

No. _____

In the
Supreme Court of the United States

WILLIAM EUGENE MOON

Petitioner

v.

STATE OF TENNESSEE

Respondent

On Petition for Writ of Certiorari to
the Tennessee Supreme Court

PETITION FOR WRIT OF CERTIORARI

Paul Andrew Justice III
1902 Cypress Drive
Murfreesboro, TN 37130
(615) 419-4994
drew@justicelawoffice.com
Counsel for Petitioner

Question Presented

- I. Was the Defendant denied a speedy trial?

Related Proceedings

State of Tennessee v. William Eugene Moon, M2019-01865-SC-R11-CD slip op. (Tenn. April 20, 2022).

State of Tennessee v. William Eugene Moon, M2019-01865-CCA-R3-CV slip op. (Tenn. Crim. App. Feb. 12, 2021).

The Parties

The Petitioner is William Eugene Moon, the Defendant in this criminal case.

The Respondent is the State of Tennessee, the Plaintiff.

Table of Contents

Question Presented.....	i
Related Proceedings.....	i
The Parties.....	i
Table of Contents.....	ii
Table of Authorities.....	iii
Introduction.....	1
Jurisdiction.....	1
Federal Law at Issue — The Sixth Amendment.....	2
Statement of the Case.....	2
Reasons to Grant Certiorari.....	7
I. THE DEFENDANT WAS DENIED A SPEEDY TRIAL.....	7
A. Tennessee's Elimination of the Right to a Speedy Trial.....	7
B. Criteria for Granting Certiorari.....	11
1. Supreme Court Rule 10(c).....	11
2. Supreme Court Rule 10(b).....	12
Conclusion.....	14

Table of Authorities

<u>Court Cases</u>	<u>Page(s)</u>
<i>Barker v. Wingo</i> , 407 U.S. 514 (1972).....	8,9,10,11
<i>Cain v. Smith</i> , 686 F.2d 374 (6th Cir. 1982).....	12
<i>Dillingham v. United States</i> , 423 U.S. 64 (1975).....	8
<i>Klopfer v. North Carolina</i> , 386 U.S. 213 (1967).....	11
<i>Prince v. State of Alabama</i> , 507 F.2d 693 (5th Cir. 1975).....	13
<i>Redd v. Sowders</i> , 809 F.2d 1266 (6th Cir. 1987).....	13
<i>State v. Utley</i> , 956 S.W.2d 489 (Tenn. 1997).....	7,13
<i>State v. Wood</i> , 924 S.W.2d 342 (Tenn. 1996).....	9
<i>United States v. Butler</i> , 426 F.2d 1275 (1st Cir. 1970).....	12
<i>United States v. Calloway</i> , 505 F.2d 311 (D.C. Cir. 1974).....	13
<i>United States v. Loud Hawk</i> , 474 U.S. 302 (1986),.....	10
<i>Vermont v. Brillon</i> , 556 U.S. 81 (2009).....	9
<i>Wells v. Petsock</i> , 941 F.2d 253 (3rd Cir. 1991).....	13,14
<u>Statutes</u>	
28 U.S.C. § 1257.....	1
<u>Other Authorities</u>	
6th Amendment.....	2,11
Sup. Ct. R. 10.....	11,12,14

Introduction

In denying a speedy trial claim, the Tennessee Supreme Court held that an accusation of generic street crime by eyewitnesses was "complex," that a delay of one year always weighs in the government's favor, that government-caused delay weighs in the government's favor, and that pretrial incarceration and anxiety do not count as prejudice. Such holdings deviate markedly from this Court's speedy trial jurisprudence, not to mention the rulings of the other federal courts. Defendant-Petitioner William Moon asks for a writ of certiorari, and ultimately reversal.

Jurisdiction

This Court has appellate jurisdiction under 28 U.S.C. § 1257, which authorizes petitions for certiorari after a state's highest court rules on a federal question. In this case, the judgment of the Tennessee Supreme Court was issued on April 20, 2022, (Pet. Appx 3). Therefore, this petition is timely on July 19, 2022.

Federal Law at Issue

Sixth Amendment

"In all prosecutions, the accused shall enjoy the right to a speedy and public trial[.]"

