

ORIGINAL

No. 20-2209

FILED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

SUPREME COURT of the UNITED STATES

IN THE

IN RE RODOLFO A. LOPEZ - PETITIONER

VS.

WARDEN, ORANGE COUNTY JAIL - RESPONDENT

ON PETITION FOR A WRIT OF HABEAS CORPUS TO

THE

PETITION FOR A WRIT OF HABEAS CORPUS

RODOLFO A. LOPEZ

NAME

ORANGE COUNTY JAIL 3723 WILSON BLVD. PO BOX 4970

ADDRESS

ORLANDO, FL 32802

CITY, STATE, ZIP CODE

APRIL

PHONE

QUESTIONS PRESENTED

1. IS MR. LOPEZ HELD UNLAWFULLY IN ACCORDANCE WITH THE
SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION
AND THE INTERSTATE AGREEMENT ON DETAINERS?

LIST OF PARTIES

[X] ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE.

RELATED CASES

LOPEZ v. STATE OF FLORIDA , 2016-CF-006170-A-0, NINTH JUDICIAL CIRCUIT OF ORANGE COUNTY. Judgment not entered.

LOPEZ v. STATE OF FLORIDA , 2020-CA-010481-0, NINTH JUDICIAL CIRCUIT OF ORANGE COUNTY. Judgment entered Nov. 04, 2020.

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APPENDIX A

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
BOWEN V. STATE , 698, SO. 2D 248, 250 (Fla. 1997)	8,
FLECK V. STATE OF FLORIDA , 2ND DISTRICT COURT OF APPEAL OF FLORIDA (2007)	8,
GODINEZ V. MORAN , 509 U.S. 389, 399, 113 S.Ct. 2680, 2686-87, 125 L.ED. 2D 321 (1993)	8,
HILL V. STATE , 688 SO. 2D 901, 905 (Fla. 1996)	8.

STATUTES AND RULES

FLORIDA RULES OF CRIMINAL RULES AND PROCEDURE	FRCRP 3.1210 (B) MENTAL INCOMPETENCY
FLORIDA RULES OF CRIMINAL RULES AND PROCEDURE	FRCRP 3.191 SPEEDY TRIAL
INDIANA CODE TITLE 35	CRIMINAL LAW AND PROCEDURE 35-33-10-4
FLORIDA CRIMINAL PUNISHMENT CODE	SCORESHEET RULE 3.922(a).

OTHER

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS
CORPUS

OPINIONS BELOW

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JURISDICTION

28 U.S.C. § 2254(6), 28 U.S.C. 2241, 2242, 28 U.S.C. § 1651(a),

MUST STATE "THE REASONS FOR NOT MAKING APPLICATION TO THE DISTRICT COURT WHEREIN THE APPLICANT IS HELD";

STATEMENT OF JURISDICTION TO THE U.S. SUPREME COURT:

MR. LOPEZ FILED MULTIPLE FILINGS TO THE STATE COURTS, DISTRICT COURTS, THE U.S. COURT OF APPEALS AND A PETITION FOR A WRIT OF HABEAS CORPUS TO THE U.S. SUPREME COURT.

NO OPINION ORDER OR DECISION OF THE CASE HAS BEEN ISSUED BY ANY OF THE COURTS AND THE CASE REMAINS IN PRE-TRIAL STATUS FROM 2016.

ALL LOWER COURTS HAVE DENIED PETITIONS FOR A WRIT OF HABEAS CORPUS BOTH STATE AND FEDERAL.

(SEE LATEST DENIAL ATTACHED / AMENDED TO THIS PETITION)

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS.

MR. LOPEZ PROCEEDS TO THE U.S. SUPREME COURT ON EXTRAORDINARY CIRCUMSTANCES IN ADDITION TO HAVING EXHAUSTED COURT REMEDIES OF THE LOWER COURTS AND U.S. COURT OF APPEALS FILING.

