

22-5336
No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

JUN - 2 2022

OFFICE OF THE CLERK

BRIAN SCOTT BERRYMAN — PETITIONER
(Your Name)

vs.

STATE OF MISSISSIPPI, ET AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS FOR THE STATE OF MISSISSIPPI
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRIAN SCOTT BERRYMAN MDOC NO. 44499
(Your Name)

SMCI - AREA 2 - ALPHA 2/B-107
P.O. Box 1419
(Address)

LEAKESVILLE, MS. 39451
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. A STATE Court has decided an important federal question in a way that conflicts with relevant decisions of this Court AND THE UNITED STATES COURT OF APPEALS that affects the broad public interests.
2. THE STATE COURT OF LAST RESORT HAS MADE A DECISION CONTRARY TO DECISIONS AND FAILS TO COMPORT TO PREVIOUS DECISIONS OF THE STATE COURT OF APPEALS THAT AFFECTS THE BROAD PUBLIC INTERESTS.
3. THE STATE SUPREME COURT, THROUGH VIOLENCE TO A LEGISLATIVE ACT, BY STATUTORY CONSTRUCTION TO A STATUTE DEEMED PLAIN AND UNAMBIGUOUS CRAFTED JUDICIAL LAW TO A CRIMINAL STATUTE CONTRARY TO DECISION OF THIS COURT.

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. HON. KELLY LEE MIMS, Circuit Court Judge ; ~~HON. LBSB~~
2. HON. LYNN FITCH, ATTORNEY GENERAL for the STATE OF MISSISSIPPI

RELATED CASES

BRIAN SCOTT BERRYMAN V. STATE OF MISSISSIPPI, ND. CR 17-151, TISHOMINGO COUNTY CIRCUIT COURT OF THE STATE OF MISSISSIPPI. RETIRED CAUSE. Judgment Entered

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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☐ is unpublished.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☐ is unpublished.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 _____ 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 MISSISSIPPI COURT OF APPEALS court appears at Appendix M to the petition and is

☒ reported at 337 So. 3d 1116; 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 11/9/2021.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date:
2/15/2022, and a copy of the order denying rehearing
appears at Appendix C.

☐ 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. ARTICLE IV - SUPREMACY CLAUSE OF THE UNITED STATES Constitution
2. 6th AMENDMENT OF THE UNITED STATES Constitution
3. 14th AMENDMENT OF THE UNITED STATES Constitution
4. 18 U.S.C. § 3161-3174, FEDERAL SPEEDY TRIAL ACT
5. MISSISSIPPI Code Ann. § 99-17-1, STATE SPEEDY TRIAL ACT
6. MISSISSIPPI Code Ann. § 99-19-81 (HABITUAL, MANDATORY)
7. MISSISSIPPI Code Ann. § 99-19-83 (HABITUAL, LIFE WITHOUT PAROLE)
8. MISSISSIPPI Code Ann. § 97-37-5 (FELON IN POSSESSION)

STATEMENT OF THE CASE

- I. THE STATE COURT MADE A DECISION THAT CONFLICTS WITH THE DECISIONS OF ANOTHER STATE COURT OF LAST RESORT, THE UNITED STATES COURT OF APPEALS AND THIS COURT.

- A. PETITIONER IS DEPRIVED BY THE STATE COURT OF LAST RESORT HIS U.S. CONSTITUTIONAL 6th AND 14th AMENDMENT RIGHT GUARANTEE.

ON 6/23/2020 THE STATE TRIAL COURT OF TISHOMINGO COUNTY, MISSISSIPPI, HON. KELLY L. MIMS, PRESIDING JUDGE, DISMISSED COUNT I OF INDICTMENT NO. CR17-183 WITH PREJUDICE FOR VIOLATION OF DEFENDANT'S RIGHT TO A SPEEDY TRIAL (6th AMENDMENT) (THIS IS NOT AT ISSUE).

