

No. **20-8399**

Supreme Court, U.S.
FILED

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In The
Supreme Court Of The United States

Clarence O. Hopkins - Petitioner;

v.

Kwame Baoul - Respondent;

Petition For Writ Of Certiorari

ORIGINAL

Pro Se Petitioner,

Clarence O. Hopkins

IDOC # R04583

Menard Correctional Center

P.O. Box 1000

Menard, IL 62259

Question Presented

Was appellate Counsel ineffective for failing to include all charges within Petitioner's direct appeal argument for the speedy trial violation?

Parties

Petitioner, pro se:

Clarence O. Hopkins, ID# 1304583, P.O. Box 1000, Menard,
IL, 62259

Respondent:

Kwame Baoul, Attorney General, 100 W. RandolphST, 12th
Floor, Chicago, IL 60601

Prior Opinions And Orders

May 8, 2012 Conviction for Attempt first degree murder, and unlawful
use of a weapon by a felon, Whiteside County, IL; 11-CF-237

September 30, 2015 Armed Habitual Criminal charge vacated on
speedy trial violation; People v. Hopkins 2015 IL App(3d) 130565-U;
Conviction for Attempt first degree murder Affirmed.

March 30, 2016 Denied Leave to Appeal to Illinois Supreme
Court on remaining convictions.

April 7, 2017 Post Conviction Denied

August 4, 2020 Appellate Court Affirmed denial of Post conviction;
People v. Hopkins 2020 IL App(3d) 170253

Table Of Authorities Cited

Cases

People v. Hopkins, 2020 IL App. (3d) 170253
People v. Hopkins 2015 IL App. (3d) 130565-U
Yates v. Aiken, 484 U.S. 211 (1988)
Miller-El v. Cockrell, 537 U.S. 322 (2003)
People v. Wooddell, 219 Ill. 2d 166 (2006)
People v. Correa, 108 Ill. 2d 541 (1985)
People v. S.L.C., 115 Ill. 2d 33 (1986)
People v. Penrod, 316 Ill. App. 3d 713 (5th Dist. 2000)
Barker v. Wingo, 407 U.S. 514 (1972)
People v. Patheal, 27 Ill. 2d 269 (1963)
People v. Lykes, 124 Ill. App. 3d 604 (3rd Dist. 1984)
People v. Burchfield, 62 Ill. App. 3d 754 (3rd Dist. 1978)
People v. Hillsman, 329 Ill. App. 3d 1110 (4th Dist. 2002)

Statutes

725 ILCS 5/103-5 (2010)
730 ILCS 5/38-10 (2010)
730 ILCS 5/3-8-10 (2010)

Basis Of Jurisdiction

Seeking U.S. Supreme Court review of the denial of Post Conviction relief under the Illinois Post Conviction Hearing Act

Jurisdiction is conferred on this Court by U.S. Sup. Ct. Rules 10(c) and 13(1). The state court decision was a final adjudication per Illinois Post Conviction Hearing Act, and the denial conflicts with the Due Process Clause of the United States Constitution Amendment XIV.

Constitutional Provisions And Statutes

United States Constitution Amendment XIV

725 ILCS 5/103-5 (2010)

730 ILCS 5/38-10 (2010)

730 ILCS 5/3-8-10 (2010)

Statement Of Facts

Petitioner was serving a term of mandatory supervised release (MSR) on a previous unrelated conviction when, on July 1, 2011, he was charged in Whiteside County via information with the offenses of attempt to commit first degree murder and armed violence. *People v. Hopkins*, 2020 IL App.(3d) 170253, ¶3. The same day, Whiteside County issued an arrest warrant for Petitioner based on the attempted murder and armed violence charge. *Hopkins*, 2020 IL App(3d) 170253, ¶3. The Illinois Department of Corrections (DOC) also issued an arrest warrant for an MSR violation. *Id.*

