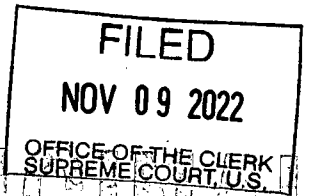


22-6078

No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

JAMES WESLEY SCOTT — PETITIONER
(Your Name)

vs.

JACQUILINE BANKS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURTS OF APPEALS 5th CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAMES WESLEY SCOTT
(Your Name)

SMCI P.O. BOX 1419
(Address)

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

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Should *Barker v. Wingo's*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972) Four Factors in determining when an Accused Right to a Speedy trial has been violated be Overruled and given a more precise Method/Guide in protecting a defendant's Constitutional Due process Right?
2. Has the State of Mississippi Eroded the United States Supreme Court's *Barker v. Wingo's* Balancing-test Analysis by requiring Affirmative demonstration of all Four Factors as the touchstone for providing a denial of Constitutional Right to a speedy trial and that denial of defendant's claim on ground that a showing that all factors did not weigh in defendant's favor was essential to establish a Speedy trial Violation?

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:

RELATED CASES

SCOTT V. BANKS NO. 2:18-CV-156-TBM-LGI
U.S. District Court For the Southern District of Mississippi,
Judgement entered September 30, 2021 .

SCOTT V. BANKS NO. 21-60813 U.S. Court of
Appeals For the Fifth Circuit.
Judgement entered September 01, 2022.

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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 A 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☒ is unpublished.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 B 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 D to the petition and is

☒ reported at Scott v. State, 2016 WL 3391630 (MS); 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 9-01-22.

☐ 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: 9-28-22, 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 _____.
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

UNITED STATES CONSTITUTION ... AMENDMENT 6

MISSISSIPPI CONSTITUTION ARTICLE 3 SECTION 26

STATEMENT OF THE CASE

Around the 15th of November 2009, Petitioner James Wesley Scott turned himself in to Law Enforcement on Charges that stemmed from an July 03, 2009 Incident. On September 26, 2011, A Forrest County, MS. Grand Jury indicted Scott and he was Arraigned on March 14, 2012. Scott Filed a motion for recusal of the trial Judge on April 12, 2012 and the Mississippi Supreme Court appointed a Special Judge on September 20, 2012.

Later on May 31, 2013, Scott wrote the Circuit Court clerk requesting all documents in his case along with his request for a speedy trial. See Exhibit C(1) Also on March 24, 2014 and May 02, 2014, Scott Filed prose motions to dismiss in which he alleged Speedy trial violations. Scott's appointed Counsel Filed a third motion to dismiss on August 14, 2014, which was denied at Scott's pretrial hearing on August 19, 2014.

A Forrest County Jury Found Scott guilty and he was sentenced as an habitual offender under Mississippi Code Section 99-19-83, to three consecutive life sentences without the possibility of Parole. Scott then Filed a motion for a Judgment Notwithstanding the Verdict, or in the alternative, for a New trial, which the trial Court denied. Scott Appealed his conviction, and the Mississippi Supreme Court assigned his case to the Mississippi Court of Appeals,

which Affirmed Scott v. State, 2016 WL 3391630.

On June 13, 2017, The Mississippi Supreme Court granted Scott's petition for a Writ of Certiorari. On November 29, 2017, the Mississippi Supreme Court with four Justices of the opinion that the Judgment of the Mississippi Court of Appeals should be Reversed and four Justices of the opinion that the Judgment be Affirmed, failed to resolve contrary rulings made against him by the Court of Appeals. According to the Mississippi Supreme Court, the Judgment of the Court of Appeals must be Affirmed, as the case has not been decided to be erroneous by a majority of the Justices sitting on the case. See ~~Exhibit~~ A.

Because of this divided Court, the issue(s) Scott has presented to the Mississippi Court of Appeals remain contrary to Mississippi Supreme Court and the United States Supreme Court cases.

Because of this divided Court, Scott has not been fairly adjudged under Barker v. Wingo's 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed. 2d 101 (1972), Balancing - test Analysis.

Petitioner filed a Habeas Corpus on August 23, 2018, which was denied September 30, 2021. Scott then filed his appeal to the 5th Circuit Court of Appeals on January 06, 2022 and his Motion for Rehearing on September 14, 2022, which was denied September 28, 2022.

REASONS FOR GRANTING THE PETITION

Petitioner contends that under Barker v. Wingo, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972) The right to a speedy trial calls for a more precise guide in determining when that right has been violated. Petitioner calls on this Court to overrule Barker v. Wingo and use its supervisory power and settle the important questions that the Mississippi Supreme Court/Court of Appeals and lower circuit courts are in conflict with that is relevant with decisions of the United States Supreme Court under Barker v. Wingo.

