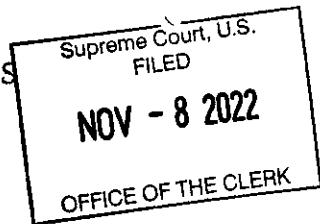


22-6163 **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES



NOEL L. BROWN - PETITIONER

VS.

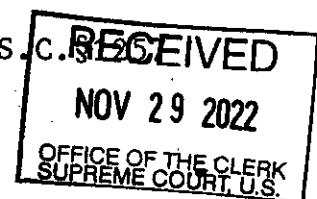
THE STATE OF NEW YORK - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES SUPREME COURT

(NAME OF COURT THAT LAST RULED ON THE MERITS OF THIS CASE)

(STATE OF NEW YORK COURT OF APPEALS)

petition for writ of certiorari under 28 U.S.C.

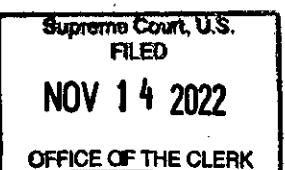


NOEL L. BROWN MW0387

SCI. SOMERSET

1590 WALTER MILL ROAD

SOMERSET, PA 15510



QUESTIONS PRESENTED

- 1 Does the substantial holding in United States of America V. Demario CHATMON, (2nd Cir.), the court held"that because the initial seizure of defendant was not justified, the search of his person while in custody is not justified as an inventory search. WHEREBY, evidence from the station search must be suppressed."Apply on collateral review to petitioner?
- 2 Does the unequivocal pro se, motion for speedy trial statutory right under 18 U.S.C. §3161(c)(1) and 18 U.S.C. §3162(a)(2). Apply on collateral review to petitioner?
- 3 Does the subsequent denial of speedy trial time limit and exclusion under 18 U.S.C. §3161(E), "that trial shall commence within seventy days from the date the action occasioning the retrial became final."Apply on collateral review to petitioner?
- 4 Does the Sixth Amendment in the United States Constitution, outlining the criminal defendant's right (1)"to a speedy and public trial by an impartial jury."Apply on collateral review to petitioner?
- 5 Does the United States Supreme Court holding that" Ineffective Assistance of Counsel entitle defendants to have his/her conviction overturned."Apply on collateral review to petitioner?
- 6 Does the State of New York Court of Appeals denial of petitioner's reconsideration petition for leave to appeal, till after the court renders a decision in other cases, not associated with petitioner's petition for leave

to appeal, per se prejudice?

7 Does the lack of competent representation requiring court appointed counsel within petitioner's criminal case, to have the legal knowledge, skills, thoroughness, and preparation reasonably necessary for the representation of petitioner. Apply on collateral review to petitioner?

8 Does the substantial holding in *Miranda V. Arizona*, holding "that government may not introduce statements made by an individual who is subject to custodial interrogation unless he first was read his *Miranda* warnings." Apply on collateral review to petitioner?

9 Does ineffective assistance of counsel apply where petitioner's court appointed lawyer, failed to communicate with petitioner about the means by which petitioner objectives are to be accomplished. Or keep petitioner reasonably inform about the status of the matter to be accomplished. Apply on collateral review to petitioner?

10 What is the interpretation of Constitutional Protection under Ineffective Assistance of Counsel, denial of Due Process in violation of the ~~Fourteenth~~ Amendment?

In persuasive authority leading case on point UNITED STATE V. CHATMON (2020), the United States District Court Second Circuit, held that "evidence from the station search must be suppressed because the traffic stop was not supported by reasonable suspicion, nor the seizure of defendant supported by probable cause".

ADDITIONALLY, the courts held that "temporary detention of an individual during a traffic stop is limitation under the Fourteenth Amendment, as a seizure of the person. The Fourth Amendment requires that an officer making such a stop have probable cause. Or reasonable suspicion that the person stopped has committed a traffic violation, or otherwise engaged in or about to be engaged in criminal activity.

No Probable Cause; HERE, petitioner asserts that his conviction, for possession of weapon, in the interest of justice should be reversed, because petitioner was prior acquitted of the alleged traffic violations leading to his arrest, in the case now being appealed. WHEREIN, jury found officers conducted an illegal stop and search of petitioner, and the traffic stop lacked probable cause, nor resulted in a traffic infraction/citation prior, during or after petitioner's arrest on said alleged traffic violations.

In persuasive authority leading case on point MIRANDA V. ARIZONA (1966), the Supreme Court created prophylactic rules through Miranda, and its progeny that are designed to provide an added measure of protection against the inherently coercive nature of custodial interrogation. HERE, petitioner was placed in hand cuffs, while officers engaged in seizure of petitioner and petitioner's property without any probable cause. ADDITIONALLY, officer's engaged in plurality of questions on whether said property had been stolen, and their need to run petitioner's fingerprints.

The Speedy Trial Statutory Rights Under 18 U.S.C. §3161(c)(1);

Generally, if a defendant is not brought to trial within seventy days, or under New York State Law days, the Court must dismiss the indictment on the defendant's motion. 18 "U.S.C.S. §3162(A)(2).

