No. 20-8323

IN THE

SUPREME COURT OF THE UNITED STATES

CLINT RAYMOND WEBB – PETITIONER

vs.

WYOMING DEPARTMENT OF CORRECTIONS

MEDIUM INSTITUTION WARDEN, ET AL – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Clint Raymond Webb #30342

WMCI

7076 Road 55F

Torrington, WY 82240

QUESTION(S) PRESENTED

I. If a state creates a liberty interest by providing a procedural mechanism to enforce and ensure a defendant's constitutional right to a speedy trial, is that rule prohibited from being applied to the Due Process Clause of the Fourteenth Amendment?

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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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

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] reported at not yet reported; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is published.

The opinion of the United States district court appears at Appendix B to the petition and is

[X] reported at not reported; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is published.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C and Appendix E to the petition and is

[X] reported at *Webb v. State*, 401 P.3d 914 (Wyo. 2017).; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is published.

The opinion of the Seventh Judicial District Court of Wyoming court appears at Appendix D to the petition and is

[X] reported at not reported; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is published.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was March 15, 2021.

[X] 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. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was September 15, 2017 (Direct Appeal) and January 17, 2019 (Writ of Certiorari / Review). A copy of those decisions appears at Appendix C and Appendix E, respectively.

[ ] 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. _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

AMENDMENT 5

No person shall be held to answer for a capital, or otherwise 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 shall any person be subject for the same offence 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, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

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 informed of the nature and cause of the accusation; 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 defense.

AMENDMENT 14

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 2. Interpretation

These rules are to be interpreted to provide for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay.

Rule 48. Dismissal

(a) By the Government. The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent.

(b) By the Court. The court may dismiss an indictment, information, or complaint if unnecessary delay occurs in:

(1) presenting a charge to a grand jury;

(2) filing an information against a defendant; or

(3) bringing a defendant to trial.

UNITED STATES CODE SERVICE

18 USCS § 3161. Time limits and exclusions

(c) (1) In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate [United States magistrate judge] on a complaint, the trial shall commence within seventy days from the date of such consent.

...

(h) The following periods of delay shall be excluded in computing the time within which information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to

(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

...

(5) If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation

would commence to run as to the subsequent charge had there been no previous charge.

...

(7) (A) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

(i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

(ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.

(iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in section 3161(b) [18 USCS 3161(b)] or because the facts upon which the grand jury must base its determination are unusual or complex.

(iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

(C) No continuance under subparagraph (A) of this paragraph shall be granted because of general congestion of the courts calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.

18 U.S.C. § 3162. Sanctions

(a) (2) If a defendant is not brought to trial within the time limit required by section 3161(c) [18 USCS 3161(c)] as extended by section 3161(h) [18 USCS 3161(h)], the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with any exclusion of time under subparagraph 3161(h)(3) [18 USCS 3161(h)(3)]. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter [18 USCS 3161 et seq.] and on the administration of justice. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

WYOMING RULES OF CRIMINAL PROCEDURE

Rule 2. Purpose and construction.

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

Rule 48. Dismissal; speedy trial.

(a) *By attorney for the state.* The attorney for the state may, by leave of court, file a dismissal of an indictment, information or citation, and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant.

(b) *Speedy trial.*

(1) It is the responsibility of the court, counsel and the defendant to insure that the defendant is timely tried.

(2) A criminal charge shall be brought to trial within 180 days following arraignment unless continued as provided in this rule.

(3) The following periods shall be excluded in computing the time for trial:

(A) All proceedings related to the mental illness or deficiency of the defendant;

(B) Proceedings on another charge;

(C) The time between the dismissal and the refiling of the same charge; and

(D) Delay occasioned by defendant's change of counsel or application therefor.

(4) Continuances exceeding 180 days from the date of arraignment may be granted by the trial court as follows:

(A) On motion of defendant supported by affidavit; or

(B) On motion of the attorney for the state or the court if:

(i) The defendant expressly consents;

(ii) The state's evidence is unavailable and the prosecution has exercised due diligence; or

(iii) Required in the due administration of justice and the defendant will not be substantially prejudiced; and

(C) If a continuance is proposed by the state or the court, the defendant shall be notified. If the defendant objects, the defendant must show in writing how the delay may prejudice the defense.

(5) Any criminal case not tried or continued as provided in this rule shall be dismissed 180 days after arraignment.

(6) If the defendant is unavailable for any proceeding at which the defendant's presence is required, the case may be continued for a reasonable time by the trial court but for no more than 180 days after the defendant is available or the case further continued as provided in this rule.

(7) A dismissal for lack of a speedy trial under this rule shall not bar the state from again prosecuting the defendant for the same offense unless the defendant made a written demand for a speedy trial or can demonstrate prejudice from the delay.

STATEMENT OF THE CASE

The alleged incident occurred on June 30, 2014. The state of Wyoming charged Webb with one count of aggravated assault on July 1, 2014. Webb turned himself into the authorities in Las Vegas, NV on July 3, 2014, and was transported to Natrona County Detention Center on July 23, 2014.

Webb had his first initial appearance under docket number CR-2014-1660 (first charge) on July 24, 2014. Webb had his first preliminary hearing under docket number CR-2014-1660 (first charge) on July 31, 2014; however, the State dismissed the original charge of aggravated assault and recharged Webb with two counts of aggravated assault and one count of felony property destruction. The new charges were for the same offense and based on facts, laws and judicial decisions that were available at the time of the filing of the first charge. The July 31, 2014 hearing turned out to be the Webb's second first appearance under docket number CR-2014-1956 (second charges).

Webb had his second preliminary hearing under docket number CR-2014-1956 (second charges) on Aug. 8, 2014, which was waived. Webb filed a written demand for speedy trial on August 15, 2014 (second charges). Webb pled not-guilty at his first District Court arraignment under criminal action number 19792-A (second charges) on Sept. 3, 2014.

On October 23, 2014, the state recharged Webb with two counts of aggravated assault, one count of felony property destruction and one count of attempted second degree murder under docket number CR-2014-2622 (third charges). The new charge

was for the same offense and based on facts, laws and judicial decisions that were available at the time of the filing of the first charge. Webb has his third initial appearance under docket number CR-2014-2622 (third charges) on Oct. 24, 2014, where Webb personally questioned the court on his right to a speedy trial.