A joint group headed by the United States Marshals arrested Petitioner in Chicago on July 29, 2011. *Id.*, ¶3. Petitioner received the MSR violation while detained in a Cook County detention center. On August 2, 2011, the DOC reconfined Petitioner in one of its facilities for the MSR violation until he was released into the custody of Whiteside County on December 2, 2011. Subsequently, Petitioner appeared in Court. He pled not guilty, demanded a jury trial, and was appointed counsel. On December 6, 2011, the State was aware the Petitioner filed a speedy-trial demand. *Id.*

On December 13, 2011, the State then charged the Petitioner with additional offenses of aggravated discharge of a firearm and unlawful use of a weapon by a felon. *Id.*, ¶4. On March 30, 2012, the State filed an amended information charging Petitioner with being an armed habitual criminal. *Id.*

Petitioner filed two separate motions to dismiss, both based on speedy-trial violations. *Id.*, ¶5. He argued the armed habitual criminal offense was subject to compulsory joinder and filing the charge

after he had been in custody for 245 days violated his speedy-trial rights. Petitioner also argued all pending charges should be dismissed because he was not tried within 120 days, pursuant to section 103-5(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-5(a)(2010)). The trial court held a hearing on the motions.

Prior to argument, the State read to the court a stipulation to which the defense agreed. *Id.*, ¶6. The State's Attorney for Whiteside County stipulated,

"[T]he defendant was arrested on July 29, 2011 in Chicago by a joint group of officers headed by the United States Marshalls and was taken into custody. He was on that date at approximately 6:00pm. arrested on our warrant. That would be the warrant in 11 CF 237. The parole violation that had--warrant that had been issued on July 1st was served on Mr. Hopkins the following day, July 30th of 2011 and Mr. Hopkins was transferred to the Illinois Department of Corrections on a parole violation and was in their custody up to and including December 2nd of 2011 when he was released to Whiteside County and he has been in our custody since that time."

Petitioner's arguments mirrored his motions. *Id.*, ¶6. He asserted he was taken into custody based on the Whiteside County warrant on July 29, 2011, and had a right to be tried within 120 days of the arrest. The State asserted *People v. Lykes*, 124 Ill. App.3d 604 (3d Dist. 1984), was directly on point and argued that the Illinois Intrastate Detainers statute (730 ILCS 5/38-10(2010)) applied. The State argued Petitioner needed to file a written demand for a speedy trial under the Illinois Intrastate Detainers statute, which occurred December 6, 2011. *Id.*

The trial court found that Petitioner never filed an appropriate demand as required under the Detainers statute; therefore, since he was no longer in the custody of the DOC, that statute did not apply. *Id.*, "7. For purposes of Petitioner's speedy-trial rights, he was taken into custody on the current charges when he was transferred to the Whiteside County Jail on December 2, 2011, at which time his 120-day speedy-trial clock began. The court further found that the armed habitual criminal offense was timely filed. *Id.*

The State brought Petitioner to trial on May 8, 2012. *Id.*, "8. The jury found Petitioner guilty of all five counts charged. Petitioner engaged in posttrial motion practice, renewing the arguments that the State violated his speedy-trial rights. The trial court denied the motions pertaining to speedy-trial violations. However, the court vacated the conviction and sentence for the offense of unlawful use of a weapon by a felon pursuant to one-act, one-crime principles. *Id.*

On direct appeal, Petitioner's attorney argued that the armed habitual criminal offense was subject to compulsory joinder, precluding the delay attributable to him on the initial charges from being considered in calculation of the 120 days for that offense. *Id.*, "9; Hopkins, 2015 IL App.(3d) 130565-U, "30. Petitioner's appellate attorney adopted the trial court's finding that he was not in custody for purposes of the 120-day speedy-trial clock until December 2, 2011. Hopkins, 2015 IL App.(3d) 130565-U, "30. Petitioner's appellate attorney did not argue that all the convictions needed to be vacated due to speedy-trial violations. *Id.*, "9.

