

No. 20-7571

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

HILLIARD FULGHAM II – Petitioner,

vs.

SCOTT CROW, OKDOC DIRECTOR – Respondent

“ON PETITION FOR A WRIT OF CERTIORARI TO”

THE UNITED STATES COURT
OF APPEALS FOR THE TENTH CIRCUIT

ORIGINAL

Petitioner Pro-se
HILLIARD FULGHAM II
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March 10th 2021

QUESTION(S) PRESENTED

1. Is an objection required before a court would have understanding that a detainee did not want to be tried after the time-line set in his involuntary removal initiated under article IV of the Interstate Agreement on Detainers Act?
2. Would it be abuse of discretion if a court over looked a specific relevant law before making it's decision?
3. What constitutes a waiver?
4. Can faulty court records, ineffective assistance of counsel, and the trial courts failure to consider relevant law gain advantage for the state and affect the outcome of a fair trial?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

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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 A to the petition and is

reported at UNITED STATES TENTH CIRCUIT; 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 is unpublished.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 B to the petition and is

reported at NORTHERN DISTRICT OF OKLAHOMA; 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 is unpublished.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 C to the petition and is

reported at OKLA. COURT OF CRIMINAL APPEALS; 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 is unpublished.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 is unpublished.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 DECEMBER 23 2020

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 DEC 22 2016. A copy of that decision appears at Appendix C.

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

**INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE
SIXTH & FOURTEENTH AMENDMENTS OF THE UNITED STATES
CONSTITUTION.**

ARTICLE II §§ 7, 9 & 20, of the OKLAHOMA CONSTITUTION

18 uscs APPX, INTERSTATE AGREEMENT ON DETAINERS, ACT. ART. IV(C)

28 uscs §§ 2254

STATEMENT OF CASE

Appearing Pro-se this petitioner declares that this case arises from when the trial court found a document of the state's request for temporary custody pursuant to Article IV of the Interstate Agreement on Detainers Act (IAD) the trial court initially found this document after the conviction as it prepared for the sentencing hearing. The trial court confession of discovery is also acknowledgment that it hasn't been considered up to the time of the discovery. Up to this point this petitioner had no reason to doubt his good faith that he placed in the court to consider all relevant laws that specifically applies to him. The court doesn't deny the violation of this petitioner's rights, but claims this petitioner waived those rights by not objecting in numerous continuances. It's the objections that were made without the court considering the law, that this petitioner wants the courts to review. By not considering the (IAD) law upon this petitioner's objections, the trial court, in finding that these continuances were granted for good cause did abuse it's discretion and petitioner's right to a speedy trial under the (IAD) was violated. In this case, the trial court never considered the (IAD) law in the finding of good cause sufficient to extend the 120 days, or considered the (IAD) law in response to objections made by this petitioner. Accordingly petitioner's judgment and sentence should be reversed due to his rights being violated by the state.

REASON FOR GRANTING WRIT

Because this issue came to be known only after the conviction, and due to comments made in the opinions given by certain courts, the petitioner believes that the charges of murder in which he was convicted is playing a part to cause the courts to except the states close narratives, but lead them away from evident facts. Advantage was given to the state. Rather accidentally or purposely can't be determined and should not serve as an excuse to evade the law or overlook fairness in the court. A review of all that took place shows fault can be found in court record; in this petitioner's appointed counsel and even with a judges failure to consider a pertinent law that specifically applied to this

petitioner. Then the argument of a waiver. Again the state gives excuses that specific mention by man of this IAD law was never raised before commencement of trial. Cases have been decided that show their narrative for the meaning of a waiver. Even though specific mention of the IAD was not made, there is however record of this petitioner objecting to a moved trial date. This shows his intent. He showed his intent when he made no request for a final disposition, and again when he objected to the resetting of the preliminary hearing and even for a third time by objecting to the formal trial date. Now that a conviction was had, the state willingly overlooks and excuses these facts as if they are meaningless. This petitioner intends to demonstrate that the OCCA (Oklahoma Court of Criminal Appeals) ruling resulted in a decision that was based on an unreasonable determination of the facts, (see 18 U.S.C.S Appx., Interstate Agreement on Detainers, Art. IV. (c); 28 U.S.C.S. § 2254), and because the OCCA already adjudicated petitioner's claims, higher courts would not grant relief unless these facts are considered. In this case, leading up to the commencement of trial, the court, not in acknowledgement of this pertinent law (IAD) failed to consider this law when objections were made. This on it's own should not be ignored by any court. For a judge to give a ruling without consideration of a specific law that had been provided to him, and pertains essentially to the defendant; has to be seen as a violation of his rights. This petitioner will show that the court ruling was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fair-minded disagreement (*Richter* 562 U.S. at 103).