On October 30, 2014, there was a hearing for Webb to undergo a competency evaluation under docket number CR-2014-2622 (third charges) that Webb's defense counsel (the State's public defenders) had motioned for, against Webb's wishes. The Circuit Court granted defense counsel's motion despite Webb's earnest objections. On October 31, 2014, the District Court held an *ex parte* hearing on the State's motion to dismiss the second set of charges, under criminal action number 19792-A (second charges). The dismissal and re-filing was because of the prosecutor's fulfillment of a threat to Webb that if he did not engage in plea negotiations, the State would file additional and more severe charges in order to gain an advantage in plea negotiations. The District Court authorized the dismissal without Webb or his counsel available to object or be heard.

Webb was found competent to proceed on January 13, 2015 under docket number CR-2014-2622 (third charges). Webb has his third preliminary hearing under docket number CR-2014-2622 (third charges) on Jan. 22 & 23, 2015. On February 4, 2015, Webb filed his second written demand for a speedy trial (third charges). Webb pled not-guilty at his second District Court arraignment under criminal action number 19965-A (third charges) on Feb. 25, 2015.

On June 1, 2015, Webb filed a Motion to Dismiss pending charges (third charges) for the State's violation of his Sixth Amendment right to a speedy trial. On June 29, 2015, the District Court held a hearing on Webb's Motion to Dismiss and ruled, "I am, I guess, a little confused but ultimately not persuaded that there is a sufficient basis under Rule 48 that there was a speedy trial violation in this case." (APPENDIX F).

Webb had a jury trial under criminal action number 19965-A (third charges) at the earliest available date where the court's docket had the adequate amount of time needed for the trial, July 27, 2015 through July 31, 2015. The jury found Webb guilty of two counts of aggravated assault, one count of felony property destruction and one count of attempted second degree murder on July 31, 2015. On December 2, 2015, the District Court sentenced Webb to concurrent terms of five to seven years for each count of aggravated assault, a concurrent term of one to three years for property destruction, and a consecutive term of 30 to 45 years for attempted second-degree murder. Webb's conviction and sentence was filed on Dec. 31, 2015.

Webb timely filed a direct appeal and had oral arguments for his direct appeal in the Wyoming Supreme Court under S-16-0081 on March 15, 2017. Webb's conviction was affirmed by a divided panel of the Wyoming Supreme Court under S-16-0081 on Sept. 15, 2017 (APPENDIX E). The mandate from the Wyoming Supreme Court was released on Oct. 3, 2017.

Webb timely filed a Petition for Post-Conviction in the District Court on July 19, 2018, which was dismissed with prejudice on November 27, 2018 (APPENDIX D).

Webb timely filed a Writ of Certiorari/Writ of Review with the Wyoming Supreme Court on December 14, 2018, that was dismissed on January 17, 2019 (APPENDIX C).

Webb timely filed a Petition for Writ of Habeas Corpus in the U.S. District Court for the District of Wyoming under 1:19-CV-39-ABJ on February 21, 2019. The U.S. District Court for the District of Wyoming dismissed Webb's Petition for Writ of Habeas Corpus on April 13, 2020 (APPENDIX B).

Webb timely filed a Combination Opening Brief and Application for Certificate of Appealability with the U.S. Court of Appeals for the Tenth Circuit under 20-8023 on June 12, 2020. The U.S. Court of Appeals for the Tenth Circuit denied Webb a Certificate of Appealability on March 15, 2021 (APPENDIX A).

REASONS FOR GRANTING THE PETITION

New Questions for Review

I. If a state creates a liberty interest by providing a procedural mechanism to enforce and ensure a defendant's constitutional right to a speedy trial, is that rule prohibited from being applied to the Due Process Clause of the Fourteenth Amendment?

The Question Raised in this Petition is Constitutional and Unresolved

Federal District and Circuit Courts have sanctioned the state courts procedures that unfairly and arbitrarily deprive defendants of their liberty, in direct conflict

with the Due Process Clause of the Fifth and Fourteenth Amendment. The federal courts have allowed this denial of a Constitutional right due to this Court having not previously addressed this issue. "The United States Supreme Court has not addressed the application of any state-created liberty interests flowing from state speedy trial statutes. In the absence of such authority, Petitioner is not entitled to habeas relief." *Reno v. Davis*, 2017 U.S. Dist. LEXIS 213593 (9th Cir. 2017). A defendant "is not entitled to habeas relief in connection with the state court's interpretation or application of the Ohio speedy trial statute." *Green v. Andrews*, 2010 U.S. Dist. LEXIS 47694 (6th Cir. 2010). The 4th Circuit has held that even if a defendant's "state-created right to a speedy trial had been violated, it would not entitle him to 2254 relief." *Uzzle v. Fleming*, 2017 U.S. Dist. LEXIS 130198 (4th Cir. 2017). The state and federal courts unfair and arbitrary denial of due process of a state created liberty interest is in conflict with the U.S. Supreme Court's ruling in *Hicks v. Oklahoma*, 447 U.S. 343, 346, 65 L. Ed. 2d 175, 100 S. Ct. 2227 (1980). In its present posture, this case presents a novel and unresolved issue, not controlled by any prior decisions of this Court. If a state creates a liberty interest by providing a procedural mechanism to enforce and ensure a defendant's constitutional right to a speedy trial, is that rule prohibited from being applied to the Due Process Clause of the Fourteenth Amendment?

The U.S. Supreme Court has consistently recognized the right to a speedy trial as a fundamental right. "[T]he right to a prompt inquiry into criminal charges is fundamental and the duty of the charging authority is to provide a prompt trial."

Dickey v. Florida, 398 U.S. 30, 37-38, 26 L. Ed. 2d 26, 90 S. Ct. 1564 (1970). "We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in Magna Carta (1215), .." *Klopfer v. North Carolina*, 386 U.S. 213, 223, 18 L. Ed. 2d 1, 87 S. Ct. 988 (1967). This Court has recognized that a fundamental right is subject to proscription under the Due Process Clause. "[T]he State's power to regulate procedural burdens was subject to proscription under the Due Process Clause if it 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,'" *Cooper v. Oklahoma*, 517 U.S. 348, 367, 134 L. Ed. 2d 498, 116 S. Ct. 1373 (1996).