Petitioner contends that it is compelling upon this Court to review the history of the Mississippi Supreme Court/Court of Appeals and fully measure decisions in conflict with United States Supreme Court precedent, or in the alternative prescribe a new method which is unambiguous that lower courts must/shall adhere to in order to protect the integrity of the United States Constitution and to protect a criminal defendant's due process rights. Criminal defendants are languishing in pretrial confinement at staggering intervals. Months and even years pass by without justice. Petitioner being a Black man in America wonders if this right applies to him at all.

The record reflects at least 1,39 days or Fifty Seven Months passed between petitioners Arrest and trial. EXHIBIT A At pg 4,5

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to a speedy and public trial. Additionally, Article 3 Section 26 of the Mississippi Constitution guarantees criminal defendants a speedy and public trial by an impartial jury. According to Mississippi Constitution Article 3 Section 26, a formal indictment or information or an arrest - whichever comes first - triggers the constitutional right to a speedy trial. United States v. Marion, 404 U.S. 307, 320. 92 S.Ct. 455, 463, 30 L.Ed.2d 468 (1971). McBride v. State, 61 So.3d 138, 142 (Miss. 2011).

In 1972, The United States Supreme Court handed down Barker v. Wingo, 407 U.S. 514, 530, which established four factors state courts must consider when analyzing Sixth Amendment speedy trial issues. The four factors set forth are length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. And to the extent the United States Supreme Court has instructed how these factors must be applied and no court is to improvise when balancing these factors. The factors set forth in Barker for determining whether a defendant's Sixth Amendment right to a speedy trial was violated are to be balanced together and no single factor is a necessary or sufficient condition to the finding of a

Deprivation of the right to a Speedy Trial, (No single Barker Factor is controlling) Stated Another way, Courts may not pick out one factor such as prejudice, and hold that the defendant must win on it to prevail.

Whether the Four Factors of "Barker" v. Wingo are Ambiguous or UnAmbiguous is a Question this Court must Address in order to protect and Secure a Criminal Defendant's Due process Rights. It is time to get a crystal clear Interpretation when determining just when the Speedy trial right has been violated. Either a defendant must win all four factors or prevail on a majority of the factors? Courts have been given too much room to find no deprivation of this secured right that is guaranteed under the Sixth Amendment and as a result defendants sit longer and longer in pretrial detention waiting on the outcome of their case. The State of Mississippi has Erased Barker v. Wingo Balancing Analysis - test and petitioner will shortly explain this: Petitioner asserts that for the past 30 years there has not been one - single Speedy trial violation found in the State of Mississippi. This is Astonishing and crystal clear that in order for due process Rights to be protected and Liberty and Justice for all, this Court must step-in Now.

In the State of Mississippi there are more dissents on this Issue than any other and Justices have declared the Speedy trial NON-~~existence~~ AND are no longer willing

to enforce AN ~~accused~~ Constitution^{al} Right to a Speedy trial, FRANKLIN V. STATE, 136 So.3d 1021, 1033 (Miss. 2014). ("the right to a Speedy trial is dead AND gone in the State OF Mississippi")

Johnson V. State, 68 So.3d 1239 (Miss. 2011) ("It's right crystal clear this Court's position on the Right to a Speedy trial. The Life-Support plug has been pulled AND the right to a Speedy trial exists no more") ("Defendant's cannot win Speedy trial claims before this Court unless they win All Four Factors")

Newell V. State, 175 So.3d 1260 (Miss. 2015) ("It's no secret Among the bench AND bar that this Court has no Interest in protecting the constitutional right to a Speedy trial, or in enforcing Speedy trial Law")

Taylor V. State, 162 So.3d 780 (Miss. 2015) ("This Court has not Faithfully Applied the Barker Balancing test")

("In sum, it is clear that this Court has shown little regard for binding precedent from the U.S. Supreme Court Interpreting A protection guaranteed by the United States Constitution")

Also see EXHIBIT B (U.S. District Judge REEVES Court)

IF the Mississippi Supreme Court Justices Feel this way about Barker V. Wingo then Now is the time that this Court of the Land ~~step in~~ AND Fix the problem.

Barker V. Wingo expressly rejected the notion requiring Affirmative demonstration of prejudice as the touch stone for providing a denial of a Speedy trial - See: Moore V. Arizona, 414 U.S. 25 (1973) Here, The State

OF Mississippi' declares that Affirmative demonstration of All Factors AS the touchstone For proving A deprivation to the Constitutional Right to A speedy trial is essential in Finding A violation, See: Johnson v. State, 68 So.3d 1239 (Miss. 2011). Johnson won 3 Factors AND still did not prevail Under Barker Balancing Analysis-Test.