ALTHOUGH COUNT I WAS DISMISSED, THE TRIAL JUDGE ORDERED COUNT II OF THE INDICTMENT TO TRIAL, OVER VIGOROUS OBJECTIONS OF DEFENDANT, IN THAT THIS DEPRIVED DEFENDANT OF HIS 14th AMENDMENT RIGHT GUARANTEE TO DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS.

DEFENDANT WAS SUBSEQUENTLY TRIED, CONVICTED AND SENTENCED ON 6/23/2020, AS AN HABITUAL OFFENDER AND SENTENCED TO A TERM OF LIFE WITHOUT THE POSSIBILITY OF PAROLE.

DEFENDANT ARGUED THAT PURSUANT TO THE INDICTMENT (SEE APPENDIX K, I AND H), THE STATE HAD FAILED TO PLACE DEFENDANT ON NOTICE OF THE FACT THAT THE STATE SOUGHT A SENTENCE OF LIFE WITHOUT PAROLE.

THE STATE TRIAL COURT AND THE STATE COURT OF APPEALS HAS RENDERED DECISIONS CONTRARY TO DECISIONS OF THE FEDERAL 5th CIRCUIT COURT OF APPEALS, DECISIONS OF THIS COURT, DECISIONS OF THE STATE COURT OF APPEALS, AND THE STATE SUPREME COURT ON THE ISSUES, AND THIS CASE IS OF SUCH

imperative public importance as to justify deviation from normal Appellate practice and to require immediate determination in this Court. (28 U.S.C. § 2101(E)).

Pursuant to Article VI, Supremacy Clause, the U.S. Constitution states:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; And the Judges in every State shall be bound thereby, Any Thing in the Constitution or Laws of Any State to the Contrary notwithstanding."

Pursuant to Article VI, and case precedent, both Federal and State, this Court said in BARKER V. WINGO, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed. 2d 101 (1972): (SPEEDY TRIAL RIGHT):

"The Amorphorous quality of the right also leads to the unsatisfactory severe remedy of the dismissal of the indictment when the right has been deprived. This is indeed a serious consequence because it means that a defendant who may be guilty of a serious crime will go free, without having been tried. Such a remedy is more serious than the exclusionary rule or a reversal for a new trial but it is the only possible remedy." (footnote omitted).

Id. 407 U.S. At 522 [4].

In STRUNK V. U.S., 412 U.S. 434, 93 S.Ct. 2260, 37 L.Ed. 2d 56 (1973), this Court said:

"... But such severe remedies are not unique in the Application of Constitutional standards. In light of the policies which underlie the right to a speedy trial, dismissal, as BARKER noted, is 'the only possible remedy.'"

Id. 412 U.S. At 439-440 [8].

In similar cases, the United States 5th Circuit Court of Appeals has held in cases involving the Federal Speedy Trial Act 18 U.S.C.A. § 3161

" [I]f a defendant is not brought to trial within this period, then the indictment must be dismissed. "

Id. United States v. Jones, 56 F. 3d 581, 583 (5th Cir. 1995); see also United States v. Neal, 27 F. 3d 1035, 1042 (5th Cir. 1994) ('If the Act is violated, the indictment must be dismissed.')

In United States v. Rogers, 781 F. Supp. 1181, 1185 (S.D. Miss. 1991) the Court held:

' If on balancing these factors, a violation is found, dismissal of the indictment is the only possible remedy. '

These three cases were cited in the instant case, in the dissenting opinions of Justices Westbrook and McCarty. (Appendix J, ¶¶ 87-88).

In cases of precedent in the State Court, The Mississippi Supreme Court, in addressing the violation of a defendant's Speedy Trial right in such cases as: Smith v. State, 550 So. 2d 406 (1989); Perry v. State, 419 So. 2d 194 (1982); Bailey v. State, 463 So. 2d 1059 (1985); and Ross v. State, 605 So. 2d 17 (1992), the State Supreme Court held:

" Of course, the sole remedy for denial of a defendant's right to a speedy trial is dismissal of the charges against him. " "

Id. 550 So. 2d at 409 [4]. Charges, not a single count or charge, but "charges".