Constitutional and Statutory Provisions involved

U.S. CONSTITUTION BILL OF RIGHTS AMENDMENT VI. (1789)

"ALL CRIMINAL PROSECUTIONS THE ACCUSED SHALL ENJOY THE
RIGHT TO A SPEEDY AND PUBLIC TRIAL."

..TO CONFRONT THE WITNESSES..

TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE;

STATEMENT OF THE CASE

ON MAY THIRTEENTH TWO THOUSAND SIXTEEN, MR. LOPEZ WAS DETAINED INTO THE CUSTODY OF ORANGE COUNTY JAIL. ON JULY TWENTY EIGHTH, THE STATE OF FLORIDA FILED INFORMATION OF COMPLAINT FROM MM FOURTEENTH CHARGING MR. LOPEZ WITH THE OFFENSES OF COUNT I. THROWING A DEADLY MISSILE AT, WITHIN, OR INTO AN OCCUPIED VEHICLE, A SECOND DEGREE FELONY, COUNT II. CRIMINAL MISCHIEF WITH DAMAGE OF GREATER THAN ONE THOUSAND DOLLARS OR EQUAL TO, A THIRD DEGREE FELONY, COUNT III. RESISTING OFFICER WITHOUT VIOLENCE, A FIRST DEGREE MISDEMEANOR, COUNT IV. CRIMINAL MISCHIEF, A SECOND DEGREE MISDEMEANOR. ON AUGUST SIXTEENTH MR. LOPEZ WAS ARRAIGNED. AFTER THE HEARING, MR. LOPEZ WAS ASSIGNED A PUBLIC DEFENDER TO THE CASE. AT PRE-TRIAL CONFERENCE THE REPRESENTING ATTORNEY FILED MOTION OR SUGGESTION TO DETERMINE MENTAL COMPETENCY. MR. LOPEZ DENIED A TIMED SERVED MEA DEAL ON DECEMBER TWO THOUSAND SIXTEEN. ON FEBRUARY TWENTIETH TWO THOUSAND SEVENTEEN, THE COURT ORDERS A FINDING OF DEFENDANT INCOMPETENT TO PROCEED AND PLACING DEFENDANT ON CONDITIONAL RELEASE. DEFENDANT FILES MOTION TO PROCEED PRO SE ON MARCH THIRTEENTH. ON APRIL FIFTH TWO THOUSAND EIGHTEEN A CAPIAS WARRANT WAS ISSUED FOR FAILURE TO APPEAR AT COURT HEARING A MONTH EARLIER. MR. LOPEZ WAS INCARCERATED IN THE STATE OF INDIANA ON AN UNRELATED CASE. MR. LOPEZ WAS CONVICTED AND SENTENCED TO PRISON ON THE UNRELATED CASE IN INDIANA. MR. LOPEZ FILED AN INTERSTATE AGREEMENT ON DETAINERS ON DECEMBER TENTH TWO THOUSAND NINETEEN. HE WAS TRANSPORTED FROM INDIANA DEPARTMENT OF CORRECTIONS AND ARRIVED WITHIN THE CUSTODY OF ORANGE COUNTY JAIL ON FEBRUARY TWENTY FOURTH TWO THOUSAND TWENTY.

MR. LOPEZ WAS FOUND MENTALLY COMPETENT AT HEARING ON MAY TWENTY FIRST TWO THOUSAND TWENTY. THE COURT WAS TO SET A "FARETTA HEARING" AS PER COURT ORDER ADJUDGING THE DEFENDANT COMPETENT TO PROCEED.

MR. LOPEZ DISCHARGED COUNSEL AT FARETTA HEARING HELD OCTOBER FOURTEENTH TWO THOUSAND TWENTY AT A PRE-TRIAL CONFERENCE. ON OCTOBER TWENTY SEVENTH THE COURT ORDERED APPOINTING PUBLIC DEFENDER AS STANDBY COUNSEL. THE STATE OFFERS DEFENDANT TIME SERVED IN 12/2016. THE STATE OFFERS 3 YEARS PROBATION ON 08/2020. DEFENDANT HAS SERVED 20 MONTHS PRETRIAL DETAINMENT AND A SCORE 37 RULE 3.922(a).