ARGUMENT I

PETITIONER'S RIGHTS UNDER THE INTERSTATE AGREEMENT ON DETAINERS ACT (IAD) WERE VIOLATED.

No waiver was made, and no court should allow this excuse to cover the courts incompetents to consider a law that specifically applies to this petitioner. "State courts have not only power but duty to enforce rights secured by constitution and laws of the United States when such issues are involved in proceedings before them." (emphasis added). (ARTICLE VI C1 2. Supreme Law, 24. State Courts and

their duties) *Betts v. Easley* 161 Kan. 459, 169 P.2d 831, 1 Empl. Prac. Dec. (CCH) ¶ 9611, 18 L.R.R.M. (BNA) 2145, 11 Lab. Cas. (CCH) ¶ 63207 (Kan. 1946). The court violated the defendants rights by not considering the protections stated within the articles of the Interstate Agreement on Detainers Act (IAD). The states claim that this right to be protected was waived by the defendant by not objecting to the mistreatment before his trial commenced is misleading and can be found to be untrue if the record was searched, (Appx. A, 7). Objections were made, (Appx. D, pg.18 & 21). The state even acknowledged these in their brief to the OCCA pg.11-12, Brief of Appellee(Oklahoma Court of Criminal Appeals). The petitioner argues that at the point of these objections, the court was obligated by law to consider the time-line listed in Article IV (IAD) which specifically applied to the defendant. The state wants to overlook these objections by excusing them to what is said after the fact. Estoppel and waiver § 29, 15. Waiver is an intentional relinquishment or abandonment of a known right or privilege. By a judge needing to contemplate both sides of the argument before giving a decision, it shows that the presiding judge understood no waiver, or no relinquishment of any right was intended, (Appx. E, pg. 22, at 16). The court admits that the (IAD) wasn't considered before the trial when it was announced that a document for temporary custody (IAD) was discovered only after trial but before sentencing. It was at this point that the good faith the defendant had in-trusted in the court to determine all law, and to allow a fair trial, was destroyed. Because the defendant registered an objection to the trial date at the time it was re-set, a time that has been determined after the expiration of the 120-day limit, but before the trial commenced, the IAD law had to be considered by the court, (Appx. E, pg. 11, at 9). Under such circumstances, a rational should be adopted to review if the courts failure to consider the IAD law, denied the defendant an opportunity for full and fair advantage of his rights. The states argument that "the continuance from January 26th 2015 to April 6th 2015; although upon defendant's objection was granted for good cause and should also serve to toll the statutory time limit." (OCCA Brief of Appellee pg. 15), a decision for good cause was given only after the Honorable Musseman