In the instant case, when the trial court found that defendant's 6th Amendment right to a speedy trial had been violated, case precedent and the 14th Amendment demanded that all [charges] and counts to be

dismissed with prejudice, instead, the trial court created a "NEW" remedy, dissecting each count of the indictment.

In the dissenting opinion (Appendix J, ¶ 89), Justices WESTBROOK and McCarty wrote in the instant case:

'So it is well established that the "only possible remedy" for a violation of the right to a speedy trial is to dismiss the entire indictment. Yet in this case, the trial court segmented its analysis, looking at each charge separately, and examining the prejudice present to each charge...'

These Justices went on to say:

'Yet in dismissing only [one] of the charges due to a speedy trial violation, the trial court created a [NEW] remedy. While the United States Supreme Court concluded in [BARKER] that "the only possible remedy" is the dismissal of the [entire] indictment, and our Supreme Court has held [all] charges must be dismissed, the trial court in this case dismissed only [some]. No matter how well meaning, this ruling plainly does not comport with clearly established constitutional law. (Emphasis added).

Id. APPENDIX J, ¶ 91; (¶ 94 and ¶ 103 see also),

Therefore, the decision of this Court is of broad importance, as the trial court has created "NEW" remedy that will affect the defendant's of the future, who may suffer 6th and 14th Amendment right violations, and deprived of their constitutional guarantees, as it has for the past twenty years.

2. THE STATE COURT OF LAST RESORT MADE A DECISION CONTRARY TO DECISIONS MADE BY THE UNITED STATES COURT OF APPEALS AND THIS COURT.

A. The Mississippi Supreme Court HAS UNCONSTITUTIONALLY And by VIOLENCE AMENDED A LEGISLATIVE ACT through STATUTORY CONSTRUCTION OF A STATUTE HELD PLAIN AND UNAMBIGUOUS, OF A CRIMINAL STATUTE.

Mississippi Code Annotated, SECTION 99-17-1, made effective on July 1, 1976 and remains UNAMENDED by the LEGISLATURE until the present time, deemed PLAIN AND UNAMBIGUOUS, has BEEN, by VIOLENCE, UNCONSTITUTIONALLY AMENDED by the JUSTICES of the Mississippi Supreme Court, who has CRAFTED that a defendant MUST show "ACTUAL PREJUDICE" to prevail in A CRIMINAL STATUTE that DOES NOT require prejudice to be shown AT ALL. (SEE APPENDIX G).

ON NOVEMBER 7, 2018, (in the instant case), PETITIONER WAS Arraigned ONE (1) year and NINE (9) months after his Arrest on 2/6/2017. PETITIONER, despite vigorous demands for trial was deprived trial for 594 days. Miss. Code Ann. § 99-17-1 (APPENDIX G) reads:

'Unless good cause be shown, and a continuance duly granted by the Court, all offenses for which indictments are presented to the Court shall be tried no later than two hundred seventy (270) days after the defendant has been arraigned.'

The Mississippi Supreme Court, in FOLK V. STATE, 576 So. 2d 1243 (1991) held:

'Our 270 day rule is in form and nature not unlike a statute of limitations. It reflects a societal imperative for prompt trials. Beyond this the rule confers a right upon the accused which he may claim no matter how inconvenient society may otherwise deem it. MOORE V. STATE, 556 So. 2d 1031 (1990); In re BROWN, 478 So. 2d 1033, 1034 (1985). The

right is entailed by the provision that the statute may be tolled upon good cause shown and a continuance duly granted by the court....

Id. 576 So.2d At 1245.

