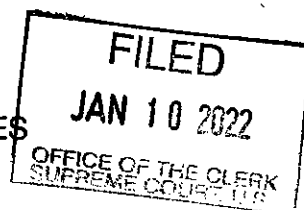


No. 21-7464

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



In Re Ioan Lela — PETITIONER
(Your Name)

vs.

Sheriff Tom Dart, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Appellate Court/Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ioan Lela (ID# Y49071)
(Your Name)

P.O. Box 1000
(Address)

Menard, Illinois. 62259
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- I. Whether a pre-trial detainee, amid the ongoing Covid-19 crisis, can obtain dismissal of his/her pending state criminal charges in federal court pursuant to 28 USC § 2241; based on wilful and uncontradicted violations of his/her 6th Amendment Constitutional Right to a speedy trial by the State.
- II. Whether a pretrial detainee's legally presumed and uncontradicted "irreparable harm" caused by wilful speedy trial violations through a (4) year bad faith delay by the State, constitutes a judiciary exception to the younger/abstention rule; and thus warrants Federal habeas intervention and relief under 28 USC § 2241, including dismissal of pending state charges.

LIST OF PARTIES

[] 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:

- ① Sheriff Tom Dart
- ② Assistant States Attorney Ashley Moore
- ③ Assistant States Attorney Necho Locke
- ④ Honorable Judge James M. Obbish

RELATED CASES

- ① Ioan Lela v. Tom Dart, et al. / case # M.D. 014582

State Habeas Corpus Writ Filed with the Illinois State Supreme Court on 12/28/20 pursuant to 735 ILCS 5/10-124 (3)

- ② Ioan Lela v. Tom Dart, et al. / case # 21-CV 1014

Federal Habeas Corpus petition filed with the U.S. District Court / Northern Illinois on 2/18/21 pursuant to 28 USC § 2241

- ③ Ioan Lela v. Tom Dart, et al. / case # 21-2056

Federal Habeas Corpus Appeal filed with the U.S. Appellate Court / Seventh Circuit on 6/4/21.

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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 _____ to the petition and is

☐ reported at _____; 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 _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**: N/A

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

☐ reported at _____; 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 November 9, 2021.

☐ 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), 28 USC § 1651(A) and 28 USC § 2241.

☐ For cases from **state courts**: N/A

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ 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

I. 28 U.S.C. § 2241:

28 U.S.C. § 2241 Expressly provides, in pertinent part, the following:

- (A) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their jurisdictions.
- (C) The writ of habeas corpus shall not extend to a prisoner unless —
 - (1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or —
 - (3) He is in custody in violation of the Constitution or laws or treaties of the United States.

II. 6th Amendment/ Speedy trial clause

The Sixth Amendment Speedy trial clause expressly guarantees that "in all criminal prosecutions, the accused shall enjoy the right to a speedy... trial..."

STATEMENT OF THE CASE

On 3/20/16, Petitioner, an Arizona state resident, was arrested pursuant to an Illinois arrest warrant and extradited to Chicago, Illinois. On 3/25/16, Petitioner was indicted for 1st degree murder, inter alia, and shortly thereafter retained his defense counsel. On 7/25/17, Petitioner through his defense counsel asserted his first demand for a speedy trial in open court. In September 2017, Petitioner terminated his defense counsel due to wilful ineffective assistance, of counsel. In early 2018, Petitioner asserted his first pro se demand for a speedy trial in open court, which was repeatedly ignored by the Respondents through countless and unexcuseable continuances over Petitioner's repeated voiced objections.

On 12/10/18, Petitioner filed and presented his pro se pretrial motion to dismiss based on wilful and uncontested speedy trial violations by the state, which was summarily denied by Respondent Judge Obbish with No legal or factual basis. On 2/14/20, after countless and unexcuseable continuances by the state, and despite of Petitioner's voiced objections based on the well-documented reasons in his prior 12/10/18 motion to dismiss, a bench trial was set to commence on 2/26/20.

On 2/26/20, opening statements in the bench trial were presented by both sides; however, the

Statement of The Case

State presented only one witness. The bench trial was scheduled to resume on 4/14/20 over Petitioner's voiced objections. However, on 4/14/20 the bench trial was continued without Petitioner's consent due to alleged Covid-19 related issues with the State's witnesses. Overall, the bench trial over Petitioner's voiced objections was repeatedly continued on 5/18/20, 6/2/20, 7/13/20, 8/12/20, 9/15/20, 10/9/20, 11/10/20, 12/10/21, 1/29/21 and further dates until 6/2/21, due to alleged but unsupported Covid-19 related excuses with the state's witnesses.

During this unexcusable (16) month bench trial, on 12/21/20 Petitioner filed his pro se state Habeas Corpus petition to dismiss with the Illinois State Supreme Court based on ongoing and wilful violations of his Constitutional right to a speedy trial. On 1/27/21, Petitioner's state habeas petition was denied with no adjudication or opinion on its merits. Likewise, during the said 16 month bench trial, on 2/18/21, Petitioner filed his Federal Habeas Petition to dismiss with the U.S. District Court Northern Illinois pursuant to 28 USC § 2241 based on the same ongoing and wilful violations of his Constitutional Right to a Speedy Trial. On 3/8/21, Petitioner's said Federal Habeas petition was denied, without prejudice, based solely on the younger abstention rule and with No Adjudication or opinion on the merits of his

Statement of The Case

6th Amendment Constitutional claim to a speedy trial. (See Appendix "A"). On 3/27/21 Petitioner timely filed his FRCP/Rule 59(E) Motion to Amend/Alter the said 3/8/21 dismissal order/judgement. On 5/4/21, Petitioner's said Rule 59(E) Motion was denied in a One paragraph dismissal/judgement order. (See Appendix "B.") On 6/4/21, Petitioner timely filed his Notice of Appeal with an Application for a Certificate of Appealability. (See Appendix "C"). On 11/9/21, the U.S. Court of Appeals/Seventh Circuit denied Petitioner's COA. (See Appendix "D").