claimed to consider the law both parties arguments, and after a search of the record. (see continuance hearing decision, January 23rd 2015). If discovery of the document informing the court of temporary custody (IAD) was found then, instead of the time claimed Judge Musseman under obligation of law, would have found the record clearly demonstrates many of the continuances did not establish good cause. He would have found any error's with a time-line relevant factor. Notify both parties of his finding, and changes needed to correct any error. Article VI (a) of the IAD would have been considered and time would have been tolled before a decision and ruling finalized. Because this was not done, it deprived this petitioner of his rights under the consideration of this law. At a continuance hearing where a time-line issue was presented, a judge stated in his decision that the record was searched, only to later find the record was in error, this should benefit the defendant in a time-line issue of the law. In the opinion from the court (OCCA Appx.C,pg. 7), it was determined that a proper record establishing good cause was not made in relation to a "great many" of the continuances. (emphasis added) There is no record the state followed the statutory procedure for requesting the continuances that were granted. Title 22 O.S. 1981 § 584; title 12 O.S. 1981 § 668. There are no affidavits in the file. Apparently, the court granted the continuances on the district attorney's oral representations. Consequently, the record before this court is not sufficient to support the assertions that the continuances were granted for good cause shown. Certain allegations are made in the briefs and were made at the oral argument, but the record does not sustain those allegations. Further, the court minutes are not complete enough to be relied upon. Absent an abuse of discretion, this court will not reverse a trial court's ruling on a request for continuance. *Roberts v. State* 571 P.2d 129, 133 (Okla.CR 1977), cert. denied; 434 U.S. 957, 985 S. Ct. 485, 54 L.Ed. 2d 316 (1977). We will not however, considering the facts of this case expand that rule to the extent the state advocates. The continuances which were granted without complying with title 12 O.S. § 668 will not be considered as a "necessary or reasonable continuance." Thereby extending the limitation prescribed in the Act. Title 22 O.S. 1981 § 1347 Art. IV. see also *Richardson v.*

State 600 P.2d 361 (Okla. CR 1979). This court in *Gallimore v. State* 1997 OK CR 46, § 31, 944 P.2d 939. Again granted the petitioner's application for a writ of Mandamus and directed that the information against him be dismissed with prejudice. In *Gallimore*, this court determined that the "good cause" required by the IAD to toll the statute did not include the unavailability of a jury docket. Id. The state found clear error with the trial courts record in this case, asking that higher courts place their faith in that of a sheriff's return, instead of the multiple recorded appearances before a judge. (see footnotes, (Appx. D, pg. 17). This would benefit the state in the tolling of the time of the 120-day time limit. At the same time if this is to be the states finding, a court would have to question this courts record keeping of all other dates, times, appearances, that were recorded. Not just the parts that benefit the state. The state proves that the record is not sufficient to support the assertions that the continuances were granted for good cause. (also see *Bell v. State ex rel. Lane*, 1986 OK CR 14, ¶5, 714 P.2d 205, 206) this court found that the continuances granted without complying with title 12 O.S. 2011, § 668, would not be considered as necessary or reasonable continuances. This petitioner argues that if the state's request for temporary custody was considered by the court as it should have been when the defendant objected by multiple ways, and at multiple times, the court would have made a thorough search of the record, found mistakes if there was any, toll the time correctly, then they would have a complete information as to the finding of what's "necessary and reasonable" or "good cause." It's very evident that the Judge failed to consider this law and the protections of this law was withheld from this petitioner (Appx. E, pg.22,3-18). If in fact, this document was in the defendant's Discovery, the judge had a duty to consider and up hold all relevant laws that pertained to this case. The trial court did abuse it's discretion as the action was an unreasonable and arbitrary action made without proper consideration of the relevant facts and laws, also described as a clearly erroneous conclusion and judgment. (see *Bosse v. State* 2015 OK CR 14, 9123, 360 P.3d 1203, 1206). In *Ullery v. State*, 1999 OK CR 36, 988 P.2d 332, this court addressed whether *Ullery*'s murder conviction must be reversed with instructions to

