

21-7661

ORIGINAL

No. _____

Supreme Court, U.S.
FILED

DEC 29 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Antron Adon Tucker — PETITIONER
(Your Name)

vs.

Commonwealth Of Virginia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court Of Virginia
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

A Antron Adon Tucker
(Your Name)

Augusta Correctional Center 1821 EstalineValley Rd
(Address)

Craigsville, Va. 24430
(City, State, Zip Code)

(Phone Number)

RECEIVED
JAN 11 2022
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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Whether Petitioner's Constitutional right to a speedy trial has been violated, also his statutory right to a speedy trial. Pursuant to U.S. Constitution Sixth Amendment and Virginia Const. Article 1 8 Sixth Amendment, and if the four factors in Barker-v-Wingo 407 U.S. 514 weigh in favor of the Petitioner?

2. Whether the Court Of Appeals Of Virginia and the State trial Court erred and abused it's discretion in denying Appellant's motion to discharge and forever bar the prosecution against him for failing to prosecute him within the time period allowed by Code of Virginia 19.2-243?

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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

- APPENDIX A- Decision of Court of Appeals of Virginia Record no.2011-19-3
On August 10,2020 before Senior Judges Annunziata, Frank, and retired Judge Bumgardner
- APPENDIX B-Decision of State Trial Court's denial of motion to discharge
pursuant to VA. Code 19.2-243 on August 7,2019 Wythe County Circuit Court
Judge Josiah T. Showalter case no. CR17-440.00-02
- APPENDIX C-Decision of The Supreme Court of Virginia October 15,2021
record no. 201195

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Kim-v- Commonwealth, 293 Va. 304, 312, 797 S.E. 2d 766, 770 2017	1
Turner -v- Commonwealth, 64 Va. App. 72, 78 2017.....	1
Barker -v- Wingo, 407 U.S. 514, 530-32, 92 S. Ct. 2182, 331 Ed. 2d.....	1
101 1972	
Powell -v- Commonwealth, 29 Va. App. 745, 514, S.E. 2d 785 1999.....	13
Williams -v- Commonwealth, 2 Va. App. 566, 347 S.E. 2d 146 1986.....	4
Godfrey -v- Commonwealth, 227, Va. App. 460, 317 S.E. 2d 781 1984.....	3
Thomas -v- Commonwealth, 16 Va. App. 851, 434 S.E. 2d 319 1993.....	3
Cantwell -v- Commonwealth, 2 Va. App. 606, 347 S.E. 2d 523 1986.....	4
Moten -v- Commonwealth, 7 Va. App. 438, 374 S.E. 2d 704 1988.....	4
Baity -v- Commonwealth, 16 Va. App. 497, 431 S.E. 2d 891 1993.....	4
Carter -v- Commonwealth, 293 Va. 537 543, 800 S.E. 2d 498, 501 2017.....	3
WL 2691532 2017	

- STATUTES AND RULES
1. VA. Code 19.2-243 Limitation on prosecution of felony due to lapse of time after finding of probable cause.
 2. U.S. Constitution Sixth Amendment-right to speedy trial.
 3. VA. Constitution Article 1 88 sixth Amendment-right to speedy trial.

OTHER

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**:

The opinion of the highest state court to review the merits appears at Appendix C 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 Of Appeals of Virginia _____ court appears at Appendix A 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 _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was October 15, 2021.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Constitution sixth Amendment- Defendants accused of crime enjoy "the right to a speedy and public trial".
2. Virginia Constitution Article 1 8 sixth Amendment-Virginia Code Section 19.2-243 is conceptually and funtionally related to the "Constitutional guarantee of a speedy trial".

STATEMENT OF THE CASE

The standard of review for reviewing a trial court's decision requires a mix of facts, the dates of hearings and their assignment to either party for tolling purposes, and law, the interpretation of the law by the trial court and the Court of Appeals. Therefore it is a de novo standard of review. *Kim-v-Commonwealth*, 293 Va.304, 312, 797 S.E. 2d 766, 770 2017 WL 1367021 2017. On computing time for speedy trial, the Virginia Code and case law are clear. Virginia Code 19.2-243 and *Turner-v-Commonwealth*, 64 Va. App. 72, 78 2017. states 152 and a fraction days or 5 months if incarcerated and nine months if not. This Court may find that the four factors in *Barker-v-Wingo* 407 U.S. 514, 530-32, 92 S.Ct. 2182, 331. Ed. 2d 101 1972. weigh in favor of the petitioner.

Petitioner was arrested on April 4, 2017 on drug charges. Before the preliminary hearing held on October 5, 2017 the General District Court allowed two continuances by the Commonwealth even though the defense objected to any continuances. It took two years for the actual trial in this case. From the time this case was certified to the Circuit Court the petitioner consistently noted his objection to any delay in his trial. Petitioner specifically made request of the trial court to hold the trial within the speedy trial timeframe. The trial Court denied these requests. After this case was certified on October 5, 2017 the speedy trial clock began to run this day. Petitioner made bail on October 15, 2017.

The Court scheduled a jury trial for March 6-7 2018, within the nine month timeframe, this jury was called off. Petitioner notes that the Court should have full access to the record, the Petitioner does not. Therefore, the Petitioner encourages the Court to take judicial notice of the reasons why.

The trial Court scheduled a new jury trial for March 29, 2018 this was later amended to a Motions hearing. The defense motioned for a continuance because the Commonwealth had not provided complete discovery. The trial Court then scheduled a jury trial for May 31 2018 within nine months of preliminary hearing. Petitioner asks this Court to search the records as to why the case was not tried. A new jury trial was to be held on September 6, 2018 but was not again the Petitioner asks this Court to search the records as to reason why. The Court then set jury trial for January 10, 2019.

