1, 52) and trial commenced October 6, 2015. (CCR Vol 1, 474).

The Sixth Amendment, made applicable to the States through the Fourteenth Amendment guarantees a speedy trial to the accused. See: 6th Amendment US Constitution, 14 Amendment US Constitution and Art. 1 Section 10 Texas Constitution and Art 1.05 (Vernon Supp. 2003). Klopfer v. North Carolina, 386 U.S. 213, 222-23, 87 S. Ct. 988, 18 L. Ed. 2d 1 (1967).

The four factors that a Court should consider are (1) length of delay, (2) State's reason for delay, (3) defendant's assertion of his right to a speedy trial and (4) prejudice to the defendant because of the delay. Barker v. Wingo, 407 US 514, 530 (1972).

To trigger the Barker, supra, analysis, the accused must show that the interval between accusation and trial has crossed the threshold dividing ordinary from presumptively prejudicial delay. Doggett v. United States, 505 U.S. 647, 652 n.1, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992) was prima facie unreasonable. Harris v. State, 827 S.W. 2d 949, 956 (Tex Cr. App. 1992). In the case at bar, over

twenty-four (24) months elapsed from arrest to trial. The longer the delay the more the defendant's prejudice is compounded. Zamorano v. State, 84 S.W.3d 643, 649 (Tex. Cr. App. 2002) Appellant's verified motions include the statements of harm due to loss of witnesses to his defense (CR Vol 1, 341-343; 381-383) and the delay will impair his ability to defend himself (CR Vol, 316-319). The State failed to file any controversion and the Trial Court failed to hold a hearing. The burden rests upon the State after the threshold is met by Appellant. State v. Munoz, 991 SW2d 818 (Tex. Cr. App. 1999); Harris, *supra*, Kelley v. State, 163 SW3d 722 (Tex. Cr. App. 2005). Viewing the record, without hearing or controversion, Appellant's right to a speedy trial was violated.

"After reviewing the findings of fact of the trial court, the speedy trial analysis of the court of appeals and applying the Barker factors *de novo*, we reach the same conclusion as the court of appeals that Appellant's right to a speedy trial was violated. Therefore, we affirm the judgment of the court of appeals and the indictment against Appellant is dismissed with prejudice." Gonzales v. State, 435 SW3d 801, 815 (Tex. Cr. App. 2014). The brief wasn't very concise. Counsel failed to add in the brief that the length of the delay is measured from the date of the indictment or the date of the arrest, whichever is earlier. United States v. Marion, 404 U.S. 307, 320, 92 S. Ct. 455, 30 L. Ed. 2d 468 (1971); Redd v. Sowders, 809 F.2d 1266, 1269 (6th Cir. 1987). The Sixth Circuit has recognized a request for bail as an assertion of a speedy trial right. Redd v. Sowders, 809

F.2d 1266, 1271 (6th Cir. 1987) ("[A] request for reduction of bail is equivalent to a request for a speedy trial."); Cain v. Smith, 686 F.2d 374, 384 (6th Cir. 1982). On February 7, 2014 Motion To Release Defendant and Set Reasonable Bail was granted on this day. Which is equivalent to a request for a speedy trial. Because of twenty-four (24) month delay Petitioners speedy trial was violated. Reversal on the basis of a speedy trial violation results in dismissal. see Kelly v. State, 163 SW 3d 722 (Tex. Cr. App. 2005); Brecheisen v. State 4 S.W. 3d 761, 764-65 (Tex. Crim. App. 1999); Zamorano v. State 84 S.W. 3d 643, 649 (Tex. Crim. App. 2002); Gonzales v. State 435 S.W. 3d 801, 815 (Tex. Crim. App. 2014); Maples v. Stegall 427 F.3d 1020 (6th Cir. 2005); Barker v. Wingo 407 U.S. at 522, 92 S. Ct. at 2188; Strunk v. United States 412 U.S. 434, 93 S. Ct. 2260, 37 L. Ed. 2d 56 (1973).

Remedy Bar To Prosecution

West's Key Number Digest, Constitutional Law - 4612; Criminal Law - 577. In Barker v. Wingo, the Supreme Court described dismissal of the charging instrument - with prejudice, certainly - as "The Unsatisfactorily Severe Remedy." 407 U.S. at 522, 92 S. Ct. at 2188. The next year in Strunk v. United States, 412 U.S. 434, 93 S. Ct. 2260, 37 L. Ed. 2d 56 (1973). The court explicitly held that such dismissal is mandated upon a determination that an accused's SIXTH AMENDMENT TO A SPEEDY PUBLIC TRIAL was violated.

CONCLUSION

Petitioner, Matthew Jackson contends that his Constitutional Right To A Speedy Public Trial was violated, that this Honorable Court reverse his conviction and dismiss the indictment against him with prejudice for failure to provide a Constitutional Speedy Public Trial.

WHEREFORE, PREMISES CONSIDERED, PETITIONER Matthew Jackson respectfully requests this Honorable Court to grant his Petition For Writ of Certiorari pursuant to Article 1.05 of the Texas Code of Criminal Procedure in order to uphold the rights under Article I Section 10 of the Texas Constitution, the Sixth and Fourteenth Amendments to the United States Constitution, the laws of the State of Texas and Universal Declaration of Human Rights

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Respectfully Submitted,
"SAVE A LIFE FOUNDATION
MENTAL, MEDICAL AND LEGAL
SERVICES"

Mr. Matthew Jamal Jackson

CLEMENS UNIT

11034 HWY 36

Brazoria, Texas 77422

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4/4/17



REASONS FOR GRANTING THE WRIT

This case, in which the Sixth and Fourteenth of petitioner's Speedy Public Trial was denied and whether the delay of approximately 24 months between time of arrest and time of trial on Aggravated Robbery charges was presumptively prejudicial as petitioner asserted his Speedy Public Trial right did not abandon his request therefore

Whether the Six Amendment, made applicable to the States through the Fourteenth Amendment guarantees a speedy public trial to the accused. See: 6th Amendment + US Constitution, 14 Amendment US Constitution and Art. 1 Section 10 Texas Constitution and Art 1.05 (Vernon Supp. 2003). *Klopfer v. North Carolina*, 386 U.S. 213, 222-23, 87 S. Ct. 988, 18 L.Ed. 2d 1 (1967).