dismiss because the trial was not commenced within the time constraints of the IAD. In making this determination, this court held the record must be examined to determine whether time limits within the IAD were tolled “by either (1) necessary and reasonable continuances that were granted for cause in open count, or (2) delays occasioned by the defendant.” *Ullery*, 1999 OK CR 37 ¶11, 988 P.2d at 341. The defendant contends the trial court “never made any findings of good cause sufficient to extend the 120 days for the state to try [defendant].” Brief of appellant, pg.11. In Oklahoma, “the decision whether to grant or deny a motion for continuance rest within the sound discretion of the trial court and will not be disturbed absent abuse of such discretion.” In the case at bar the facts speak for them self. The trial court failed to discover the IAD document until after the trial. (sentencing hearing 1&2). Continuances were ruled in favor of the state without the consideration of this IAD law, that did apply specifically to this petitioner, (see continuance hearings November 25th 2013; January 23rd 2015). The record show’s a “great many” errors. “While the record clearly demonstrates some of the delays were for good cause, a proper record establishing good cause was not made in relation to a great many of the continuances;” (see OCCA, Opinion pg.5 last sentence)(emphasis added (Appx. C, pg.7)). These facts alone should be deemed, “abuse of sound discretion by the trial court.” Oklahoma Court of Criminal Appeals in their opinion, with the last three words of page 5, goes onto say, nonetheless, this court need not determine if the mandated 120-days was properly tolled as we find appellant waived any rights granted to him under the IAD when he proceeded to trail. The petitioner argues that this court was misguided by the facts it was given and or is easily accepting the state rendering of the facts in order to uphold the conviction. The state cited *New York v. Hill*, the United States Supreme Court held that a defendant can implicitly waive the IAD’s time constraints by accepting treatment inconsistent with the IAD’s time limits. 528 U.S. at 118, 120 S. Ct. at 666. The *Hill* court reasoned such an approach would enable defendants to escape justice by willingly accepting treatment inconsistent with the IAD’s time limits, and then recanting later on. In all fairness, if the court finds this approach would give advantage to the defendant,

they would also have to reason that the state would gain advantage by “discovering” the agreement only after the commencement of the trial. In a fair review of this case, a court should look to evidence of the facts. Unlike the *Hill* court, there is evidence in this case that the defendant (this Petitioner) was unwilling to accept treatment inconsistent with the IAD’s time limit when he objected to more than one continuance (Appx. E, pg.11 at 12). At the last continuance hearing (1.23.2015) a decision was made to deny the defendants objection to a new trial date, and a ruling in favor of the state’s request to continue was granted. Under the criminal law and procedure>preliminary proceeding>detainers>general overview, notes in *United States v. Lawson* 736 F.2d 835 (2nd Cir. 1984). For waiver to be found there must be evidence that the defendant intended to relinquish his (IAD) rights or took action that was expressly or implied inconsistent with the provisions of the IAD. In the case at bar there is evidence that the defendant did not want to prolong the time it took to be brought to trial. After being brought from the sending state he was placed in a one man segregated cell under maximum security conditions where he was held the entire time due to “jurisdiction uncertainties,” violating title 22 O.S. 1991 § 1347 Art I. While meant to “encourage the expeditious and orderly disposition” of a prisoner’s pending charges in a different jurisdiction, this court stated the (IAD) “is meant to prevent the government from gaining advantages against a defendant by lodging a detainer against him without assuming the responsibilities arising from the action.” *Gillmore v. State* 1997 OK CR 46 ¶18, 944 P.2d 939, Citing *United States v. Mauro*, 436 U.S. 340, 98 S. Ct. 1834, 56 L.Ed.2d 329 (1978) (emphasis in original). In the case at bar the government did exactly what this Act was supposed to prevent “gaining advantage against this petitioner without assuming the responsibilities.” After more than 18 months of isolation time in segregation, the state wants to place these responsibilities on this petitioner alone. This court further held the “IAD should be liberally construed in favor of the defendant.” *Gallimore v. State* 1997 OK CR 46, ¶18, 944 P.2d 939, citing *State ex rel Hammett v. McKenzie* 596 S.W. 2d 53, 58 (MO. 1980); *Commonwealth v. Fisher* 301 A.2d 605, 607(Pa. 1973); *State v. West*, 191 A.2d 758, 760 n.1

(NJ. 1963) pursuant to Article IV of the (IAD), unlike Article III where the prisoner initiates the request for a final disposition in the other jurisdiction, Art IV does not require the prisoner to object prior to the disposition of his case as judge Parks points out in result opinion to *Rackley v. State* 1991 OK CR 70, ¶1, 814 P.2d 1048, 1051 (Parks J., Concurring in result). In the instant case it was the state that initiated this petitioner's removal from Mississippi for disposition in Oklahoma; and therefore Art IV is the applicable section of the (IAD) and no objection is required. The state assumes the responsibilities under Art. IV just as the differences of Art. III and Art. IV time limits would reason. In situations in which two different sets of time limitations are prescribed the more stringent limitation may simply be understood in the final disposition process. Both the language and legislative history of the (IAD) support the interpretation that, whereas a prisoner initiating the transfer procedure under Art. III waives rights which the sending state affords prisoner's being extradited, including rights provided under the Extradition Act., a prisoner's extradition rights are preserved when the receiving state seeks the prisoner's involuntary transfer under Art IV of the Detainers Agreement. *Adams v. Culyer* 592 F.2d 720 (Affirmed).