Wyoming has implicated the federal right of the Constitutional right to a speedy trial with Wyoming Rules of Criminal Procedure (W.R.Cr.P.) 48. "Wyoming's Rules of Criminal Procedure provide a procedural mechanism for enforcing a defendant's constitutional right to a speedy trial. W.R.Cr.P. 48(b)." *Tate v. State*, 382 P.3d 762, 767 (Wyo. 2016). "In recognition that W.R.Cr.P. 48 provides criminal defendants a procedural mechanism to ensure the protection of this constitutional right, we have held that compliance with its terms is mandatory." *Detheridge v. State*, 963 P.2d 233 (Wyo. 1998). This Court should consider this issue because Rule 48 is a procedural mechanism to ensure and enforce the constitutional right to a speedy trial. "[W]e consider here whether a State's procedures for guaranteeing a

fundamental constitutional right are sufficiently protective of that right." *Cooper v. Oklahoma*, 517 U.S. 348, 368, 134 L. Ed. 2d 498, 116 S. Ct. 1373 (1996).

This Court has consistently determined that the only remedy for a speedy trial violation is dismissal of the charges. "In light of the policies which underlie the right to a speedy trial, dismissal must remain, as *Barker* noted, 'the only possible remedy.'" *Strunk v. United States*, 412 U.S. 434, 440, 37 L. Ed. 2d 56, 93 S. Ct. 2260 (1973). If the charges against a defendant were dismissed for a speedy trial violation, then that defendant would be free from restraint in connection with those charges. Wyoming Rules provide that if a defendant had filed a written demand for a speedy trial prior to a dismissal for speedy trial violation then the State would be barred from again prosecuting for the same offense. Additionally, Wyoming recognizes that a violation of the right to a speedy trial precludes the establishment of guilt by trial. "A violation of the right to a speedy trial precludes the establishment of guilt by trial," *Zanetti v. State*, 783 P.2d 134 (Wyo. 1989). Since the sole remedy for a speedy trial violation is the dismissal of charges and freedom from restraint, a state created right to a speedy trial is a liberty interest. That liberty interest is one that the Fourteenth Amendment preserves against unfair and arbitrary deprivation by the State. "[W]e recognize that States may under certain circumstances create liberty interests which are protected by the Due Process Clause. But these interests will generally be limited to freedom from restraint." *Wilkinson v. Austin*, 545 U.S. 209, 222, 162 L. Ed. 2d 174, 125 S. Ct. 2384 (2005).

Therefore, freedom from restraint is the only remedy for a speedy trial violation, which establishes a liberty interest.

The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, 1. This Court has consistently held that, "The Fourteenth Amendment's Due Process Clause protects persons against deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must establish that one of these interests is at stake. A liberty interest may arise from the Constitution itself, by reason of guarantees implicit in the word 'liberty,' or it may arise from an expectation or interest created by state laws or policies." *Wilkinson v. Austin*, 545 U.S. 209, 221, 162 L. Ed. 2d 174, 125 S. Ct. 2384 (2005). "We have repeatedly held that state statutes may create liberty interests that are entitled to the procedural protections of the Due Process Clause of the Fourteenth Amendment." *Vitek v. Jones*, 442 U.S. 480, 488, 63 L. Ed. 2d 552, 100 S. Ct. 1254 (1980). "[A] person's liberty is equally protected, even when the liberty itself is a statutory creation of the State. The touchstone of due process is protection of the individual against arbitrary action of government, *Dent v. West Virginia*, 129 U.S. 114, 123, 32 L. Ed. 623, 9 S. Ct. 231 (1899)." *Wolff v McDonnell*, 418 U.S. 539, 558, 41 L. Ed. 2d 935, 94 S. Ct. 2963 (1974).

This is a case involving an "unfair and arbitrary denial" of a state created liberty interest, in in violation of the U.S. Constitution. Wyoming denied Webb the procedural mechanism that enforces and ensures the constitutional right to a

speedy trial, to which he was entitled under state law, simply by unfairly changing and applying two conflicting meanings (depending on the application) to the word "dismissal" in W.R.Cr.P. 48(b)(7). The Wyoming Supreme Court held that the word "dismissal" in W.R.Cr.P. 48(b)(7) is to be interpreted as a dismissal under W.R.Cr.P. 48(a) to start the speedy trial time clock anew and that the same "dismissal" in W.R.Cr.P. 48(b)(7) is to be interpreted as a dismissal under W.R.Cr.P. 48(b)(5) to bar the state from again prosecuting Webb for the same offense. In doing so, Wyoming deprived Webb of his liberty without due process of law.

Webb asserts that he was denied his liberty through a due process violation of a state created liberty interest that ensures and enforces his constitutional right to a speedy trial. Webb's claim of a due process violation is not an argument based on the state courts' interpretation of a word, but instead is an argument based on the state courts applying two competing meanings, depending upon the application, of the same word in an unfair and unjust manner, which denied Webb the computation of speedy trial time expressly allowed under the rule and denied him of his liberty. Applying two competing meanings to one word, depending on its application, is outside the limits of acceptable notions of justice. The U.S. Supreme Court has consistently held that "judges cannot give the same statutory text different meanings in different cases." *United States v. Santos*, 553 U.S. 507, 128 S. Ct. 2020, 170 L. Ed. 2d 912, 916 (2008). As far as applying two conflicting interpretations at the same time, as Wyoming did in Webb's case, this Court has

held that "It cannot, however, be interpreted to do both at the same time." *Clark v. Martinez*, 543 U.S. 371, 378, 125 S. Ct. 716, 160 L. Ed. 2d 734 (2005).

> "*Clark v. Martinez*, 543 U.S. 371, 125 S. Ct. 716, 160 L. Ed. 2d 734 (2005), held that the meaning of words in a statute cannot change with the statute's application. *See id.*, at 378, 125 S. Ct. 716, 160 L. Ed. 2d 734. To hold otherwise ``would render every statute a chameleon," id., at 382, 125 S. Ct. 716, 160 L. Ed. 2d 734, and ``would establish within our jurisprudence . . . the dangerous principle that judges can give the same statutory text different meanings in different cases," id., at 386, 125 S. Ct. 716, 160 L. Ed. 2d 734." Quoting *United States v. Santos*, 553 U.S. 507, 522, 128 S. Ct. 2020, 170 L. Ed. 2d 912 (2008).