Statement of the Case

The Petitioner, William Moon, was arrested for supposedly pulling out a gun and pointing it at a police officer while being arrested. (Pet. Appx 5). Moon was charged with Attempted First Degree Murder, and also a weapons charge for using a firearm to do it. (Pet. Appx 5). At trial, the evidence all centered around eyewitness testimony. (Pet. Appx 6). The supposedly victimized police officer, Michael Wilder, said that Moon pulled the gun and pointed it at him, but that he somehow wrestled it away and then shot Moon. (Pet. Appx 5). Four other nearby eyewitnesses (including another police officer) saw the incident but did not see Moon holding any gun. (Pet. Appx 6). Moon himself also denied holding the gun. (Pet. Appx 29-31). He acknowledged, though, that he possessed a gun in his pants. (*Id.*) The defense theory was that the arresting officer scuffled with Moon trying to arrest him (while being overly rough), panicked upon seeing the gun, shot Moon for no good reason, and then lied afterward. In the end, the jury did find Moon guilty. (Pet. Appx 3). He was convicted of Attempted Second Degree Murder, and also

Employing a Weapon During a Dangerous Felony (*Id.*) Nonetheless, on April 20, 2022, the Tennessee Supreme Court overturned the convictions based on evidentiary error. (*Id.*)

Still, one issue where the Tennessee Supreme Court denied any relief at all was Moon's speedy trial claim. (Pet. Appx 9-11). The incident happened on December 17, 2017. (Pet. Appx 9). Criminal charges, namely affidavits of complaint and arrest warrants, were taken out on December 21, 2017. (*Id.*) Since Moon was recovering in an out-of-state hospital from being shot, the warrants were not served until January 24, 2018. (*Id.*) Moon's first court appearance was on February 02, 2018. (*Id.*) Moon did not request any continuance. (Pet. Appx 66). When the preliminary hearing did not happen timely as expected (and as required by the Tennessee Rules of Criminal Procedure) but instead got continued, Moon filed a "Demand for Speedy Trial." (Pet. Appx 56). It was filed on March 07, 2018. (Pet. Appx 9). He filed the demand to ensure that the hearing did not get continued again. On March 08, 2018, the general sessions court bound the case over to the grand jury. (*Id.*) Moon was indicted on April 10, 2018. (*Id.*) He was arraigned on April 17, 2018. (*Id.*) At his next court appearance on May 09, 2018, he requested a trial date. (See Pet. Appx 19). On May 23, 2018, he again requested a trial date. (Pet. Appx 19 and 52) Specifically, he asked for the soonest trial date available. (Pet. Appx 52 and 56). The court set the case for trial, albeit many months out. Trial was first set for November 28, 2018. (Pet. Appx 5).

Then, in November, at the State's request, the court continued the trial even further. (Pet. Appx 5). It continued the case over defense objection. (*Id.*) The reason for continuing the trial was that the State had another case set for trial on that same week (which it had already drug out for multiple years), and it preferred to try the other case instead. (*Id.*) Over defense objection, the court thus continued Moon's trial to February 2019. (*Id.*) At first it was reset for Friday February 01, 2019. (*Id.*) Later, the judge changed it to February 11, 2019 so that the trial would not be interrupted by a weekend. (Pet. Appx 20).

On January 16, 2019, Moon filed a motion to dismiss the case based on the violation of his Sixth Amendment right to a speedy trial. (Pet. Appx 41, Motion). The motion was heard January 23, 2019. (Pet. Appx 19-20). At the hearing, Moon testified. (*Id.*) He said that he had been incarcerated ever since he was brought back to Tennessee from the out-of-state hospital. (Pet. Appx 65-67). For most of the pretrial jail time, he was held solely on this case. (Pet. Appx 67). The other case — for which the officer had originally been trying to arrest him, before shooting him — was dismissed on March 08, 2018. (*Id.*) Moon testified that he had no felony convictions. (Pet. Appx 67-68). Despite the lack of meaningful criminal history, he was being held pretrial under maximum security. (*Id.*) For most of the pretrial delay, he was only allowed out of his cell for two hours a day. (*Id.*) Moon testified that he never got to see the sun at all. (Pet. Appx 69). Generally speaking, the confinement was "pretty bad." (Pet. Appx 67-68). Moreover, having such serious

charges hanging over him was something that he specifically worried about every day. (Pet. Appx 69-70). Worrying about it made him "depressed." (*Id.*)

In his written motion and at the hearing, Moon's attorney recounted that he had sought the speediest trial date available. (Pet. Appx 56 and 80-81). He had only sought one continuance the whole time, namely three weeks at the arraignment to obtain the dashboard video in discovery. (Pet. Appx 74-75).