If the court fails to understand the interpretation of the language and legislative history in the IAD, a judge should be able to understand the similarities between a defendant's objection to continue and what the IAD article states, if it were ever considered. No one case is as similar to this one as is *United States v. Richard Thompson Ford* 436 U.S. 340, 56 L.Ed .2d 329, 98 S. Ct. 1834 (no. 77-52). In a Opinion by White J. joined by Brennan, Stewart, Marshall, Blackmum, Powell, and Stevens. JJ. It was held (2) with regard to no. 77-52 thus the court of appeals had properly concluded that the federal indictment in the case at bar should have been dismissed, since the government had violated the agreements requirement that trial must be commenced within 120-day[s] of the prisoner's arrival in the receiving jurisdiction. Annotation references: Supreme Court's view as to weight and effect to be given, on subsequent judicial construction, to prior administrative construction of Statute. 39 L.Ed .2d 942.

Accused's rights to speedy trial under Federal Constitution 21 L.Ed .2d 905. Infra- 436 U.S. 353 Dismissed with prejudice; 436 U.S. 365 failure to invoke in specific terms. [11] *Ford*'s failure to invoke the agreement in specific terms in his speedy trial motions before the District Court did not result in a waiver of his claim that the government violated Art. IV(c) U.S.C.S. Constitutional Amendment IV; 18 U.S.C.S. Appx., Interstate Agreement on Detainers Act. IV (c); 28 U.S.C.S. § 2254. Just as in *Ford*'s case, this petitioner's failure to invoke the agreement in specific term's in open court should not result in a waiver of his claim either, because he was returned and held in a maximum secure segregated housing unit after objecting to the trial date, is cause to find suffering and prejudice attributed to the delayed commencement of trial. (Appx. E, pg. 12, at 1), *Orrins Reed v. Robert Farley* (separate opinion [1a] last paragraph). *Orrins Reed v. Robert Farley* 512 U.S. 339, 129 L.Ed .2d 277, 114 S. Ct. 2291 [no. 93-5418].

In summary to the decision Blackman J. joined by Stevens, Kennedy and Souter JJ. Dissenting expressed the view that (1) for purposes of determining the availability of collateral review, the § 2255 distinction between fundamental and other errors does not support a § 2254 distinction between constitutional and statutory violations; and (2) the case at bar ought to be resolved on the basis that (a) the accused sufficiently invoked and the trial court denied his right to be tried within the IAD's 120-day limit (b) § 2254 authorized federal courts to grant for such violation[s] whatever relief law and justice required (c) the IAD required dismissal of the indictment and (d) nothing in the IAD § 2254 or Supreme Court precedent required or even suggested that federal courts ought to refrain from entertaining a state prisoner's claim of a IAD violation.

ARGUMENT II

PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH & FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION & ARTICLE II §§ 7, 9, & 20 OF THE OKLAHOMA CONSTITUTION.

Trial counsel who the petitioner claimed to be ineffective assistance of counsel failed to discover or research the state's request for temporary custody pursuant to article IV of the interstate agreement on detainees act (IAD). Because of this he could not advise his client or speak on his behalf as to what his rights were. Even so, objections were made to the amount of time it was taking to commence the trial. In not so specific terms, this petitioner objected to the terms of article IV (IAD) being violated by the court¹. In all, but two of the continuance hearings held, the petitioner was kept in a holding cell and wasn't informed of anything until after his return to the jail. It was a jailor who looked it up for him on the computer even then. It was at the last continuance hearing January 23rd 2015; that it was known about trial counsels agreement to continue without his clients consent. The judge was informed of trial counsel's act (Appx. E, pg.12 at 2-9). This act has been taking place without his knowledge until this date. Due to being held in a segregation unit for more than (18) months as of the date of this hearing, advantages were easily taken by the trial counsel and the court due to the effects prolonged isolation had on this petitioner's mental awareness and easy acceptance to trust those responsible for him. At this hearing he was allowed to withdraw his signature from the joint agreement to continue. (see Appx. F, affidavit document 113) trial counsel tried to give a reason why he acted without first consulting his client, "I was just going to say that I believe the states motion was made with good faith and that is the reason why" ((Appx. E, pg.20 at 8)transcript of continuance hearing, January 23rd 2015 pg.20, 8-10). At the formal sentencing hearing on April 23rd 2015 trial counsel confessed for the record that his client had asked him to look into the due process that allowed his transfer and he was unable. He claimed that he was never provided this document in the states discovery and he had never seen this document until the court showed it to the parties. (SH-2, 4-6) as far as this petitioner knows this accusation that the state withheld this evidence was never pursued. Showing his ineffective assistance to his client.