When the State exceeded the mandated 270-day statute of limitation without showing good cause, and no continuance(s) granted by the court for a good cause shown, a procedural bar is enacted by the statute's time limitation, the trial court lacked judicial discretion to extend the Legislative Act (§99-17-1 - Appendix G), lacking power, authority, or jurisdiction to proceed, was bound by law to dismiss the indictment with prejudice, just as the Federal 5th Circuit Court of Appeals held in cases of the Federal Speedy Trial Act 18 U.S.C.A. § 3161-3174. See United States v. Jones, supra; United States v. Neal, supra; and United States v. Rogers, supra.

Pursuant to the United States Constitution, Article 6, states:

'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and All Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, Any Thing in the Constitution or Laws of Any State to the Contrary notwithstanding.'

When Congress enacted 18 U.S.C.A. §§ 3161-3174 on October 13, 2008, it became "the Supreme Law of the Land, causing Miss. Code Ann. § 99-17-1, it requiring harsher time limitations than § 3161-3174, is Unconstitutional. States are free to enact laws equal to, or more lenient, but not harsher than federally enacted laws. See Guice v. State, 952 So.2d At 150 (¶173).

'Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges....'

Id. 18 U.S.C.A. § 3161 (b).

PETITIONER WAS ARRESTED ON 2/6/2017 (SEE APPENDIX P), yet even though a grand jury was empaneled, PETITIONER WAS NOT indicted until 9/22/2017 (SEE APPENDIX F). PETITIONER FILED DEMAND FOR TRIAL; MOTION TO DISMISS AND APPOINTMENT OF COUNSEL ON 6/16/18 (SEE APPENDIX F). IN VIOLATION OF § 3161 (b), PETITIONER WAS indicted SEVEN (7) MONTHS AFTER HIS ARREST.

Pursuant to 18 USC § 3161 (f), states in pertinent part:

'... the time limit imposed with respect to the period between arrest and indictment by subsection (b) of this section shall be sixty days, ...'

The State argued investigation and lack of location of witnesses.

Pursuant to § 3161 (c) states:

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

On 10/5/17, An MDOC (Miss. Dept. of Corr.) detainer was filed against Petitioner. (SEE APPENDIX F) On 6/16/2018, Petitioner filed his DEMAND for trial. Pursuant to § 3161 (3), it reads:

'Upon receipt of such notice, the attorney for the government shall promptly seek to obtain the presence of the prisoner for trial.'

ON 11/7/2018 Petitioner was transferred from the MDOC, South Mississippi Correctional Institution for Arraignment (See Appendix F, and N), In Appendix N, trial was set for 1/7/2019, thirty days from indictment, but Petitioner was transported back to the custody of MDOC the same day (11/7/2018), and it would be 594 days before Petitioner was brought back for trial. The record of the case (Appendix F) fails to contain any Continuance(s) requested by the State or the trial Court on a good cause issue. (See Appendix F).

The record of the case (Appendix F) has only one (1) Continuance requested and granted, but was refuted and objected to. (See Appendix J, ¶ 12, ¶ 14, ¶ 16 and ¶ 19) In paragraph 19, the State Court of Appeals said: 'It does not appear that Sparks ever played any substantive role in this case. Petitioner did not motion the trial Court for Continuance.

Pursuant to 18 USCA § 3162 (2) states;

'If a defendant is not brought to trial within the time limit required by section 3161 (c) as extended by section 3161 (h), the information or indictment shall be dismissed on motion of the defendant....'

Petitioner asserts that any other state statute for indictment, indictment to trial that fails to meet the time limitation set forth by Congress, upheld by Article VI, as well as the 14th Amendment's Equal protection clause, and § 3161, is unconstitutional, as the Federal Executive Branch enacted the Law of the Land, which Constitutionally, "the Judges in every State are bound".

HOWEVER, preadventure the State of Mississippi's statute § 99-17-1, is the Law in Mississippi, if the State Supreme Court itself cannot faithfully protect Constitutionally enacted Legislative Law itself,

And restrain from the use of statutory construction of A unambiguous Statute unconstitutionally, then, failing to follow its own Courts decisions of CASE PRECEDENT, the rulings of that Court becomes Arbitrary And Capricious, and offically So, to A Criminal Statute.