On February 07, 2019, the judge denied Moon's motion to dismiss via written order. (Pet. Appx 50). The court acknowledged Moon's chronology. (Pet. Appx 51). It acknowledged that Moon had demanded a speedy trial and had sought the earliest trial date available. (*Id.*) But it found that the trial was speedy enough. (Pet. Appx 52-53). The trial court faulted Moon for not filing a motion to reduce bond if he wanted to avoid pretrial incarceration. (*Id.*)

The trial was held on February 11-14, 2019, and it centered around eyewitness testimony. (Pet. 5-6). The State produced a total of four witnesses, all law enforcement officers. One was the accuser who shot Moon, Corporal Michael Wilder. (Pet. Appx 21-24). The next was a nearby officer, Karl Pyrdom, who saw the incident. (Pet. Appx 24-25). Unlike Wilder, Pyrdom did not see Moon holding any gun, or hear Wilder calling out any commands to drop a gun. (*Id.*) He did, however, collect Moon's gun off the ground where Moon fell. (*Id.*) The third witness was an officer, Sergeant Harry Conway, who inspected the gun and introduced it into evidence. (Pet. Appx 25-26). The fourth witness was an officer, Special Agent

Elizabeth Williams, who tested some drug residue on a plastic bag that Moon had chewed on. (Pet. Appx 26). Moon was found guilty. The conviction was then overturned on April 20, 2022. (Pet. Appx 3).

In denying the speedy trial claim, the Tennessee Supreme Court recited the four speedy trial factors: (1) Length of the delay, (2) Reason for the delay, (3) Demand for a speedy trial, and (4) Prejudice. (Pet. Appx 9). But it held that the length of the delay weighed against Moon because, in Tennessee, thirteen months of awaiting trial is "customary promptness." (Pet. Appx 10). It also held that a case like this was "complex." (*Id.*) As for the reason for the delay, it agreed that almost the entire delay was caused by the State. (*Id.*) Still, it weighed the "reason" factor in favor of the State, failing to hold the State responsible for any negligence, or for overcrowded courts. (*Id.*)¹ As for prejudice, it held that Moon's pretrial incarceration for the entire time, and also his pretrial anxiety, did not count as "discernible prejudice." (Pet. Appx 11). Since no exculpatory evidence was lost, it weighed the prejudice factor in favor of the government. (*Id.*) In the end, the court did grant that one factor alone weighed in Moon's favor, namely that he had demanded a speedy trial. (Pet. Appx 10). But since it weighed all the other factors in favor the government, it denied the speedy trial claim. (Pet. Appx 11).

¹ At the hearing on Moon's motion, the trial judge appeared to acknowledge that his trial dockets are crowded, resulting from "bureaucratic indifference" by the State. (Pet. Appx 81).

Reasons to Grant Certiorari

I. THE DEFENDANT WAS DENIED A SPEEDY TRIAL.

The courts of Tennessee do not take the right to a speedy trial seriously. Nor do they take this Court's jurisprudence about it seriously. This decision from the Tennessee Supreme Court has now held that despite ongoing requests for a speedy trial, despite the fact that an accused suffers from pretrial incarceration and anxiety, and no matter how simple the evidence, the government may automatically and systematically delay criminal trials in excess of one year. On each of the three factors (out of four) held against William Moon, this Court has previously ruled the opposite. Even on the fourth factor ("demand"), this Court's jurisprudence would give it greater weight than the lower court seemed to do. Besides this Court, Tennessee has also ruled contrary to other federal courts, further justifying certiorari. If the constitutional right to a speedy trial is ever again going to apply in Tennessee, it will be up to this Court to implement it.

A. Tennessee's Elimination of the Right to a Speedy Trial

First, as to the length of the delay, the Tennessee Supreme Court has purported to overrule this Court. Tennessee holds that the government *always* has, at minimum, an amount "approaching" twelve months to bring someone to trial. Without at least that much delay, a speedy trial motion cannot even be considered.

State v. Utley, 956 S.W.2d 489, 494 (Tenn. 1997) (Eight-month delay categorically