Webb has a substantial and legitimate expectation that he has been deprived of his liberty by the unfair and arbitrary denial of the state created procedural mechanism that ensures and enforces his Constitutional right to a speedy trial.

<u>The Procedures used Erroneously Deprives Defendants of their Liberty Interest</u>

Rule 48(b)(7) states: "A **dismissal** for lack of speedy trial under this rule shall not bar the state from again prosecuting the defendant for the same offense unless the defendant made a written demand for a speedy trial or can demonstrate prejudice from the delay (boldness added)." It is important to note that dismissal is mentioned only once in Rule 48(b)(7). In *Hall v. State*, when the State dismissed charges due to a lack of speedy trial and re-filed charges, the State court ruled, "Rule 48(b)(8) [now (b)(7)] provides that upon **dismissal** under the rule, the State is not barred from again prosecuting the defendant for the same offense unless the defendant made a written demand for speedy trial or can demonstrate prejudice from the delay. Implied in that reading is that the 120-day [now 180-day] period will begin anew

after each filing (boldness added)." *Hall v. State*, 911 P.2d 1364 (Wyo. 1996). After this ruling, Wyoming consistently started the speedy trial time clock anew any time a criminal case was dismissed and then refiled.

In *Rhodes v. State*, Rhodes argued that "Rule 48 does nothing to limit the number of times the State can dismiss and refile a charge, therefore does nothing to protect the accused, and affords the State an almost unlimited amount of time to build a case and hold a defendant in jail while it does so." The Wyoming Supreme Court clarified that the "dismissal" in Rule 48(b)(7), which implies that the speedy trial time clock to start anew, is interpreted as the "dismissal" identified in Rule 48(a). "In light of our precedent holding that the speedy trial period begins anew when charges are re-filed against a defendant,... would be consistent with Wyoming precedent interpreting W.R.Cr.P. 48(a), which permits the State to **dismiss** charges against a defendant 'by leave of court (boldness added).'" *Rhodes v. State*, 348 P.3d 404 (Wyo. 2015).

In Webb's case, he had filed a written demand for a speedy trial on Aug. 15, 2014 and had his arraignment on Sept. 3, 2014. Then at the end of Oct. 2014, the State dismissed and re-filed charges against Webb for the same offense (based on facts, laws, and judicial decisions available when the State first filed charges against Webb) under W.R.Cr.P. 48(a). Under the precedent ruling from *Rhodes*, Wyoming would have been barred from again prosecuting Webb for the same offense because Webb had previously filed a written demand for a speedy trial (as required to bar

the State from again prosecuting for the same offense under Rule 48(b)(7)) prior to the State dismissing the charges under W.R.Cr.P. 48(a).

On June 1, 2015, Mr. Webb filed a Motion to Dismiss due to a lack of Speedy Trial. On June 29, 2015, the District Court held a Motions Hearing and ruled, "I am, I guess, a little confused but ultimately not persuaded that there is a sufficient basis under Rule 48 that there was a speedy trial violation in this case." (APPENDIX F). In that ruling, the second interpretation of dismissal in W.R.Cr.P. 48(b)(7) was not given. Webb could not have presented the claim of the Constitutional due process violation for unfairly applying two competing interpretations of W.R.Cr.P. 48(b)(7) in his direct appeal because the second interpretation was not given prior to his direct appeal.

Webb argued that his right to a speedy trial was violated in his direct appeal. In a 3 to 2 split decision of Webb's direct appeal, the State court changed the precedent interpretation of dismissal in Rule 48(b)(7) set under *Rhodes*. The State court gave a new, second interpretation of dismissal in Rule 48(b)(7). "A plain reading of Rule 48(b)(7) makes it clear that Mr. Webb's speedy trial demand can affect the re-filing of charges only if the previous charges were dismissed due to a lack of speedy trial." *Webb v. State*, 401 P.3d 914, 920 (Wyo. 2017). The State court interpreted the dismissal in Rule 48(b)(7) to be a "dismissal" according to Rule 48(b)(5), which states, "Any criminal case not tried or continued as provided in this rule shall be **dismissed** 180 days after arraignment (boldness added)." If the State court interprets the dismissal in Rule 48(b)(7) as only a dismissal required by Rule

48(b)(5), then when applying *Hall* to Rule 48(b)(7), it would imply that the speedy trial time clock starts anew only if the dismissal was required by Rule 48(b)(5) and not a dismissal under Rule 48(a) as indicated in *Rhodes*.

The State court's new interpretation of dismissal in Rule 48(b)(7) directly conflicts with the precedent set in *Rhodes* that the dismissal in Rule 48(b)(7) is a dismissal under Rule 48(a). However, the State court applies the precedent interpretation to start the speedy trial time clock anew and circumvent the 180 day limitation; then applies the new, second interpretation to circumvent the requirement that the State would be barred from again prosecuting Webb because he had filed a written demand for a speedy trial prior to the State's dismissal. The State courts indirectly applies the precedent interpretation to start the speedy trial time clock anew and then directly applies the new, competing interpretation to allow the State to again prosecute Webb for the same offense. The two interpretations are unfairly applied to the detriment of Webb and to benefit the State. Black's law dictionary defines the Due Process Clause as "the constitutional provision that prohibits the government from unfairly or arbitrarily depriving a person of life, liberty, or property." The procedure used for W.R.Cr.P. 48 unfairly deprives Webb of his liberty.

By unfairly applying two competing interpretations of the same word to benefit the State, a defendant loses the guarantee of Rule 48 to be brought to trial within 180 days of his arraignment and the State gains an infinite amount of time to bring a defendant to trial. In doing so, the State courts are in violation of

W.R.Cr.P. 2. Rule 2 specifically states that Rule 48 shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustified expense and delay. W.R.Cr.P. 2 is practically identical to the F.R.Cr.P. 2. "Only those state procedural rules that are "independent and adequate," however, will prevent federal habeas review on the merits. To be independent, the rule must not be interwoven or intertwined with federal law." *Stuart v. Fisher*, 2012 U.S. Dist. LEXIS 126353, 9 (9th Cir. 2012). Wyoming precedent clearly states that the delay caused when the State dismissed and re-filed charges against Webb was unnecessary. "The prosecutor, not the supreme court and not the district court, must decide how to charge a defendant. If he later changes the charge because he changes his mind, then any delay that results is unnecessary." *Caton v. State*, 709 P.2d 1260 (Wyo. 1985). Therefore, the State court's ruling on Rule 48 is unfair in administration and does not eliminate unjustifiable delays as required by W.R.Cr.P. 2 and F.R.Cr.P. 2.