The ARIZONA SUPREME COURT in VON FELDSTEIN V. STATE, 17 ARIZ. 245, 150 P. 235 (1915), MORE THAN 100 YEARS AGO Addressed the issue at hand, of failing to follow A SPEEDY TRIAL STATUTE, and said:

... IN RE BEGEROW, 133 Cal. 349, 65 PAC. 828, 56 L.R.A. 513, 85 AM. ST. REP. 178, the Court quoting from PEOPLE V. MORINO, 85 Cal. 515, 24 PAC. 892, said:

"A Party charged with a crime has a constitutional right to a Speedy trial, and the Court has no discretionary power to deny him a right so important, or to prolong his imprisonment, without such trial, beyond the time provided by law. The statute is imperative, unless good cause to the contrary is shown, must order the prosecution to be dismissed...

'... If there was any good cause for holding him for a longer time without a trial, it was for the prosecution to show it. The Court could not presume it. Under the facts shown, the case should have been dismissed, and it was error to deny the motion.' That case has NEVER, AS FAR AS I KNOW, BEEN CALLED IN QUESTION, AND IT DECIDES SOME IMPORTANT POINTS (1) THE STATUTE IS A CONSTRUCTION OF THE CONSTITUTIONAL PROVISION, SO FAR AS TO INDICATE WHAT IS A REASONABLE TIME WITHIN WHICH THE CASE SHOULD BE BROUGHT TO TRIAL, IN ORDER THAT THE CONSTITUTIONAL GUARANTY MAY BE KEPT. AND IT MAY BE FAIRLY INTERPRETED TO MEAN THAT THIS GUARANTY IS VIOLATED WHENEVER 60 DAYS IS ALLOWED TO ELAPSE WITHOUT A TRIAL; THERE BEING NO GOOD REASON FOR THE DELAY AND THE DEFENDANT NOT CONSENTING THERETO; (2) AND IN THE SECOND PLACE, IT DECIDES THAT IT IS SUFFICIENT FOR THE DEFENDANT, IN ORDER TO MAKE OUT HIS CASE UPON A MOTION FOR DISMISSAL IN THE TRIAL COURT, TO SHOW THAT HE HAS BEEN

detained without trial for more than 60 days...

The Arizona Supreme Court went on to say:

'The rule Announced in the Merino and Begerow Cases has been followed in California consistently. In EX PARTE Ford, 160 CAL. 339, 116 PAC. 758, 35 L. R. A. (N.S.) 822, Ann. Cas. 1921 D, 1267, the Court used the following very definite and clear statement:

'Undoubtedly, where a defendant is not brought to trial within the statutory period, and no good cause is shown by the prosecution for the delay, it is the imperative duty of the Superior Court, on a motion of the defendant to that end, to order the indictment dismissed. The Court has no discretionary power under such circumstances to further postpone the trial but is required to dismiss the indictment, ...'

Id. 17 Ariz. at 250.

This Arizona case mirrors the instant case, showing that the trial Court Judge is without discretionary power to extend the 270 day statute, Miss. Code Ann. § 99-17-1 (APPENDIX G), as no good cause was shown (APPENDIX F), and defendant filed a Motion to Dismiss on numerous occasions (APPENDIX F); required dismissal of indictment. The State Courts requirement of a defendant to show "Actual Prejudice" is unlawful and Unconstitutional, which requires this Court to decide, for the broad public, which has cause for that decision of this Court.