Petitioner's appellate attorney succeeded in arguing that the trial court erred by failing to dismiss the armed habitual criminal offense

due to the State's failure to bring him to trial within 120 days of the late-added charge. *Id.*, ¶10; *Hopkins*, 2015 IL App. (3d) 130565-U, ¶32. The court vacated the conviction for the offense, reinstated the unlawful use of a weapon by a felon conviction and sentence, and remanded for sentencing on that charge. *Id.*, ¶10; *Hopkins*, 2015 IL App. (3d) 130565-U, ¶¶32, 55.

Petitioner then filed a post-conviction petition alleging, inter alia, appellate attorney was ineffective for failing to argue all charges should be dismissed based on the custody date of July 29, 2011, and alleged speedy-trial violations. *Id.*, ¶11. The petition advanced to the second stage, where the State introduced a motion to dismiss, claiming the issue of a speedy-trial violation was addressed on direct appeal and Petitioner was foreclosed from arguing the matter via res judicata. A hearing ensued, and the trial court granted the State's motion. In doing so, the court explained,

"With regard to the speedy trial issue, we also know that that was brought up and ruled upon by our appellate court. The appellate Court even knew of that other date that Mr. Hopkins is referring to, whether it was July 29, 2011[,] or December 2, 2011. The appellate Court was aware of those two dates. Those two dates were argued at different points as far as the speedy trial issue goes, so I do find that [the] speedy trial issue was already ruled upon not only at the trial level but also at the appellate level, and it was affirmed at the appellate level."

Id., ¶11.

On appeal from this order, Petitioner argued that the Circuit court erroneously found that the issue was barred under principles

of res judicata. He further argued that subsection (a) of the speedy-trial statute applied to him because he was taken into custody for the alleged Whiteside County offense before he was taken into simultaneous custody for the MSR violation based on the Whiteside County offense.

The appellate court re-framed the issue, stating, "[I]t is clear defendant's argument revolves around a singular question. Was defendant committed to a DOC facility?" *Id.*, "21. It found that he was, and he was therefore required to file a demand for trial under the Illinois Intrastate Detainers statute. Since he was tried within 160 days of his filed demand, the court held that his speedy-trial right was not violated, appellate counsel was not ineffective for not raising the issue, and the Circuit Court appropriately dismissed his post-conviction petition. *Id.*, "36.

Petitioner filed a petition for rehearing asserting that the appellate court had not adequately addressed Petitioner's argument where its opinion did not address the stipulated fact that Petitioner was taken into custody for the alleged Whiteside County offense before he was taken into simultaneous custody on the MSR violation. The day after the petition for rehearing was filed, the appellate court denied it.

Petitioner filed a petition for Leave to Appeal to the Illinois Supreme Court, which was denied.

Argument

Clarence O. Hopkins, Petitioner has attempted, at every stage, to raise the claim of a Illinois speedy trial statute violation. Thereby, violating the Petitioner's due process rights and achieving the standard for a reasonable probability of relief by Illinois' Post Conviction Hearing Act. *Penson v. Ohio*, 488 U.S. 75, 83-84 (1988) (a determination that arguable issues were presented by the record creates a constitutional imperative).

Petitioner's request for certiorari is due to the deepening split of authority. While there is no constitutional right to Post Conviction review, when a state elects to provide an avenue for post-conviction relief, the process must comport with the protections of the United States Constitution Amendment XIV. *Yates v. Aiken*, 484 U.S. 211, 217-218 (1988) ("When a State opts to act in a field where its actions has significant discretionary elements, it must nonetheless act in accord with the dictates of the constitution - and, in particular, in accord with the Due Process Clause."). A review of the record shows that the "Court did not give full consideration to the substantial evidence Petitioner put forth in support of the prima facie case." *Miller-El v. Cockrell*, 537 U.S. 322 (2003).

Petitioner was on mandatory supervised release (MSR) for an unrelated offense when he was taken into custody for alleged offenses committed in Whiteside County. The next day, he was taken into simultaneous custody for an MSR violation based on the Whiteside County charges. The question here is, what is the applicable speedy trial provision?

Subsection (a) of the speedy-trial statute provides, in pertinent part: "Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he or she was taken into custody unless delay is occasioned by the defendant"

725 ILCS 5/103-5(a) (2010). The 120-day period begins to run automatically. *People v. Woodbelle*, 219 Ill.2d 166, 174 (2006).