The state courts construction of the W.R.Cr.P. 48 ignores its plain language and circumvents its basic purpose, as Justice FOX and Chief Justice BURKE acknowledged in their dissent on Webb's direct appeal, "Our acquiescence in the State's repeated circumvention of the speedy trial rule by dismissing and refiling to start the clock anew has the effect of eviscerating W.R.Cr.P. 48." *Webb v. State*, 401 P.3d 914, 930 (Wyo. 2017).

By applying two meanings to dismissal in Rule 48(b)(7) the State can repeatedly dismiss and refile charges prior to the 180 day limitation and receive a new speedy

trial time clock. Therefore W.R.Cr.P. 48 does nothing to protect the accused, and affords the State an almost unlimited amount of time to build a case and hold a defendant in jail while it does so. The unusual Wyoming procedure, which in effect allows state prosecuting officials to put a person under the cloud of an unliquidated criminal charge for an indeterminate period, violates the requirement of fundamental fairness assured by the Due Process Clause of the Fourteenth Amendment. See *Klopfer v. North Carolina*, 386 U.S. 213, 226-227, 18 L. Ed. 2d 1, 87 S. Ct. 988 (1967).

In the District Court's ruling, "I am, I guess, a little confused but ultimately not persuaded that there is a sufficient basis under Rule 48 that there was a speedy trial violation in this case (APPENDIX F)" at the hearing for Webb's Motion to Dismiss for Lack of Speedy Trial, the second interpretation of dismissal in W.R.Cr.P. 48(b)(7) was not given. Webb could not have presented the claim of the Constitutional due process violation for unfairly applying two competing interpretations of W.R.Cr.P. 48(b)(7) in his direct appeal because the second interpretation was not given prior to his direct appeal.

Webb presented the claim of the Constitutional due process violation for unfairly applying two competing interpretations of W.R.Cr.P. 48(b)(7) in his *pro se* Petition for Post-Conviction Relief and his *pro se* Writ of Certiorari / Review. However, the state courts ruled that the due process claim was procedurally barred from review because the substance was that his speedy trial rights were violated and the Wyoming Supreme Court had already ruled that the rights were not violated in

Webb's direct appeal (APPENDIX D & C). Since the due process violation for unfairly applying two competing interpretations was not available at the time of Webb's direct appeal and then procedurally barred from review after the direct appeal, then the procedures used by Wyoming courts arbitrarily denied Webb to have the due process claim to be addressed.

By applying two competing interpretations of "dismissal" in W.R.Cr.P. 48(b)(7), the Wyoming Supreme Court has shown that the language in the rule is ambiguous and vague. The U.S. Supreme Court has held:

> ``The prohibition of vagueness in criminal statutes,'' our decision in *Johnson* explained, is an ``essential'' of due process, required by both ``ordinary notions of fair play and the settled rules of law.'' 576 U.S., at ___, 135 S. Ct. 2551, 192 L. Ed. 2d 569, 577) (quoting *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 70 L. Ed. 322 (1926)). The void-for-vagueness doctrine, as we have called it, guarantees that ordinary people have ``fair notice'' of the conduct a statute proscribes. *Papachristou v. Jacksonville*, 405 U.S. 156, 162, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972). And the doctrine guards against arbitrary or discriminatory law enforcement by insisting that a statute provide standards to govern the actions of police officers, prosecutors, juries, and judges. See *Kolender* v. *Lawson*, 461 U.S. 352, 357-358, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983)." Quoting *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212, 200 L. Ed. 2d 549 (2017).

Webb was not given "fair notice" of the second interpretation of "dismissal" prior to his direct appeal; and then the State arbitrarily barred Webb from review of the due process violation after he was given notice of the second interpretation.

In Webb's Writ of Habeas Corpus in the U.S. District Court for the District of Wyoming, he presented the claim of the Constitutional due process violation of the state created procedural mechanism that enforces and ensures a defendant's

constitutional right to a speedy trial. Webb argued that Wyoming violated due process when it created a liberty interest and then unfairly and arbitrarily denied that liberty interest by applying two conflicting interpretations to the same word in order to circumvent the requirements of the rule that created the liberty interest. The U.S. District Court dismissed this claim and stated that the Court was bound by the state courts analysis of state law; thus, the claim was not cognizable in federal habeas review (APPENDIX B).

Webb presented the claim of the Constitutional due process violation for the State courts unfairly applying two conflicting interpretations to the state created procedural mechanism that enforces and ensures a defendant's constitutional right to a speedy trial to the U.S. Court of Appeals for the Tenth Circuit in his Combined Opening Brief and Application for a Certificate of Appealability. The U.S. Court of Appeals denied a Certificate of Appealability for this by claiming that the "Wyoming Supreme Court's resolution of this issue presents a non-reviewable determination of state law. (APPENDIX A)"

The state courts and federal courts also denied Webb correction of the due process violation through the constitutional-voidance canon. "The canon of constitutional avoidance comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction; and the canon functions as a means of choosing between them. See, e.g., *Almendarez-Torres v United States*, 523 U.S. 224, 237-238, 140 L. Ed. 2d 350, 118 S. Ct. 1219 (1998); *United States ex rel. Attorney General v Delaware &*

Hudson Co., 213 U.S. 366, 408, 53 L. Ed. 836, 29 S. Ct. 527 (1909)." Quoting *Clark v. Martinez*, 543 U.S. 371, 385, 125 S. Ct. 716, 160 L. Ed. 2d 734 (2005). "Under the constitutional-avoidance canon, when statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems." *Jennings v. Rodriguez*, 138 S. Ct. 830, 836; 200 L. Ed. 2d 122 (2018).

Webb was unable to have any state or federal court hear the claim of the due process violation for unfairly applying two conflicting interpretations to a state created liberty interest because the claim was not available at the time of Webb's direct appeal, then the claim was procedurally barred from review by the state courts after the direct appeal, and then the procedures used by the federal courts denied Webb review of a state created liberty interest. The U.S. District and Circuit Court have sanctioned the state courts procedures that unfairly and arbitrarily deprive defendants of their liberty, in direct conflict with the Due Process Clause of the Fourteenth Amendment. The state and federal courts have so far departed from the acceptable and usual course of judicial proceedings and sanctioned such a departure that it calls for an exercise of the U.S. Supreme Court's supervisory power.