When the trial Court allowed the state to exceed the 270 day Speedy Trial Statute (§99-17-1), the trial Court lacked discretionary Power or Authority, and was without jurisdiction

to proceed in prosecution of indictment CR17-183, especially Count II. In Guice v. State, 952 So.2d 129 (Miss. 2007), the Justices in dissent, GRAVES AND DICKINSON said:

" A STRICT INTERPRETATION OF THE STATUTE IS REQUIRED BY LAW AND PRECEDENT. "

' It is imperative that we return to strict compliance with the 270-day statute and overrule the line of cases that stray from the plain and unambiguous language crafted by the Legislature... ' There is no exception for a showing of "prejudice," nor does that word appear anywhere in the statute; this part of the law has been wholly crafted by the Justices of this Court. There is only one way around the 270-day rule, and this path has two components: First, "good cause [must] be shown, and a continuance duly granted by the Court," Miss. Code Ann. § 99-17-1. The 270 days can thus be extended, but only if a continuance is requested of and granted by the trial court, predicated upon a finding of good cause for the delay. " '

Id. 952 So.2d at 148 (¶60).

This statute (§99-17-1) has been legislatively re-enacted [without] legislative amendment to include the requirement of a showing of "Actual Prejudice" by the defendant, is not present in the statute.

Pursuant to U.S. v. Falletta, 523 F. 2d 1198 (1975), this Court said:

' WE CAN therefore rely to some extent on the common assumption that when Congress re-enacts a statute without overturning judicial constructions of it, the earlier interpretations should be followed. C.f. Shapiro v. U.S., 335 U.S. 1, 16, 68 S. Ct. 1375, 1386, 92 L. ed. 1787, 1798 (1948).

Id. 523 F.2d at 120 [2][3].

Therefore, the States requirement of defendant's showing of "Actual Prejudice" to prevail in the Barker factors, and Miss. Code Ann. § 99-17-1, is shown in Williams v. Taylor, 529 U.S. 362, 120 S. Ct. 1495, 146 L. Ed. 2d 389, 68 U.S.L.W. 4263, 2000 Daily Journal D.A.R. 3949... (2000) is...

"Contrary to, [And] involved unreasonable Application of, clearly established federal law."

Id. 529 U.S. At 363 (b).

The dissenting Justices (GRAVES AND DICKINSON) in Guice, SUPRA, Said:

'It is not simply judicial restraint and respect for enactments of the Legislature that drives this reasoning. The well-settled rule is that criminal statutes must be strictly construed in favor of the Accused. See United States v. ENMONS, 410 U.S. 396, 411, 93 S.Ct. 1007, 35 L. Ed. 2d 379 (1973) ("A Criminal statute... must be strictly construed, and any ambiguity must be resolved in favor of lenity."); STATE v. BURNHAM, 546 So. 2d 690, 692 (Miss. 1989) ("Statutes imposing criminal Penalties must be construed strictly in favor of the Accused, a proposition which may not be doubted." This is the plain and unambiguous rule as set forth by the Legislature and we are bound to follow it. "because of our constitutional mandate to faithfully apply the provisions of constitutionally enacted Legislation." Univ. of Miss. Med. Ctr. v. Easterling, 928 So. 2d 815, 820 (Miss. 2006).

Id. 452 So. 2d at 148 (¶ 60).

Miss. Code Ann. § 99-17-1, is a criminal Statute, and by Rule of Law, must be construed in favor of the Accused.

Justices GRAVES and DICKINSON in Guice, supra, said:

'It is not the purpose of this Court to craft legislation.'

Id. 452 So. 2d at 148 (¶ 61).

This Court said in ENMONS, supra:

'EVEN if the language and history of the Act were less clear than we have found them to be, the Act could not properly be expanded as the Government suggest - for two reasons. First, this being a criminal statute, it must be strictly construed, and any ambiguity must be resolved in favor of lenity. United States v. Wiltberger, 5 Wheat. 76, 45, 5 L. Ed. 37; United States v. Halseth, 342 U.S. 277, 280, 72 S. Ct. 275, 276, 96 L. Ed. 308; Bell v. United States, 349 U.S. 81, 83, 75 S. Ct. 620, 622, 99 L. Ed. 905; Arroyo v. United States, 359 U.S. 419, 79 S. Ct. 864, 867, 3 L. Ed. 2d 915; Rewis v. United States, 401 U.S. 808, 812, 91 S. Ct. 1056, 1059, 28 L. Ed. 2d 493.'