The Illinois Intrastate Detainers statute provides that subsection (b) of the speedy-trial statute applies to individuals "committed to any institution or facility or program of the [DOC] who have untied complaints, charges or indictments pending in any county of this State," 730 ILCS 5/3-8-10 (2010). Subsection (b) of the Speedy-trial statute creates a 160-day speedy-trial right for persons released on bond or recognizance, and this period begins to run only when the accused files a speedy-trial demand. 725 ILCS 5/103-5(b) (2010).

In this case, Petitioner was on MSR when he committed offenses in Whiteside County. Prior decisions from the Illinois Supreme Court provide that an individual released on MSR remains in the custody of the Department of Corrections (DOC). See, e.g., *People v. Correa*, 108 Ill.2d 541 (1985); *People v. S.L.C.*, 115 Ill.2d 33, 41 (1986); *People v. Pack*, 224 Ill.2d 144, 151 (2007); see also, *People v. Penrod*, 316 Ill. App.3d 713 (5th Dist. 2000) (holding that the defendant, who was on MSR when he was charged with a criminal offense, was in the custody of the DOC throughout his period of incarceration). Based on his MSR status, these prior decisions would dictate that the Petitioner was required to file a demand under the Illinois

Intrastate Detainers statute at the time he was taken into custody for the Whiteside County offenses.

However, in 2009, the legislature amended the Illinois Intrastate Detainers statute to provide that individuals on MSR are no longer considered in the custody of the DOC. Specifically, P.A. 96-642 (eff. Aug. 24, 2009), added two sentences to the Illinois Intrastate Detainers statute, providing,

"The provisions of this Section do not apply to persons no longer committed to a facility or program of the [DOC]. A person serving a period of parole or mandatory supervised release under the supervision of the [DOC], for the purpose of this Section, shall not be deemed to be committed to the Department."

730 ILCS 5/3-8-10 (2010). Thus, the legislative amendment carved out an exception to the Illinois Supreme Court's holdings in the line of cases beginning with *Correa*.

Because his MSR status at the time of his arrest had no effect on Petitioner's speedy-trial classification, Petitioner was "in custody in this State for an alleged offense" when he was arrested on the Whiteside County charges. Therefore, subsection (a) of the speedy-trial statute applied to Petitioner.

That Petitioner was taken into DOC custody for an MSR violation the next day based on the instant offenses makes no difference. In *People v. Wooddehl*, 219 Ill.2d 166, 177 (2006), the Illinois Supreme Court held that a defendant is subject to whatever speedy-trial statute applies at the time he or she makes a speedy-trial demand. Demand under subsection (a) is automatic and the period begins to run on the day the defendant is taken into

custody. Wooddell, 219 Ill.2d at 174. A defendant is not required to file a new speedy-trial demand every time he or she moves from one speedy-trial classification to another. Id. at 177. Thus, Petitioner was subject to subsection (a) of the speedy trial statute throughout the remainder of his custody.

A 2007 amendment to the speedy-trial statute confirms this application. Public Act 94-1094 amended Section 103-5 (a) adding, "The provisions of this subsection (a) do not apply to a person on bail or recognizance for an offense but who is in custody for a violation of his or her parole, aftercare release, or mandatory supervised release for another offense." Illinois P.A. 94-1094 (eff. Jan. 26, 2007). Thus, the legislature specifically eliminated persons who were on bond but in custody on an alleged MSR violation from subsection (a). Its failure to eliminate those who are taken into custody on a criminal charge, who are not on bond, and who are subsequently taken into custody on an alleged MSR violation shows that it did not intend to exclude those individuals from subsection (a). The Illinois legislature's failure to exclude those persons who are taken into custody on a criminal charge and then taken into simultaneous custody on an alleged MSR violation shows that it intended that those held on criminal charges and taken into simultaneous custody by the DOC are, and always have been subject to subsection (a) of the speedy-trial statute.