<u>The Wyoming Supreme Court erred in its application of the Speedy Trial Rule</u>

Wyoming has implicated that their rulings as to the application of W.R.Cr.P. 48 is guided by federal law and federal precedent. "Wyoming's rule 48 is nearly identical to its federal counterpart, and we find guidance from our nation's highest

court and the several circuits as to how this rule ought to be applied. *Bird v. State*, 901 P.2d 1123, 1129 (Wyo. 1995) ([O]ur interpretation of our Wyoming Rules of Criminal Procedure having their source in the federal rules, we afford great persuasive weight to federal precedent.)" *State v. Bridger*, 2014 Wyo. LEXIS 193 (Wyo. 2014). The U.S. Supreme Court has associated the imposed time limit in W.R.Cr.P. 48 with the Speedy Trial Act, 18 U.S.C. § 3161. "Congress passed the Speedy Trial Act of 1974, 18 U. S. C. § 3161 *et seq.*, ``to give effect to the sixth amendment right." *United States* v. *MacDonald*, 456 U. S. 1, 7, n. 7, 102 S. Ct. 1497, 71 L. Ed. 2d 696 (1982) (quoting S. Rep. No. 93-1021, p. 1 (1974)). ... Numerous state analogs similarly impose precise time limits for charging and trial [n. 7, Wyo. Rule Crim. Proc. 48 (2015).]" *Betterman v. Montana*, 136 S. Ct. 1609, 1616, 194 L. Ed. 2d 723 (2016).

Wyoming courts have circumvented the imposed time limit identified in Rule 48 by starting the speedy trial time clock anew when the prosecution repeatedly dismisses and refiles charges against a defendant for the same offense in order to add additional charges. In Wyoming, it is not necessary for the State to dismiss and refile charges to add an additional charge. The State could have amended the information and added the additional charge without dismissing and refiling. "The State moved to amend the information to include an additional eight counts ... The district court held a hearing on the motion and allowed the amendment." *Tate v. State*, 382 P.3d 762, 766 (Wyo. 2016). By dismissing and refiling charges against a defendant for the same offense, as the State did in Webb's case, the State clearly

circumvents the imposed time limit identified in Rule 48 and gains the advantage of having the speedy trial time clock start anew.

As a general rule, the filing of a superseding indictment does not affect the speedy trial timetable for offenses either charged in the original indictment or required under double jeopardy principles to be joined with such charges. See *United States v. Rojas-Contreras*, 474 U.S. 231, 239-40, 88 L. Ed. 2d 537, 106 S. Ct. 555 (1985). Federal courts have consistently followed this rule. "As a general matter, where a criminal defendant has been charged and is awaiting trial, and the government thereafter either returns a superseding indictment or re-indicts the defendant after dismissing the previous indictment without prejudice, any offenses charged in the new indictment that were also charged in the previous indictment do not receive a new speedy trial period." *United States v. Bermea*, 30 F.3d 1539, 1567 (5th Cir. 1994). "[I]f the government indicts a defendant for a particular crime, dismisses that charge, and indicts the defendant once again for the same offense, the speedy-trial calculation begins with the initial indictment or arraignment but excludes the time between the dismissal and subsequent re-indictment." *United States v. Young*, 528 F.3d 1294, 1295-1296 (11th Cir. 2008). "The reason for this rule is obvious. If the clock began anew, the government could circumvent the limitations of the Speedy Trial Act by repeatedly dismissing and refiling charges against a defendant." *United States v. Hoslett*, 998 F.2d 648, 658 n.12 (9th Cir. 1993).

Wyoming Courts have implicated that their rulings on Rule 48 are guided by the federal counterpart, the U.S. Supreme Court and the several circuits. However, allowing the State to restart the speedy trial time clock by dismissing and refiling charges has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Courts supervisory power. In Webb's direct appeal, Justice FOX and Chief Justice BURKE has implicated that their ruling as to the application of Rule 48 is guided by federal law and federal precedent in their dissent,

> "Allowing the State to restart the speedy trial clock by dismissing and refiling charges defeats the purpose of the rule. (n.8 Federal courts applying the Speedy Trial Act, 18 U.S.C. § 3161(c)(1), have recognized this. *See e.g., United States v. Rojas-Contreras,* 474 U.S. 231, 239, 106 S. Ct. 555, 559, 88 L.Ed.2d 537 (1985) (Blackmun, J., concurring in the judgment, recognizing the reason federal law does not permit the clock to restart when the government dismisses and refiles is to 'protect[] against governmental circumvention of the speedy-trial guarantee'); *United States v. Hoslett*, 998 F.2d 648, 658 n.12 (9th Cir. 1993) ('If the clock began anew, the government could circumvent the limitations of the Speedy Trial Act by repeatedly dismissing and refiling charges against a defendant.').)" *Webb v. State*, 401 P.3d 914, 930 (Wyo. 2017).

Wyoming Rules of Criminal Procedure 48 states:

Rule 48. Dismissal; speedy trial.

(a) *By attorney for the state.* The attorney for the state may, by leave of court, file a dismissal of an indictment, information or citation, and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant.

(b) *Speedy trial.*

(1) It is the responsibility of the court, counsel and the defendant to insure that the defendant is timely tried.

(2) A criminal charge shall be brought to trial within 180 days following arraignment unless continued as provided in this rule.

(3) The following periods shall be excluded in computing the time for trial:

(A) All proceedings related to the mental illness or deficiency of the defendant;

(B) Proceedings on another charge;

(C) The time between the dismissal and the refiling of the same charge; and

(D) Delay occasioned by defendant's change of counsel or application therefor.

(4) Continuances exceeding 180 days from the date of arraignment may be granted by the trial court as follows:

(A) On motion of defendant supported by affidavit; or

(B) On motion of the attorney for the state or the court if:

(i) The defendant expressly consents;

(ii) The state's evidence is unavailable and the prosecution has exercised due diligence; or

(iii) Required in the due administration of justice and the defendant will not be substantially prejudiced; and

(C) If a continuance is proposed by the state or the court, the defendant shall be notified. If the defendant objects, the defendant must show in writing how the delay may prejudice the defense.