On 6/2/21, the unconstitutional (16) month bench trial was finally concluded with Petitioner's unjust and wrongful conviction. The state during this (16) month bench trial with numerous and unexcuseable continuances by the state during this (16) month bench trial were due to uncontested and Bad Faith efforts by the state to timely present its evidence and/or witnesses, all of which could have been easily avoided through available and reasonable means; namely evidence desposition witness testimony; as fully described and addressed in Petitioner's Federal Habeas petition and supporting supplemental federal pleadings.

REASONS FOR GRANTING THE PETITION

- ① The first and foremost reason for granting this writ of certiorari is that it contains a first impression legal issue for this court with National interests for countless pretrial detainees across the United States with speedy trial challenges under 28 USC § 2241. This first impression issue is fully addressed on pages 7-8 of this writ.
- ② The second reason for granting this writ of certiorari is that a U.S. District Court and U.S. Appellate Court of appeals have wrongfully decided an extremely important federal issue in a way that clearly conflicts with controlling landmark decisions of this court. This issue is fully addressed on pages 9-10 of this writ.
- ③ The third reason for granting this writ of certiorari is that the speedy trial issue at hand clearly involves National issues; in view of the ongoing Covid-19/omicron variant crisis in almost every county jail and criminal justice system in the United States.
- ④ Whether a pretrial detainee, amid the ongoing Covid-19 crisis, can obtain dismissal of his/her pending state criminal charges in Federal Court pursuant to 28 USC § 2241; Based on willful and uncontradicted violations of his/her 6th Amendment Constitutional Right to a speedy trial by state.

Reasons For Granting The Petition

Although this Honorable Court in Braden v. 30th Circuit Court addressed a pretrial detainee's constitutional right to a speedy trial, this court did not address therein the dismissal of a pending state criminal charge by a federal court as statutory relief/remedy under 28 USC § 2241, based on wilful and uncontradicted violations of this protected Constitutional right, as found in Petitioner's case. In Strunk v. U.S. and Doggett v. U.S. This Honorable Court expressly underscored that dismissal of an accused's indictment or conviction can be an appropriate remedy for wilful violations of his/her constitutional right to a speedy trial; however those two decisions were issued in the context of federal habeas relief under 28 USC § 2254 and Not under 28 USC § 2241.

Thus, this above mentioned issue for pretrial detainees under 28 USC § 2241 is clearly first impression for this Honorable court; particularly with this matter amid an ongoing and unprecedented Covid-19 crisis within our County jails throughout the U.S.

It is also extremely important to note that this exact same issue under 28 USC § 2241 was correctly and fully decided by the U.S. Appellate/Ninth Circuit in McNeely v. Blainias (2003); which is factually on all fours with Petitioner's case; however the McNeely decision was totally and wrongfully disregarded by the U.S. District Court and the U.S. Appellate Court/Seventh Circuit in reviewing and denying Petitioner's federal habeas petition and certificate of appealability, respectively.

Reasons For Granting The Petition

- ⑤ Whether a pretrial detainee's legally presumed and uncontradicted "irreparable harm" caused by wilful speedy trial violations through a (4) year bad faith delay by the state; constitutes a judiciary exception to the younger abstention rule; and thus warrants Federal habeas intervention and relief under 28 USC § 2241, including dismissal of pending state charges.

This Honorable court in Doggett v. U.S. succinctly underscored that where a lengthy bad faith delay is asserted by an accused in support of his/her 6th Amendment Constitutional right to a speedy trial, as clearly documented in Petitioner's case; the federal court must conduct the (4) step Barker analysis test, which would include a review of the accused's asserted "irreparable harm" or prejudice caused by the speedy trial delay.

Here, the record clearly reflects that Neither the U.S. District Court nor the U.S. Appellate Court / Seventh Circuit applied this Barker analysis test; which should have been triggered by the Petitioner's well-documented and uncontested (4) year bad faith delay by the state.

Moreover, in Doggett this honorable Court stressed that official bad faith in causing a speedy trial delay must be weighed heavily against the government and that a lengthy bad faith delay would present an overwhelming case for dismissal, as clearly found in Petitioner's Case.

Reasons For Granting The Petition

Consistent with this Court's landmarks and controlling legal principles, the ninth circuit court in McNeely, applied the (4) step Barker analysis test and readily found that the accused's (5) year pretrial delay caused significant presumptive prejudice or "irreparable harm"; constituted a judiciary exception to the younger abstention rule; and consequently mandated immediate dismissal of the pretrial detainee's indictment under 28 USC § 2241.

Accordingly, consistent with the aforementioned Dossett and McNeely decisions, Petitioner moves this Honorable court to dismiss his indictment, with prejudice, as federal habeas relief under 28 USC § 2241(a); or in the alternative, Petitioner moves this Honorable court to reverse the decision of the U.S. District Court and remand with directions to specifically grant Petitioner's requested federal habeas relief under 28 USC § 2241.

CONCLUSION

The petition for a writ of certiorari should be granted, for review of questions/issues important to the administration of criminal justice based on the legal and factual reasons stated above. *Stack v. Boyle*, 342 U.S. 1 (1951).

Respectfully submitted,

Ioan Lela 

Date: March 15, 2022

Subscribed and sworn to before me on the

15th day of March 2022


Notary Public