The appellate court here held that Petitioner was required to file a demand in accordance with the Illinois Intrastate Detainers statute when he was taken into custody for the MSR violation even though he had been taken into custody on the Whiteside

County warrant. Hopkins, 2020 IL App(3d) 170253, "31. The appellate court's ruling directly conflicts with the Illinois Supreme Court's opposite holding in Wooddell.

Not only does the appellate court's holding directly conflict with the holding in Wooddell, but it also defies its rationale. There, the Illinois Supreme Court found that, requiring a defendant to file a new demand every time his classification status changed would result in the "stacking" of speedy-trial terms. Wooddell, 219 Ill.2d at 179-81. The appellate court here found that no stacking had occurred. Hopkins, 2020 IL App. (3d) 170253, "29.

Stacking is exactly what occurred in this case. Petitioner was held in custody on the Whiteside County charges for one day before he was taken into simultaneous custody on the MSR violation. Thus, the two terms were "stacked," and Petitioner was subject to a non-existent 161-day speedy-trial term. According to the appellate court's decision, had Petitioner been held in custody on the Whiteside County charges for 119 days and then been taken into custody on the MSR violation, he would have been subjected to a 279-day speedy-trial term, a "presumptively prejudicial" delay approaching one year. Wooddell, 219 Ill.2d at 179 (citing Barker v. Wingo, 407 U.S. 514 (1972)).

Additionally, the appellate court's holding effectively abrogated the Illinois Supreme Court's decision in People v. Patheal, 27 Ill.2d 269, 270 (1963). There, the defendant was arrested on August 29, 1959, on a Coles County, Illinois warrant for the offense of armed robbery. On December 11, 1959, he was taken into custody by the DOC on a parole warrant. He was discharged from the DOC and taken to the county jail on January 21, 1960, where he remained until

February 23, 1960. His motion for dismissal of the charges based on a speedy-trial violation was denied. *Patheal*, 27 Ill. 2d at 270.

On appeal to the Illinois Supreme Court, the State argued that the time spent in prison on one charge (the parole violation) should not be counted toward another charge (the Coles County charge). *Id.* at 271-72. The Illinois Supreme Court rejected the argument. *Id.* at 271-73. It said, "[I]n this case the prosecuting authorities of Coles County were at all times aware of the defendant's whereabouts. They took no action of any kind until December 8, when only 12 days of the statutory four-month period remained." *Id.* at 272. The Illinois Supreme Court refused to divide the time the defendant spent in custody into two separate periods, and it reversed his conviction. *Id.* at 273.

Here, Petitioner was taken into custody on the Whiteside County warrant. Whiteside County authorities knew where he was when he was taken into custody. The time he spent in simultaneous custody should not be divided into DOC time and Whiteside County time.

The appellate court in this case rejected *Patheal*. *Hopkins*, 2020 IL App. (3d) 170253, ¶¶ 32-33. It stated that, in *Patheal*, "the [Illinois] Intrastate Detainer Act had not yet been enacted. Thus, there was no statutory speedy trial provision covering persons 'committed to an institution[,], facility[,], or program' of the [DOC]. The Court was limited to consideration of the predecessor to Section 103-5(a), and was never required to distinguish between incarceration for the offense as opposed to incarceration by the [DOC]." *Hopkins*, 2020 IL App. (3d) 170253, ¶ 33 (quoting *People v. Lykes*, 124 Ill. App. 3d 604, 607 (3d Dist. 1984)) It further stated,

"[The] Patheal court did not find that [the defendant] was still in custody for the pending charge even after being sent to [the DOC]. In fact, the Patheal court refers to the defendant's period of incarceration on the charge itself as running from the date of his arrest to the date of his transfer to [the DOC]."

Hopkins, 2020 IL App.(3d) 170253, ¶ 33 (quoting Lykes, 124 Ill. App. 3d at 607).

However, the Illinois Supreme Court specifically refused to divide up the time periods of Patheal's custody. Patheal, 27 Ill. 2d at 273. But, the appellate court's decision did just that, operating as a de facto abrogation of Patheal.