insufficient for speedy trial claim). The law holds that for a speedy trial claim, the clock begins ticking either upon the initiation of formal criminal charges through indictment, or upon the arrest of the defendant — whichever is earlier. *Dillingham v. United States*, 423 U.S. 64 (1975). With Moon, there were thirteen months of delay. (Pet. Appx 10). The Tennessee Supreme Court held that thirteen months of delay was "very brief," and that the delay weighed in favor of the government. (*Id.*) But that rule contradicts this Court's less stringent rule. In *Barker v. Wingo*, this Court squarely held that in some cases, even "nine months" may be a delay "wholly unreasonable." 407 U.S. 514, 528 (1972). With Moon, the Tennessee Supreme Court also said that this case based on eyewitness testimony (mainly from one officer) was "complex." (See Pet. Appx 10). But this Court has applied the term "complex" to describe a "serious, complex conspiracy charge." *Id.* at 530-31. It has contrasted such complexity with simpler cases about "ordinary street crime." *Id.* Given that only one eyewitness even accused Moon, namely a police officer, given that three other witnesses (all police officers) merely provided minor supplemental testimony such as collecting and examining items from the scene, and given that the incident literally occurred outside — near the street — any purported crime here would easily be "ordinary street crime." The Tennessee Supreme Court, by holding in effect that *every* case is "complex," and by holding that the government always has at *least* one year free to spin its wheels doing nothing, has eliminated the speedy trial right from Tennessee.

But it gets worse. On the reason for the delay, again the Tennessee Supreme Court defied this Court. It acknowledged that the delay here "was caused almost exclusively by the State," and yet it weighed the "reason" factor *in favor of the State*. (Pet. Appx 10). This Court has expressly held the opposite — that delays caused by the government should be weighed in favor of dismissal. *See, e.g., Vermont v. Brillon*, 556 U.S. 81, 90-91 (2009) (Basing its result almost entirely on the dichotomy of whether the government, versus the defense, is "more to blame" for the delay). In the end, the lower court has thus held that even if a trial court gives out a trial date ten months after an arrest — despite the accused's request for the "soonest trial date available" (see Pet. Appx 51) — and even if the State then continues the trial still further, in order to do another case instead, the State is not to blame for any delay. (Pet. Appx 10). In contrast, this Court has squarely and repeatedly held that "overcrowded courts" are held against the government. *See, e.g., Barker*, 407 U.S., at 531. They weigh in favor of dismissal. Here the trial judge acknowledged that his trial dockets are crowded, resulting from "bureaucratic indifference." (Pet. Appx 81). *Cf. State v. Wood*, 924 S.W.2d 342, 346-47 (Tenn. 1996) (Using that term in reference to overcrowded courts). Whether we want to call the delay "negligence," or some nicer word, the law is clear that such delays weigh in favor of dismissal. They do not weigh in *favor* of the government. That does not make any sense at all.

As for the "demand" factor, the lower court did supposedly weigh that factor in favor of Moon, but even there, it disregarded this Court's language about how to apply the factor. A demand for a speedy trial is entitled to "strong evidentiary weight." *Barker*, 407 U.S., at 531-32. If a demand is entitled to strong evidentiary weight, then it was even more wrong for the Tennessee Supreme Court to say that the record showed no negligence by the State. The "evidentiary weight" of the speedy trial demand was strong evidence all by itself. *See id.* While it is true that other evidence can potentially override the weight of a speedy trial demand, *see United States v. Loud Hawk*, 474 U.S. 302, 314-15 (1986), no such evidence was even argued here.

Finally, on prejudice, the Tennessee Supreme Court held that pretrial incarceration and pretrial anxiety do not matter. Namely, it held that Moon's incarceration and pretrial anxiety were "no discernible prejudice." (Pet. Appx 11). It said so even though Moon was confined to his cell twenty-two hours a day. (*Cf.* Pet. Appx 67-68). It then weighed the prejudice factor in favor of the government, solely on the basis that Moon couldn't show the loss of any exculpatory evidence. (*Id.*) But this Court has expressly held that pretrial incarceration and pretrial anxiety are both serious forms of prejudice by themselves, and that they support a speedy trial claim. A defendant does not have to show the loss of evidence. Instead, "a defendant confined to jail prior to trial is *obviously disadvantaged* by delay[,] as is a defendant released on bail but unable to lead a normal life because of community suspicion

and his own anxiety." *Barker*, 407 U.S. at 527 (emphasis added). This Court further expounded at some length on pretrial incarceration:

We have discussed previously the societal disadvantages of lengthy pretrial incarceration, but obviously the disadvantages for the accused who cannot obtain his release are even more serious. The time spent in jail awaiting trial has a detrimental impact on the individual. It often means the loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs. The time spent in jail is simply dead time. Moreover, if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. Imposing those consequences on anyone who has not yet been convicted is serious.