This clearly overrules the State Court requirement of a showing of actual prejudice in § 99-17-1, is 'contrary to, [and] involved unreasonable application of, clearly established federal law.' And must be overruled by this Court, as it affects the broad public in the past, present, and future.

In the instant case, the opinion of the State Court of Appeals (Appendix J), in dissent Justices WESTBROOK and McCARTY said: (in the trial courts dismissal of a single count of indictment CR17-183)

'So it is well established that the "only possible remedy" for a violation of the right to a speedy trial is to dismiss the entire indictment, yet in this case, the trial court segmented its analysis, looking at each charge separately, and examining the prejudice present to each charge...'

Id. At Op. ¶ 89 (Appendix J).

The Justices went on to say:

'Yet in dismissing only [one] of the charges due to a speedy trial violation, the trial court created a [new] remedy. While the United States Supreme Court concluded in [BARKER] that "the only possible remedy" is dismissal of the [entire] indictment, and our Supreme Court has held [all] charges must be dismissed, the trial court in this case dismissed only [some]. No matter how well meaning, this ruling plainly does not comport with clearly established constitutional law.' (Emphasis Added).

Id. At Op. ¶ 91 (Appendix J).

B. THE STATE COURT OF LAST RESORT MADE A DECISION CONTRARY TO DECISIONS AND FAILS TO COMPORT TO PREVIOUS DECISIONS OF THE COURT OF APPEALS.

A. The STATE FAILED TO PLACE ACCUSED ON notice pursuant the 6th Amendment, AS WELL AS the 14th Amendment, U.S. Constitution.

PETITIONER WAS charged under Miss. Code Ann. § 97-37-5 (SEE APPENDIX K AND I)

In the indictment (CR17-183) the State charged the defendant with FELONY IN POSSESSION UNDER § 97-37-5, AND ALSO Sought to "Enhance", 'to be sentenced to the Maximum term of imprisonment as prescribed for such felony...'

IN APPENDIX I, it plainly put defendant on notice in § 97-37-5 (2):

'Any Person violating this section shall be guilty of a felony and, upon conviction thereof, shall be fined not more than Five Thousand Dollars (\$5,000.00), or committed to the custody of the State Department of Corrections for not less than one (1) year nor more than ten (10) years, or both.'

No Where does it call for life without parole in the indictment. The State did mistakenly cite the Statute Number (§ 99-19-83), but the substance solely tracks Miss Code Ann. § 99-19-81.

In the decision of the Mississippi Court of Appeals, that Court said in MEDLIN V. STATE, 35 So. 3d 564, 566 (Miss. Ct. App. 2010) (citing GOLDEN V. STATE, 968 So. 2d 378, 386 (Miss. 2007)):

"When reviewing an indictment, we consider the substance of the indictment."
Id.. "There is no requirement that an

indictment must include the statute number of the crimes charged." Id. (citing Johnson v. STATE, 879 So. 2d 1057, 1060 (¶10) (Miss. Ct. App. 2004) (overruled on other grounds). "Thus the statute number referenced in the indictment is of no consequence because we look to the substance of the indictment to determine whether it sufficiently gave notice of the pending charge." Id. (citing Golden v. STATE, 968 So. 2d 378; 386 (¶29) (Miss. 2007).

The Mississippi Court of Appeals and Supreme Court has held: ("Thus the statute number referenced in the indictment is of [NO] consequence because we look to the substance of the indictment to determine whether it sufficiently gave notice of the pending charges.") Clearly indictment CR17-183 gave notice that the maximum sentence under Miss. Code Ann. § 47-37-5 (2) was sought by the State, not life without parole, as the substance of the indictment plainly reads, and pursuant to the 6th Amendment, the prior decisions of the Court of Appeals in the above cited cases shows a decision in conflict with those prior rulings in this instant case, making the sentence of life without parole illegal, pursuant to the 14th Amendment.