05/21/2020

PER THE COURT:

"THE COURT ADJUDGED THE DEFENDANT COMPETENT TO PROCEED." (SEE APPENDIX A DOCKET EVENTS PG 4 OF 11)

10/27/2020

"ORDER DECLARING DEFENDANT COMPETENT TO PROCEED." (SEE APPENDIX A DOCKET EVENTS PG 1 OF 11 AND APPENDIX A ORDER DETERMINING DEFENDANT COMPETENT TO PROCEED)

11/04/2020

"ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS" (SEE ATTACHED ORDER)

THE COURT, UNDER WRIT OF HABEAS CORPUS CASE NO. 2020 "CA-010481-0", FILED BY THE PETITIONER OCTOBER NINETEENTH TWO THOUSAND TWENTY IS DENIED BY ORDER ISSUED 10/27/2020, STATING "UNDER THIS STATUTE, THE 120 DAY TIME PERIOD... WAS TOLLED UNTIL PETITIONER WAS FOUND COMPETENT TO PROCEED ON OCTOBER 27, 2020."

10/27/2020

ORDER APPOINTING STANDBY COUNSEL SEC. 5 "ON MAY 21 2020 THE COURT CONDUCTED A COMPETENCY STATUS HEARING. AFTER CONSIDERING THE STATEMENTS OF COUNSEL... THE COURT DETERMINED THAT DEFENDANT WAS COMPETENT TO PROCEED AND RETURNED THE CASE TO THE TRIAL DOCKET." (SEE APPENDIX A ORDER APPOINTING STANDBY COUNSEL PAGE 13).

REASONS FOR GRANTING THE PETITION

MR. LOPEZ HAS BEEN INCARCERATED IN ORANGE COUNTY JAIL FOR (19) NINETEEN MONTHS IN TOTAL. THE CASE AND CHARGES AGAINST MR. LOPEZ IS OVER FOUR (4) YEARS PAST THE DATE OF DETAINMENT. MR. LOPEZ HAS NEVER WAIVED HIS RIGHT TO A SPEEDY TRIAL NOR FILED A MOTION FOR CONTINUANCE AND HAS ONLY RECENTLY BEEN ALLOWED TO PROCEED PRO SE.

THE INTERSTATE AGREEMENT ON DETAINERS WAS FILED 12/10/2019

"HE SHALL BE BROUGHT TO TRIAL WITHIN ONE HUNDRED EIGHTY (180) DAYS AFTER HE SHALL HAVE CAUSED TO BE DELIVERED TO THE PROSECUTING OFFICER AND THE APPROPRIATE COURT." (I.C. 35-33-10-4 ARTICLE 3(a)).

"TRIAL SHALL BE COMMENCED WITHIN ONE HUNDRED TWENTY (120) DAYS OF THE ARRIVAL OF THE PRISONER IN THE RECEIVING STATE, BUT FOR GOOD CAUSE SHOWN IN OPEN COURT, THE PRISONER OR HIS COUNSEL BEING PRESENT, THE COURT HAVING JURISDICTION OF THE MATTER MAY GRANT ANY NECESSARY OR REASONABLE CONTINUANCE." (I.C. 35-33-10-4 ARTICLE 4(c)).

"IF TRIAL IS NOT HAD.. THE COURT SHALL ENTER AN ORDER DISMISSING THE SAME WITH PREJUDICE." (I.C. 35-33-10-4 ARTICLE 4(e)).

"IN DETERMINING THE DURATION AND EXPIRATION DATES OF THE TIME PERIODS PROVIDED IN ARTICLE 3 AND 4 OF THIS AGREEMENT, THE RUNNING OF SAID TIME PERIODS SHALL BE TIED WHEREVER AND AS FOR AS LONG AS THE PRISONER IS UNABLE TO STAND TRIAL, AS DETERMINED BY THE COURT HAVING JURISDICTION OF THE MATTER." (I.C. 35-33-10-4 ARTICLE 6(a)).