(5) Any criminal case not tried or continued as provided in this rule shall be dismissed 180 days after arraignment.

(6) If the defendant is unavailable for any proceeding at which the defendant's presence is required, the case may be continued for a reasonable time by the trial court but for no more than 180 days after the defendant is available or the case further continued as provided in this rule.

> (7) A dismissal for lack of a speedy trial under this rule shall not bar the state from again prosecuting the defendant for the same offense unless the defendant made a written demand for a speedy trial or can demonstrate prejudice from the delay.

Under W.R.Cr.P. 48(b)(2), Webb has a right to have criminal charges brought to trial within 180 days following arraignment unless continued as provided by the rule. According to W.R.Cr.P. 48(b)(5), a criminal case that is not tried or continued as provided by the rule shall be dismissed 180 days after arraignment. If the criminal case was dismissed for lack of speedy trial and a defendant had made a written demand for a speedy trial, then the state would be barred from again prosecuting the defendant for the same offense, W.R.Cr.P. 48(b)(7).

On August 15, 2014, Webb put the Court and the State on notice that he wished to proceed to trial in a timely manner by filing a written demand for a speedy trial in compliance with Rule 48(b)(1). Webb's written demand for a speedy trial also triggered the protection in Rule 48(b)(7) that the state would be barred from again prosecuting him for the same offense upon dismissal for lack of speedy trial under the rule. Rule 48(b)(2) clearly fixes the beginning point of the speedy trial time clock to be upon the date of the arraignment, which is the same as federal law and federal precedent (see 18 U.S.C. § 3161(c)(1)). "The plain language of the [Speedy Trial Act] requires a not guilty plea to begin the clock running." *United States v. O'Dell*, 154 F.3d 358, 360 (6th Cir. 1998). Rule 48 does not refer to the date of any superseding arraignment. Given this unambiguous language, there is no choice but to conclude that Rule 48 did not intend that the 180-day trial preparation period begin to run

from the date of a superseding arraignment, which is the same as federal law and federal precedent.

> "[T]he superseding indictment does not affect the running of the time on . . . charges that were in the original indictment as well as the superseding indictment.' Moreover, the speedy trial clock continues to run not only on offenses actually charged in the original indictment, but on those required under double jeopardy principles to be joined with the original offenses as well. *United States v. Marshall,* 935 F.2d 1298, 1302 (D.C. Cir. 1991); *United States v. Gonzales,* 897 F.2d 1312, 1316 (5th Cir. 1990)" *United States v. Kennedy*, 1994 U.S. App. LEXIS 21374, 4-5 (C.A. 7th Cir. 1994).

The conclusion (that Rule 48 did not intend that the 180-day trial preparation period begin to run from the date of a superseding arraignment) finds additional support in the language of Rule 48(b)(3)(C), which indicates that the period between the dismissal and the refiling of the same charge shall be excluded in computing the time for trial, which is the same as federal law and federal precedent (see 18 U.S.C. § 3161(h)(5)). "[T]he time during dismissal and reindictment should be excluded from the length of delay considered under the speedy trial clause of the sixth amendment." *United States v. Hayden*, 860 F.2d 1483, 1486 (C.A. 9th Cir. 1988). Had the rule intended that the 180-day trial preparation period of Rule 48(b)(2) commence or recommence from the date of a superseding arraignment, it would have so provided. Under the plain language of Rule 48(b)(2), Webb's speedy trial time clock was triggered to start on Sept. 3, 2014 when he had his arraignment and he pled not-guilty to the charges.

The time periods that are to be excluded in computing time for trial is specified in Rule 48(b)(3). "In accordance with W.R.Cr.P. 48, we calculate the length

of a delay by excluding the time periods specified in W.R.Cr.P. 48(b)(3)." *McDermott v. State*, 897 P.2d 1295, 1300 (Wyo. 1995). The time periods to be excluded in computing time for trial in Webb's case include the 75 days, from October 30, 2014 through January 13, 2015, for a competency evaluation as indicated by Rule 48(b)(3)(A), which is the same as federal law and federal precedent (see 18 U.S.C. § 3161(h)(1)(A)). "[D]elay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant" is excluded from the computation of time under the Speedy Trial Act. 18 U.S.C. § 3161(h)(1)(A)." *United States v. Pina*, 724 Fed. Appx. 413, 418 (6th Cir. 2018). In computing Webb's time for trial, 57 total days accrued from arraignment to the proceeding for a competency evaluation.

As indicated by Rule 48(b)(3)(C), the time between the dismissal and refiling of the same charge are to be excluded from the computing for the time for trial. In Webb's case, the State refiled charges on October 23, 2014 and dismissed the charges on October 31, 2014; therefore there was no time to be excluded between the dismissal and refiling of the charges. Under Rule 48(b)(4), the trial court may grant continuances to exceed the 180 days from the date of arraignment, which is the same as federal law and federal precedent (see 18 U.S.C. § 3161(h)(7)). "In addition, 'delay resulting from a continuance' granted by the district court may be excluded if the district court makes the findings required by 3161(h)(7)." *Bloate v. United States*, 559 U.S. 196, 198-99, 130 S. Ct. 1345, 176 L. Ed. 2d 54 (2010). In Webb's case, there were no continuances granted under Rule 48(b)(4).

Applying Rule 48(b)(2) to the facts of this case, it took 252-days following arraignment to bring Webb to trial, the 180-days requirement of the rule had expired. The record reflects that Webb's arraignment occurred on September 3, 2014. Trial was not commenced until July 27, 2015. The 180 days that the State had to bring the charges to trial, excluding the periods to be excluded in computing the time specified in Rule 48(b)(3), expired on May 16, 2015 and therefore *shall* be dismissed under Rule 48(b)(5), which is the same as federal law and precedent (see 18 U.S.C. § 3162(a)(2)). "Under the STA, '[i]f a defendant is not brought to trial within the time limit required . . . , the information or indictment *shall be* dismissed on motion of the defendant.' 18 U.S.C. 3162(a)(2) (emphasis added)." *United States v. Alvarez-Perez*, 629 F.3d 1053, 1060 (9th Cir. 2010). Webb was, therefore, subjected to a pretrial preparation period past the 180-days required by Rule 48(b)(2). Since the State did not bring Webb to trial as provided in Rule 48 and because Webb had filed a written demand for a speedy trial, then the charges shall be dismissed and the State is barred from again prosecuting Webb for the same offense under Rule 48(b)(7). Webb was guaranteed his liberty (which is protected by the Due Process Clause of the Fourteenth Amendment) because the rule that ensured and enforced his Constitutional right to a speedy trial, Rule 48, required dismissal of the charges and the State was barred from again prosecuting Webb for the same offense.