This review is of broad public importance and interests as it shows that the Miss. Court of Appeals does not do what the Court says it will do in following case precedent, showing an arbitrariness and capriciousness, and officially so, requiring review of this Most Honorable Court.

REASONS FOR GRANTING THE PETITION

1. Petitioner has shown that he is deprived of his 6th and 14th Amendment rights and safeguards Constitutionally guaranteed when, After Count I of indictment no. CR17-183 was determined by the trial Court to violate the defendant's Speedy trial right, and was dismissed by the trial Court (Dismissal of Count I is not an issue in this Petition), yet the trial Courts decision to order Count II of the indictment to trial, is contrary to, and plainly does not comport to Constitutional Laws and Precedent, STATE or FEDERAL.

The Trial Court created "NEW" remedy which fails to comport with FEDERAL Constitutional Law and CASE precedent, as well as clearly established State Constitutional law and precedent, and the trial Court is without judicial discretion, without power or authority to create "new" remedy and override this Courts decisions of CASE precedence of the "Sole remedy" for violation of a defendants right to a Speedy trial is dismissal of the indictment.

This new remedy is of Broad National importance as it affects States decisions, Nationally, of a defendant's 6th Amendment Speedy trial right, and the 14th Amendment of equal protection of the Laws, which is safeguarded and guaranteed by the United States Constitution and the Law made in Pursuance thereof; which is the Law of the Land; and the

Judges in Every State shall be bound thereby, any Thing in the Constitutions or Laws of Any State to the contrary notwithstanding; (See United States Constitution, Article VI, Supremacy Clause,

2. Miss. Code Ann. § 99-17-1 [1] is held to be plain and unambiguous, and continues to be re-enacted without change or amendment. The Mississippi Supreme Court, by violence, through statutory

construction of a Criminal Statute, unconstitutionally Amends A Legislative Act constitutionally enacted, grafts its own law into the Statute to require the Accused to show "Actual Prejudice" to prevail, in which prejudice is not named once in the words, and further by violence, overrides Federal and State Laws in regard to a Criminal Statute being strictly construed in favor of lenity, a proposition which may not be doubted, but decides a Criminal Statute in favor of ~~judicially~~ crafted Law by Justices of the Mississippi Supreme Court.

This is of such Nationally, Broad Public interests that this Court find it imperative to review and overturn as Justice requires.

3. The State failed to place the Petitioner on notice of the charges, violating the 6th and 14th Amendments, which is not simply promised by empty words, but guaranteed and safeguarded by the U.S. Constitution - And this Court, and is the Supreme Law of the Land (Article VI). The indictment (CR17-183, APPENDIX K) clearly shows that the trial Court, and Court of Appeals decisions

With the U.S. Constitution, Federal And State Laws, And the previous decisions of the Mississippi Court of Appeals, And decisions of this Court, And also is of such broad importance to the States Nationally, AS to require review And decisions of this Court returning these unlawful decisions, reversing and rendering

CONCLUSION

PETITIONER PRAYS that this Most Honorable Court grant him the relief he seeks And grant his request for Writ of Certiorari.

The petition for a writ of certiorari should be granted.

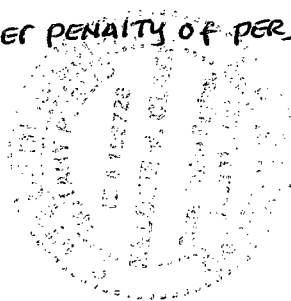
Respectfully submitted,

Brian Scott Berryman

Date: 8-3-2022

STATE OF : MISSISSIPPI
COUNTY OF : GREENE

SUBSCRIBED AND SWORN BEFORE ME UNDER PENALTY OF PERJURY, this the 3rd day of August, 2022.



[Signature]
NOTARY PUBLIC