MR. LOPEZ NEVER AGREED TO ALLOW THE COURT TO APPOINT A PUBLIC DEFENDER
THE IN JAIL ARRAIGNMENT HEARING WAS NEVER FULLY CONCLUDED. THE JUDGE
APPOINTED COUNSEL NOT AT THE REQUEST OF THE DEFENDANT.

ONE MONTH LATER ON SEPTEMBER SIXTEENTH AT FARETIA HEARING
TO PROCEED PRO SE THE STATE BRINGS FORTH NEW EVIDENCE TO THE CASE
ON DIGITAL VIDEO DISK. IN ACCORDANCE WITH PREVIOUS FLORIDA SUPREME
COURT RULINGS, AN INCARCERATED DEFENDANT PROCEEDING PRO SE
IS GIVING UP HIS ABILITY TO CONDUCT THAT OF AN ATTORNEY DUE TO
PROCEEDING PRO SE HE IS RESTRICTED AS AN INCARCERATED DEFENDANT
AND THIS INCLUDES VIEWING EVIDENCE ON DIGITAL MEDIA.

PER THE COURT: DUE TO NEW DISCOVERY FROM THE STATE DEFENDANT DOES NOT WISH TO
DISCHARGE ATTORNEY FROM THE CASE AT THIS TIME. AFTER DEFENDANT
VIEWED THE NEW EVIDENCE HE REQUESTED TO DISCHARGE COUNSEL BY MAILING
THE OFFICE OF THE PUBLIC DEFENDER. MR. LOPEZ DID NOT APPEAR IN
IN ANOTHER COURT APPEARANCE UNTIL AUGUST THE NEXT YEAR.
MR. LOPEZ WAS NOT AUTHORIZED ACCESS TO COURT HEARINGS FOR
UNKNOWN REASONS. THE DEFENSE FILED MOTION OR SUGGESTION TO
DETERMINE COMPETENCY ON SEPTEMBER TWENTY EIGHTH TWO THOUSAND
SIXTEEN WITHOUT CONSENT OR KNOWLEDGE TO DO SO BY THE DEFENDANT.

MR. LOPEZ WAS ADJUDICATED MENTALLY INCOMPETENT TO PROCEED TO TRIAL
AND PLACED ON CONDITIONAL RELEASE TO INCLUDE ATTENDANCE AT THE VETERAN'S
AFFAIRS MEDICAL CENTER FOR OUTPATIENT MENTAL HEALTH TREATMENT PROGRAM.
ON MARCH THIRTEENTH TWO THOUSAND SEVENTEEN, THREE WEEKS POST RELEASE,
MR. LOPEZ FILED MOTION TO PROCEED PRO SE. THE MOTION HAS NEVER BEEN
RULED ON TO THIS DATE. ON MAY TWENTY FIRST TWO THOUSAND TWENTY
AT COURT HEARING FINDING DEFENDANT MENTALLY INCOMPETENT TO PROCEED,
THE OFFICE OF THE PUBLIC DEFENDER STATED THAT MULTIPLE REQUESTS BY THE
DEFENDANT TO PROCEED PRO SE WERE DENIED DUE TO DETERMINATION AND
FINDING OF MENTAL INCOMPETENCY. THE COURT NOR PROSECUTING ATTORNEY
RESPONDED.

THE SIXTH AMENDMENT GRANTS CRIMINAL DEFENDANTS THE RIGHT TO SELF REPRESENTATION, (STATE V. BOWEN).

"THE COMPETENCE THAT IS REQUIRED OF A DEFENDANT SEEKING TO WAIVE HIS RIGHT TO COUNSEL IS THE COMPETENCE TO WAIVE THE RIGHT, NOT THE COMPETENCE TO REPRESENT HIMSELF." (GONINEZ V. MORAN).

"TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE," SIXTH AMENDMENT BILL OF RIGHTS TO THE UNITED STATES CONSTITUTION 1789.