The 5th Circuit Court of Appeals in it's ruling did not render an opinion in Petitioners Case. The United States District Court Agreed with the Mississippi Court of Appeals in its opinion, gathering that Petitioner won one factor, which is Length of delay. The Evidence provided in the record is Contrary to these rulings AND the Mississippi Supreme Court Agrees in it's order when it granted Petitioners Writ of Certiorari on June, 13, 2017. See Exhibit A Weighing the Length of delay, reason for the delay, AND prejudice prongs All in petitioners favor. Petitioner contends that he Successfully won All Barker v. Wingo Factors AND will provide this Court with the Evidence, Hoping to receive A Fair Balancing Analysis-Test.

LENGTH OF DELAY

A full Barker Analysis is warranted only if the delay was presumptively prejudicial, Stark v. State, 911 So. 2d 447, 450 (Miss. 2005). Any delay that exceeds eight months is presumptively prejudicial. Johnson v. State, 68 So.3d 1239, 1242 (Miss. 2011), Doggett v. U.S.

505 U.S. 647 (1992). The state conceals that petitioner turned himself in to police sometime in late October or early November 2009 and petitioner's trial was August 19, 2014. At least 1,739 days or (57) months passed between petitioner's arrest and trial, warranting a full Barker Analysis. Because this delay far exceeded eight months, the delay was presumptively prejudicial, and this factor weighs against the state.

REASON FOR THE DELAY

After a delay is found presumptively prejudicial "The Burden shifts to the prosecution to produce evidence justifying the delay... State v. Ferguson, 576 So 2d 1252, 1254 (Miss. 1991) The state's deliberate attempt to delay the trial in order to hamper the defense is weighed heavily against the state. Barker, 407 U.S. at 531. Additionally, delays that are unexplained are attributed to the state. Perry v. State, 2017 WL 2377708, at 4 (Miss. 2017). Here, The state of Mississippi's admission during petitioner's trial that the Hattiesburg Police department was responsible for the delay is the only evidence on record which caused over 680 days of delay. As for the remainder of this delay the record is unclear as the state of Mississippi failed to continue the case on record. See: Court docket sheet. It is crystal clear that the majority if not all of the delays were caused by the negligence of the police department

and because the state of Mississippi did not pursue this case with due diligence considering petitioner's Constitutional rights; Therefore, the Barker "reason for delay" factor weighs against the State.

ASSERTION OF RIGHT

Where the defendant asserts his right to a speedy trial he gains far more points under this prong. Barker, 407 U.S. at 528. In addressing petitioner's speedy trial claim, the prosecutor stated that he recalled that petitioner filed a pro se speedy trial motion. The record establishes that petitioner filed four (4) pro se motions demanding a speedy trial. Petitioner also wrote a letter/motion to the circuit court clerk requesting a speedy trial. EXHIBIT C-32 The United States Supreme Court has rejected the notion that a defendant can waive the right to a speedy trial forever by failing to timely assert it. Myers v. State, 145 So.3d 1143, 1151 (Miss. 2014) (citing Barker, 407 U.S. at 528).

The evidence presented proves that petitioner wanted a speedy trial, asserted his right to a speedy trial and this Barker factor weighs against the State.

PREJUDICE TO THE DEFENDANT

To determine whether the defendant was prejudiced by the delay, the Barker factor considers (1) preventing

Oppressive retrial incarceration" (2) minimizing ANXIETY AND CONCERN OF THE ACCUSED, AND (3) limiting the possibility that the defense will be impaired, Barker v. Wingo, citing Hurst v. State, 195 So.3d 736, 741 (Miss. 2016). OF these forms of Prejudice, the most serious is the last, Because the inability of a defendant to Adequately prepare his case skews the FAIRNESS OF the entire system. Barker, 407 U.S. AT 532.

Petitioner contends that the delay impaired his defense because it contributed to the loss of Evidence, (the 911 call, witnesses statements) witnesses, AND because the prosecution Labeled the case ~~As~~ being a cold case. Here, the delay far exceeded Eight months so it became the State's burden to rebut Petitioner's claim. Moore v. Arizona, 414 U.S. 25, 26, 94 S. Ct. 188, 38 L. Ed. 2d 183

(1973). The State Failed to show that petitioner's defense was not impaired by the loss of Evidence, AND Incorrectly placed the burden upon him to demonstrate the prejudice inflicted upon him. Freeman v. State, 121 So.3d 888 (Miss. 2013). The

Barker Factor Prejudice to the defendant weighs Against the State.

A BALANCING OF the Barker Factors indicates Petitioner's Constitutional right to a Speedy trial was violated, AND the Lower Court Erred by denying his motion to dismiss for lack of a Speedy trial.

The State of Mississippi has made the Barker Balancing Analysis - test Null AND Void AND for the past 30 Years have not found one single - Speedy trial violation. Petitioner calls on this High Court to Answer Questions AND resolve the Failures to properly ENFORCE the Barker Balancing Analysis - Test.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James W. Scott

Date: 11-09-22