In doing so, the appellate court's decision further deepened a split of authority with those cases that relied on the Illinois Supreme Court's decision in Patheal. In *People v. Burchfield*, 62 Ill. App. 3d 754, 755 (3d Dist. 1978), the defendant was arrested on September 1, 1977, for the offense of unlawful possession of a controlled substance in Peoria County, Illinois. The defendant was unable to post bond, but the court later "authorized" a personal recognizance bond. The defendant never signed the recognizance bond, and he remained in custody due to a parole warrant that was based on the Peoria County drug charge. *Id.* at 755.

The circuit court granted defendant's motion for discharge because he had been in custody for over 120 days and was never actually released on bond. *Id.* at 755-56. The appellate court Affirmed. *Id.* 756-57.

The instant appellate court refused to follow *Burchfield* because it relied on Patheal, and, in its view, Patheal was no longer viable. Hopkins, 2020 IL App.(3d) 170253, ¶ 34.

More recently, in *People v. Hillsman*, 329 Ill. App. 3d 1110, 1112 (4th

Dist. 2002), the defendant was arrested on Vermillion County charges and taken into custody. The DOC issued a parole warrant for an alleged MSR violation based on the Vermillion County offenses. The defendant did not post bond on the criminal charges. *Id.*

On the 112th day of the speedy-trial term, the State not pressed the charges and reinstated them later that day. *Id.* The State allowed defendant to obtain a recognizance bond on the refiled charges. *Id.* The defendant remained in custody on the parole hold, and he was tried several months later. *Id.* at 1112-13. The trial court allowed the defendant's motion to dismiss based on a speedy-trial violation. *Id.* at 1113.

On appeal, the State argued that the 120-day speedy trial period did not commence while the defendant was held on the alleged MSR violation. *Id.* at 1113. The reviewing court first noted that, under the Act, subsection (b) of the Statute applies to individuals committed to the DOC who have untried charges pending. Because the record did not show that defendant filed a demand for a speedy trial under subsection (b), the State argued that there had been no violation. *Id.* The Court rejected this argument for two reasons. First, the court found that the record was silent for nearly four months of the proceedings, and it could not determine if defendant had or had not filed a demand. *Id.* Second, the court found that the State forfeited this argument because it did not raise it in the circuit court. *Id.* at 1113-14.

It then stated that the issue before it was whether the defendant's detention on an alleged MSR violation, as a direct result of his arrest on the criminal charge, amounted to "custody" under

subsection(a). *Id.* at 1114. The Court, finding Patheal and Burchfield persuasive, held that, where the defendant did not post bond on the original charges and was held in continuous custody due to parole hold, subsection(a) of the speedy-trial statute applied and the speedy-trial period began when the defendant was taken into custody on the Vermillion County criminal charges. *Id.* at 1116.

Here, the Illinois appellate court stated that the Hillsman court "expressly refused to analyze application of the Detainer statute because the State failed to raise the issue in the trial court." *Hopkins*, 2020 IL App.(3d) 170253, "35. However, as shown above, the question was squarely before the Hillsman court. *Hillsman*, 329 Ill. App. 3d at 1114, 1116.

Instead, the instant appellate Court relied heavily on its prior decision in *Lykes*, where it had determined that Patheal was no longer good law. *Hopkins*, 2020 IL App. (3d) 170253, "33 (citing *Lykes*, 124 Ill. App 3d at 607). Thus, the appellate court's decision further deepened a rift in the reviewing courts on the issue of which subsection of the speedy-trial statute applies to a defendant taken into custody on an alleged offense and then later taken into custody for an MSR violation based on that alleged offense.

In sum, this Court should review the instant case to provide contemporary guidance on the interplay of the speedy-trial statute and the Illinois Intrastate Detainers statute given recent Illinois legislative changes to the provisions, to evaluate the continued due process of law, as well as, resolve the split in authority.

Conclusion

For the reasons within, this petition for a writ of certiorari should be granted.

Date: December 27th, 2020

Respectfully submitted,

/s/ Clarence O. Hopkins