THE DISTRICT COURT OF APPEAL HELD THAT THE TRIAL COURT WAS REQUIRED TO DETERMINE WHETHER DEFENDANT WAS KNOWINGLY AND INTELLIGENTLY WAIVING RIGHT TO COUNSEL, NOT WHETHER DEFENDANT WAS COMPETENT TO REPRESENT HIMSELF, WHEN DECIDING WHETHER DEFENDANT COULD REPRESENT HIMSELF. (FLECK V. STATE OF FLORIDA).

A DEFENDANT DOES NOT NEED TO POSSESS THE TECHNICAL LEGAL KNOWLEDGE OF AN ATTORNEY BEFORE BEING PERMITTED TO PROCEED PRO SE. (HILL V. STATE),

IN THE CASE OF MR. LOPEZ V. STATE OF FLORIDA (2016) IT WAS NOT UNTIL NINE (9) DAYS PRIOR TO THE TRIAL DATE SET FOR OCTOBER THAT MR. LOPEZ WAS ABLE TO ATTEND A HEARING AT PRE TRIAL CONFERENCE AND DISCHARGE A NEWLY HIRED PAID ATTORNEY HIRED ON SEPTEMBER NINTH THE MONTH PRIOR TO THE TRIAL DATE. AT THE HEARING MR. LOPEZ WAS GIVEN A FARETTA INQUIRY ALLOWING THE DEFENDANT TO PROCEED PRO SE.

THE DEFENDANT CURRENTLY PROCEEDS PRO SE WITH ORDER BY THE COURT FOR PUBLIC DEFENDER STANDBY COUNSEL.

05/21/2020
"THE COURT ADJUDGED THE DEFENDANT COMPETENT TO PROCEED BASED UPON THE REPORTS RECEIVED AND REVIEWED. THE DEFENDANT'S REQUEST FOR A FARETTA INQUIRY IS TO BE SET WITH THE JUDICIAL ASSISTANT." (SEE APPENDIX A DOCKET EVENTS PG 4 OF 11)

10/27/2020

"ORDER DECLARING DEFENDANT COMPETENT TO PROCEED." (SEE APPENDIX A DOCKET EVENTS PG 1 OF 11)

UNDER FLORIDA RULES OF CRIMINAL RULES AND PROCEDURE FCRCR 3.1210, MR. LOPEZ WAS FOUND MENTALLY INCOMPETENT TO PROCEED TO TRIAL.

ONE DETERMINING FACTOR IN PSYCHOLOGICAL EVALUATION IS WRITTEN AS "GOVERNMENT CONSPIRACY". THIS HAS NO WEIGHT BECAUSE IN THE POLICE REPORT OF REPORTED INCIDENT GOVERNMENT CONSPIRACY IS A DEFENSE USED IN THIS CASE, MR LOPEZ WAS SPEAKING OF GOVERNMENT CONSPIRACY PRIOR TO ARREST ACCORDING TO THE WRITTEN POLICE REPORT.

ANOTHER FACTOR THAT DISCREDITS THE PSYCHOLOGICAL EVALUATION IS THE FACT(S) STATED ON THE PREVIOUS PAGE IN THAT ONE DOES NOT NEED TO POSSESS THE LEGAL KNOWLEDGE AND SKILLS OF A LAWYER TO PROCEED TO TRIAL. IN THE EVALUATION, THE DR. APPOINTED ASKS QUESTIONS TO BE ANSWERED AT THE LEVEL A BAR LAWYER IS REQUIRED TO ANSWER. IN ADDITION, AN ENTIRE PSYCHOLOGICAL EVALUATION WAS UNDERTAKEN FROM FAMILY HISTORY TO WORK HISTORY TO PREVIOUS MENTAL HEALTH HISTORY.