On January 10, 2019 the Petitioner appeared before the Wythe County Circuit Court for yet another scheduled jury trial. Before the trial were to commence the Petitioner moved the Court to appoint new counsel, at that time the Court revoked the Petitioner's bail and ordered the Petitioner back into custody. see Exhibit 1 On January 23, 2019 counsel filed a motion to withdraw as counsel of record with the Wythe Co. Circuit Court Clerk. see Exhibit 2 And on January 29, 2019 a substitution order was entered and new counsel was appointed. see Exhibit 3 Newly appointed counsel Randy Jones did not receive the case file until March 4, 2019. see Exhibit 4 On Feb. 21, 2019 a bond hearing was held at the Wythe Co. Circuit Court, petitioner's counsel motioned to reinstate bail, this motion was denied. And the Court order trial set for May 30, 2019 and final motions hearing for May 8, 2019. see Exhibit 5 At the final motions hearing on May 8, 2019 the Commonwealth asked for another continuance in this case at which the Petitioner made another objection, see Exhibit 6 and Exhibit 7 The Court granted the continuance and set a new trial for August 7, 2019 outside of speedy trial time frame, and final motions hearing for August 1, 2019.

At this motions hearing the Petitioner moved to be discharged, and dismissed on statutory speedy trial grounds asserting that he had been held continuously in custody since January 10, 2019. The Commonwealth's rebuttal was that he was not in custody until May 8, 2019, and therefore, his statutory speedy trial rights had not been violated, and without referring to the records of the case the Court denied the motion to dismiss and discharge. A lack of attention and review is considered an abuse of discretion standard. *Carter-v-Commonwealth*, 293 Va. 537, 543, 800 S.E. 2d 498, 501, 2017 WL 2691532 2017.

The Court Of Appeals Of Virginia on monday August 10, 2020 before senior Judges Annunziata, Frank and retired Judge Bumgardner in it's opinion and decision notes that the record supports petitioner's assertion that he was in fact held in custody continuously from January 10, 2019 until August 7, 2019 a time period that exceeds the five month deadline in VA. Code 19.2-243.

The Court Of Appeals has on numerous occasions inaccurately stated that their was a trial date set for April 2, 2019 in this case, and because the trial was continued past April 2, 2019 the continuance is charged to the Petitioner. Petitioner states that their was never a trial date set for April 2, 2019. Continuances must be documented to enable the Court to review and evaluate them when they are challenged. *Godfrey-v-Commonwealth*, 227 Va. 460, 317 S.E. 2d 781 1984 also *Thomas-v-Commonwealth*, 16 Va. App. 851, 434 S.E. 2d 319 1993. If their is no order in the record the Court must not assume that this is accurate and factual information. The record must contain an order setting a trial date *Powell-v-Commonwealth*, 29 Va. App. 745, 514 S.E. 2d 785 1999.

The Court Of Appeals further states that the record is silent regarding why the case was not tried on April 2,2019. In assessing responsibility for delay in trying a defendant, the Court must confine its review to the record."Any opinion if not supported by the record,are insufficient Williams-v-Commonwealth, 2 Va. App. 566, 347 S.E. 2d 146 1986. In Virginia, when a defendant asserts that he has been denied a speedy trial, the burden is on the Commonwealth to explain the delay Cantwell-v-Commonwealth, 2 Va. App. 606, 347 S.E. 2d 523 1986,also Moten-v-Commonwealth,7 Va. App. 438, 374 S.E. 2d 704 1988.

Furthermore, the scope of review and proper assessment and determination of the merits of a claim involve a review of the whole record and a consideration of the trial Court's orders in the context of the record that comes before the Court Of Appeals.Baity-v-Commonwealth, 16 Va. App. 497, 431 S.E. 2d 891 1993. Therefore the Court of Appeals also has abuse of discretion standard.

Petitioner's Exhibit 5 bond hearing transcript, held on February 21,2019. Page 8 at lines 13 and 14 of transcript show that on this day a trial date had not been set. And page 9 lines 2 and 6 also page 10 lines 4,8and10 of transcript show that trial was set for May 30,2019 on this day "before April 2,2019".

On February 16,2021 court appointed appellet counsel motioned the Supreme Court of Virginia for leave to withdraw citing Anders-v-California,386 U.S. 738,87 S.Ct. 1396 1967. The Court granted the motion and on October 15,2021 the Court refused the petition for appeal and states no legal issues arguable on their merits.

REASONS FOR GRANTING THE PETITION

Under U.S. Constitution Sixth Amendment, and Virginia Constitution Article 1 8 sixth Amendment, both guarantee citizens the right to a speedy trial. This issue is "clear, substantial and material Subordinate to Constitutional and Statutory right to speedy trial guaranteed by both the Federal and State Constitutions.

An obvious miscarriage of justice, corrected for future generations of citizens by the General Assembly, has occurred. Petitioner has shown a pattern of abuse of discretion by both the trial Court and the Court Of Appeals.

CONCLUSION

For the foregoing reasons, the Petitioner prays this Court vacate the final order in this matter, and to remand this matter to the Supreme Court Of Virginia. And appoint new Counsel.

The petition for a writ of certiorari should be granted.

Respectfully submitted, 

Antron A. Tucker

Date: 12/20/21

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Antron Adon Tucker — PETITIONER
(Your Name)

VS.

Commonwealth Of Virginia — RESPONDENT(S)

PROOF OF SERVICE

I, Antron A. Tucker, petitioner, do swear or declare that on this date, December 28, 2021, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Kelci N. Smith, Esq., Assistant Commonwealth Attorney,
235 S. Fourth Street, Suite 105, Wytheville, VA. 24382

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 28, 2021

Antron Tucker
(Signature)