The Federal Courts erred by finding a Speedy Trial is not Constitutional

Webb timely petitioned the U.S. District Court for the District of Wyoming for a writ of habeas corpus. The District Court erroneously ruled that a state's procedural mechanism to protect the constitutional right to a speedy trial is not cognizable under habeas review because it is a state law and not a question of federal law (APPENDIX B). The U.S. Court of Appeals for the 10th Circuit denied Webb's timely application for a certificate of appealability for the same reason (APPENDIX A). The ruling from U.S. District Court and the U.S. Court of Appeals conflicts with their previous rulings and the U.S. Supreme Court's ruling in *Hicks v. Oklahoma*. "A petitioner may be entitled to habeas relief, however, if he shows that the alleged violations of State law resulted in a denial of due process. *Hicks v. Oklahoma*, 447 U.S. 343, 346, 65 L. Ed. 2d 175, 100 S. Ct. 2227 (1980)." *Scott v. Murphy*, 343 Fed. Appx. 338, 340 (10th Cir. 2009).

The Federal Courts erred in stating that W.R.Cr.P. 48 is not cognizable under habeas review because it is a state law and not a question of federal law. "Only those state procedural rules that are "independent and adequate," however, will prevent federal habeas review on the merits. To be independent, the rule must not be interwoven or intertwined with federal law." *Stuart v. Fisher*, 2012 U.S. Dist. LEXIS 126353, 9 (9th Cir. 2012). Wyoming has implicated that W.R.Cr.P. 48 is intertwined and guided by federal law and federal precedent. "Wyoming's rule 48 is nearly identical to its federal counterpart, and we find guidance from our nation's highest court and the several circuits as to how this rule ought to be applied. *Bird v.*

State, 901 P.2d 1123, 1129 (Wyo. 1995) ([O]ur interpretation of our Wyoming Rules of Criminal Procedure having their source in the federal rules, we afford great persuasive weight to federal precedent.)" *State v. Bridger*, 2014 Wyo. LEXIS 193 (Wyo. 2014). Wyoming has also repeatedly implicated the Constitutional right to a speedy trial with W.R.Cr.P. 48. "Wyoming's Rules of Criminal Procedure provide a procedural mechanism for enforcing a defendant's constitutional right to a speedy trial. W.R.Cr.P. 48(b)." *Tate v. State*, 382 P.3d 762, 767 (Wyo. 2016). "In recognition that W.R.Cr.P. 48 provides criminal defendants a procedural mechanism to ensure the protection of this constitutional right, we have held that compliance with its terms is mandatory." *Detheridge v. State*, 963 P.2d 233, 235 (Wyo. 1998).

The federal courts also erred because, as the U.S. Supreme Court has held, "[a] liberty interest may arise from the Constitution itself, by reason of guarantees implicit in the word 'liberty,' or they may arise from an expectation or interest created by state laws or policies [i.e., 'state-created' liberty interests], see *Wilkinson v. Austin*, 545 U.S. 209, 221, 162 L. Ed. 2d 174, 125 S. Ct. 2384 (2005). "[A] person's liberty is equally protected, even when the liberty itself is a statutory creation of the State. The touchstone of due process is protection of the individual against arbitrary action of government, *Dent v. West Virginia*, 129 US 114, 123, 32 L Ed 623, 9 S Ct 231 (1899)." *Wolff v McDonnell*, 418 US 539, 558, 41 L. Ed. 2d 935, 94 S. Ct. 2963 (1974). The right to a speedy trial is a liberty interest that arises from the Constitution itself and from an expectation created by state law. Because the sole remedy for a speedy trial violation is dismissal of the charges, Webb has a

substantial and legitimate expectation that he has been deprived of his liberty by the state courts departing from the accepted and usual course of judicial proceedings in ruling on the procedural mechanism to ensure and enforce his right to a speedy trial. Where a State has provided a procedural mechanism to enforce a defendant's constitutional right to a speedy trial, it is not correct to say that the defendant's interest in the exercise of that procedural mechanism is merely a matter of state procedural law (*See Hicks v. Oklahoma*, 447 US 343, 346, 65 L. Ed. 2d 175, 100 S. Ct. 2227 (1980)).

The federal courts should have entertained Webb's speedy trial claims because the right to a speedy trial is a liberty interest that applies to Webb through the Due Process Clause of the Fourteenth Amendment, which is a question federal courts exist to entertain. The U.S. District Court for the District of Wyoming and the U.S. Court of Appeals for the Tenth Circuit have so far departed from the accepted and usual course of judicial proceedings, by incorrectly asserting that the right to a speedy trial is not a liberty interest that is protected by the Fourteenth Amendment and is merely a matter of state procedural law, that it calls for an exercise of this Courts supervisory power.

CONCLUSION

Federal District and Circuit Courts have sanctioned the state courts procedures that unfairly and arbitrarily deprive defendants of their liberty, in direct conflict with the Due Process Clause of the Fourteenth Amendment. The right to a speedy

trial is a liberty interest that arises from the Constitution itself and from an expectation created by state law (W.R.Cr.P. 48). Webb has been deprived of his legitimate liberty expectation by the due process violation of unfairly applying two conflicting interpretations of the same word in a way that only benefits the State and then arbitrarily denied Webb review of that due process violation. The state and federal courts have so far departed from the acceptable and usual course of judicial proceedings and sanctioned such a departure that it calls for an exercise of the U.S. Supreme Courts supervisory power.

Under the plain reading of Rule 48, it took 252 computable days for the state to bring Webb to trial in violation of the 180 day limitation required by Rule 48. Due Process requires reversal, dismissal and the State is barred from again prosecuting Webb for the same offense, which would grant Webb his liberty. Under the Fourteenth Amendment, Webb has a Constitutional right to not be deprived of his liberty without due process of law.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Clint R. Webb

Date: June 10, 2021.