¹ Continuance hearings, November 25th 2013; January 23rd 2015.

On April 13th 2015, after the discovery of the document, the judge ordered both parties to research it and to provide a brief to the court. (SH-1) You would think that trial counsel's ineffective assistance to look into the due process that allowed his client's transfer would cause him to work extra hard in the ten days given by the court to do this research that was ordered by the court. Even though this written request for temporary custody was publicly filed on July 30th 2013, in this petitioner's district court file and this document also appears on the docket (Or-1, 50; Sh, 1, 2; Sh-2, 8-9), trial counsel after almost two years was unable to assist his client. After ten days on April 23rd 2015 (Sh-2), trial counsel failed to research and file a brief prior to the hearing as so ordered by the court. These different acts show numerous times that the trial counsel was deficient in his performance. In *Strickland v. Washington* 466 U.S. 668, 681; 104 S. Ct. 2052, 2064; 80 L.Ed .2d 674 (1984), the Supreme Court held that a conviction cannot stand if defense counsel's performance falls below the standards required by the *Sixth Amendment* and this deficient performance creates reasonable probability that the defendant did not receive a fair and reliable trial. Due to the lack of assistance to look into the due process of his clients transfer, trial counsel failed to make aware the rights being afforded his client through Art. IV of the IAD. This failure combined with the courts failure to consider the law has got to be deemed falling below the standards required by the *Sixth Amendment* and this deficient performance creates a reasonable probability that this petitioner did not receive a fair and reliable trial. If a specific law is not known or considered and this law has a article that orders a dismissal of charges with prejudice if the law isn't followed it was meant to be taken serious and shouldn't be overlooked. For anyone to overlook such a law would be to deny anyone who is protected by this law a fairness to it. Since this law is in respect to a detainee being brought to trial it's reasonable to understand if his rights to this law was withheld he would not receive a fair and reliable trial under which he is being brought. For a court to appoint a counsel who admits failing to be able to assist his client in finding information on this law after almost two years of time and then failing to find information requested by the court on this same

issue law after ten days given him by the court. Added to the evidence on agreement to continue without first getting consent from his client shows the *Strickland* two-part test, and that trial counsel was deficient and his performance falls below the standards required by the *Sixth Amendment* and *Fourteenth Amendment* of the United States Constitution and article II, § 7, 9, & 20 of the Oklahoma Constitution.

CONCLUSION

This case comes before you to review due to the overlooking of the law. It's obvious the state didn't consider it when they placed this petitioner in a single man maximum security segregation unit for the duration he was held. This only started the advantage that was taken, but then the state appointed an unprofessional ineffective assistance of counsel to represent him. Further still trial court failed to recognize or even to consider a law that specifically relates to his due process even after more than one objection was raised. At these times the trial court understood that this petitioner was not intending to waive any rights he had to a speedy trial. The combined reasons given allowed the state unfair advantage. Based on the multiple reasons on the numerous errors, the discussion of facts, arguments and citations of legal authorities cited herein the entire record before this court and any prejudicial errors that this court may note *sua-sponte* the petitioner respectfully requests this court give fair advantage, consider all relevant law and review rather the judgment and sentence imposed against him should be reversed, vacated and remanded, and dismiss the same with prejudice. Granting a petition for a writ of certiorari.

Respectfully Submitted,

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