THE RULINGS OF PREVIOUS CASES DO NOT REQUIRE A DEFENDANT TO BE A BAR LAWYER NOR UNDERGO A FULL PSYCHOLOGICAL EVALUATION INTENDED TO DISCREDIT A DEFENDANT, RATHER IT IS A RIGHT OF A DEFENDANT TO "SPEEDY TRIAL" TO CONFRONT THE WITNESSES. NO WHERE IN THE BILL OF RIGHTS VI AMENDMENT DOES IT PROVIDE TOLLING TIMES NOR DOES IT STIPULATE ON COMPETENCY TO PROCEED TO TRIAL AS IT IS A RIGHT TO A DEFENDANT "IN ALL CRIMINAL PROSECUTIONS".

THE DEFENDANT NEVER FILED A MOTION FOR CONTINUANCE TO THIS CASE NOR DID HE EVER WAIVE HIS RIGHT TO A SPEEDY AND PUBLIC TRIAL.

IN ADDITION MR. LOPEZ HAS NO MENTAL HEALTH HISTORY OR RECORD OF MENTAL HEALTH DISORDER.

THE SIXTH AMENDMENT RIGHT WAS NOT WRITTEN TO PROVIDE THE COURTS TO STOP "TOH" A RIGHT THAT WAS WRITTEN AS GIVEN, THAT DEFEATS THE PURPOSE OF A RIGHT.

LASTLY, THE REASONS FOR GRANTING OF THIS PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS OF LOPEZ V. WARDEN, ORANGE COUNTY JAIL, IS WRITTEN INTO THE BILL OF RIGHTS, THE "RIGHT TO A SPEEDY AND PUBLIC TRIAL". MR. LOPEZ ASSERTS THAT A DELAY OF OVER FOUR (4) YEARS IS EXCESSIVE AND FALLS OUTSIDE OF NORMAL JUDICIAL PROCEDURE AND PRACTICE. THE COURT ARGUES, MENTAL INCOMPETENCY TOILET TIME, OUT OF STATE INCARCERATION, AND MOST RECENTLY ADMINISTRATIVE ORDER AO SC 20-23 UNDER FLORIDA RULES OF CRIMINAL RULES AND PROCEDURE (FRCRP 3.191 SPEEDY TRIAL) ALLOWING THE CHIEF JUSTICE OF THE FLORIDA SUPREME COURT TO ISSUE ORDERS SUSPENDING SPEEDY TRIALS "TOILET". THE FACT IS, ALL TRIALS WERE NOT ONLY STOPPED, BUT ALSO GIVEN THE RIGHT TO SPEEDY TRIAL TAKEN AWAY FROM ALL DEFENDANTS. THE ONUS IS ON THE STATE TO PROSECUTE AND IN "ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL". EVEN IN A TIME OF WAR, CRIMINAL PROSECUTIONS MUST RESUME AND THE BURDEN OF PROOF TO FIND A DEFENDANT GUILTY OF A CRIME IS UPON THE STATE WHOM ACCUSES THE DEFENDANT OF A CRIME. THEREFORE, ALL ARGUMENTS BY THE COURT AND STATE ARE NOT VALID.

MR. LOPEZ, IN FILING THE INTERSTATE AGREEMENT ON DETAINERS, SHALL BE RELEASED FROM THE CUSTODY OF ORANGE COUNTY JAIL AND THE COURT SHALL ENTER AN ORDER DISMISSING THE SAME WITH PREJUDICE IN ACCORDANCE WITH ARTICLE 4 (P) CONTAINED AND WRITTEN THEREWITH AND IN ACCORDANCE WITH HABEAS CORPUS.

MR. LOPEZ IS HELD UNLAWFULLY ON MULTIPLE GROUNDS IN PRE-TRIAL
PROCEEDINGS WITHIN THE STATE OF FLORIDA. ON PETITION FOR EXTRAORDINARY
WRIT OF HABEAS CORPUS THE COURT SHALL FIND THAT HIS DETAINMENT IS
UNLAWFUL AND THAT HE SHALL BE RELEASED FROM THE CUSTODY OF
ORANGE COUNTY JAIL.

CONCLUSION

THE PETITION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED,

ROBERTO A. LOPEZ

DATE: November 7th 2020