Barker, 407 U.S. at 532-33. Likewise, this Court has held that anxiety and public scorn are another serious form of prejudice. *Id.* In fact, they were the primary grounds on which this Court dismissed the indictment in *Klopfer v. North Carolina*, 386 U.S. 213 (1967). A defendant is not required to show all three forms of prejudice.² Minimizing pretrial incarceration and anxiety were two of the main reasons why the Founders even set the Sixth Amendment in stone in the first place. *Barker*, 407 U.S. at 532. For Tennessee to say that they mean nothing is simply to ignore this Court's rulings and to ignore a major purpose of the Sixth Amendment.

B. Criteria for Granting Certiorari

1. Supreme Court Rule 10(c)

In the end, this Court should grant certiorari and reverse the judgment. Moon has no preference as to whether the Court implements the reversal

² Strictly speaking, a speedy trial can be won without any showing of prejudice at all. *Doggett v. United States*, 505 U.S. 647 (1992). But it helps to show prejudice. *Id.*

summarily, or otherwise, but the ruling needs to be fixed. Otherwise, the constitutional right in Tennessee will be lost. According to Rule 10(c) of the Supreme Court, the Court prefers to take cases where "a state court . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court." That much has been shown. Indeed, Tennessee has turned speedy trial jurisprudence on its head.

2. Supreme Court Rule 10(b)

Further, this Court prefers cases where "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals[.]" Sup. Ct. R. 10(b). Here that much is also true. The Tennessee Supreme Court has now held that a case based around one eyewitness (and some supplemental law enforcement officers) is "complex," such that a 13-month delay weighs in favor of the government. (Pet. Appx 10). In contrast, the Sixth Circuit has found that a delay of 11 ½ months for a "mundane garden-variety robbery" was "clearly excessive." *Cain v. Smith*, 686 F.2d 374, 381-82 (6th Cir. 1982). Likewise, the First Circuit has held that, absent some good excuse, a delay of nine months for a case built on eyewitnesses is overly long. *United States v. Butler*, 426 F.2d 1275, 1277-78 (1st Cir. 1970).

In essence, the Tennessee Supreme Court allows the government an automatic 12 months to spin its wheels, doing nothing, before a speedy trial claim may even be considered. *See Utley*, 956 S.W.2d, at 494. Then, after the 12-month span is satisfied, it still takes some hefty amount *longer* before the "delay" factor can actually help the defendant. (*See* Pet. App. 10). In contrast, the D.C. Circuit has held that any delay in excess of one year has "prima facie merit." *United States v. Calloway*, 505 F.2d 311, 316 (D.C. Cir. 1974). The Tennessee Supreme Court now holds that delays caused by the government are weighed in *favor* of the government. Yet other courts hold that where an accused has demanded a speedy trial, the prosecution has an affirmative duty to take steps to bring about the trial, and that failure to do so weighs against the government. *See, e.g., Prince v. State of Alabama*, 507 F.2d 693, 704-05 (5th Cir. 1975).

The Tennessee Supreme Court holds that pretrial incarceration is not prejudice. Yet the Sixth Circuit has held that 10 months of pretrial incarceration was indeed prejudice. *Redd v. Sowders*, 809 F.2d 1266, 1272 (6th Cir. 1987). Likewise, the Seventh Circuit has held 10 months of delay as too long. *See Strunk v. United States*, 412 U.S. 434 (1973) (Brought before this court simply to decide the proper remedy for the violation). Likewise, the Third Circuit has held that pretrial incarceration of 7 months is harmful prejudice. *Wells v. Petsock*, 941 F.2d 253, 257 (3rd Cir. 1991). While the *Wells* court considered the prejudice insufficient to justify dismissal of the indictment in that case, it said that harsher-than-average

conditions of confinement would probably change the result. 941 F.2d at 257. Here Moon was held longer than 7 months. And he was also held in *maximum security*—never allowed to go outside or see the sun, and only allowed out of his cell for two hours a day. (Pet. Appx 67-69). Such conditions are harsh.

All in all, the Tennessee courts have now disagreed not only with this Court, but also with other jurisdictions across America. If this Court does not step in to fix the situation, not only will this Court's own authority be demeaned, but there will be conflicts in the law left unresolved across jurisdictional lines. For both reasons, Rule 10 of the Supreme Court supports review.

Conclusion

Defendant-Petitioner William Moon prays that this Court grant the writ of certiorari, directed to the Supreme Court of Tennessee. Beyond that, he asks that the judgment be reversed, and that the indictment be dismissed.

Respectfully submitted,

Paul Andrew Justice III
Attorney for William Moon
1902 Cypress Drive
Murfreesboro, TN 37130
(615) 419-4994
drew@justicelawoffice.com