On March first 2018, Supreme Court of the State of New York, County of New York. Court had been timely notified by petitioner's court appointed counsel , that defendant had previously filed his pro se, Notice of Motion to Dismiss Indictment for Denial of Right to Speedy Trial Pursuant to CPL§210.20, 30.20 and §30.30, ADDITIONALLY, that counsel will adopt said motion. The Supreme Court of the State of New York, did not respond to the application of substantive rule established in 18 U.S.C. §3161(c)(1) or 18 U.S.C. §3162(a)(2). Instead continued case to trial date of July 16th 2018. It maybe construed that the reason the State Court did not stare decisis to binding authority was said court appointed counsel had not signed his notice of motion.

The Time Limit and Exclusions Pursuant to 18 U.S.C. §3161(e); States if a defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judgement for a new trial, trial shall commence within seventy (70) days from the date the action occasioning the retrial became final.

Petitioner was convicted of Criminal Possession of Weapon in the Second Degree, on March 27th 2019, following a jury trial of the remaining charges stemming from a mistrial of his first trial in the State of New York. In violation of petitioner's due process rights in the Fourteenth Amendment. WHEREBY, entitle petitioner to be herd at a meaningful time, and in a meaningful manner, within which a defendant's trial must commence pursuant to U.S.C. §3161(E), and Rules and Statues governing the State of New York. WHEREBY, more that one year had elapse, from the petitioner's initial

jury trial and judge order for mistrial.

In PADILLA V. KENTUCKY (2010), the United States Supreme Court held "that a defence lawyer's bad advice, amounted to ineffective assistance of counsel, and entitled the defendant to have his conviction overturned.

HERE, petitioner's trial counsel incompetence and bad advice to appellant's unequivocal request for counsel to reiterate that the State Court grant leave pursuant to Speedy Trial Rights, incorporated by the state into the Fourteenth Amendment to the United States Constitution.

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. The District Attorney County of New York

One Hogan Place, New York, N.Y. 100013.

2. State of New York, Office of the Attorney General

28 Liberty Street, New York, NY 10005.

TABLE OF AUTHORITIES CITED

CASES: PAGE:

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STATUES AND RULES

18 U.S.C. §3161(c)(1)

18 U.S.C. §3161(E)

18 U.S.C.S. §3162(A)(2)

SPEEDY TRIAL STATUTORY RIGHT

DUE PROCESS RIGHTS REQUIREMENT FOR MISTRIAL

FOURTH AMENDMENT GUARANTEE RIGHT TO NOT BE ARRESTED WITHOUT PROBABLE CAUSE.

FIFTH AMENDMENT RIGHT TO PROTECTION AGAINST CUSTODIAL INTERROGATIONS.

SIXTH AMENDMENT GUARANTEE TO A SPEEDY TRIAL.

FOURTEENTH AMENDMENT GUARANTEE TO NOT DENY TO ANY PERSON WITHIN ITS JURISDICTION EQUAL PROTECTION OF THE LAWS.

CLEARLY ESTABLISHED RIGHTS.

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- APPENDIX B: COUNSEL'S NOTICE OF MOTION
- APPENDIX C: PRO SE, MOTION TO DISMISS INDICTMENT FOR DENIAL OF RIGHT TO SPEEDY TRIAL.
- APPENDIX D: OPINION OF SUPREME COURT STATE OF NEW YORK APPELLATE DIVISION 1ST DEPARTMENT.
- APPENDIX E: STATE OF NEW YORK COURT OF APPEALS ORDER.
- APPENDIX F: PRO SE, REQUEST FOR RECONSIDERATION.
- APPENDIX G: COURT OF APPEALS ORDER DENYING RECONSIDERATION.
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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.

OPINION BELOW

The opinion of the highest state court to review the merits appears at Appendix G to the petition and is reported a New York State Court of Appeals on October 27th 2022.

The opinion of the Appellate Division, 1st judicial Dep. Supreme Court State of New York, appears at Appendix D to the petition and is reported on April 5th 2022.

JURISDICTION

The date on which the highest state court decided my case was July 5th 2022.

A copy of that decision appears at Appendix E.

A timely petition for rehearing was thereafter denied on the following date; October 27th 2022, and a copy of the order denying rehearing appears at Appendix G.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES: "The right of the people to be secure in their Persons, House, Papers, and Effects, aagainst unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particular describing the place to be search, and the persons or things to be seized".

2. THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES: "No person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, of property, without due process of law, nor shall private property be taken for public use, without just compensation.

3. THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES: "In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertain by law, and to be informed of the nature and cause of the accusation; and to have the assistance of counsel for his defence".

THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES: "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws".

5. 18 U.S.C. §3161(c)(1)(E); Speedy trial statutory rights, if a defendant is not brought to trial within 70 days, the court must dismiss the indictment on the defendants motion. If defendant is to be tried again by the trial judge order for a new trial, trial shall commence within 70 days from the date order.

STATEMENT OF THE CASE

PROCEDURAL HISTORY OF THE JUDGMENT?ORDER IN ISSUE:

Petitioner Noel L. Brown, was sentence to seven years imprisonment following a retrial by jury in the State of New York, County of New York. The said verdict was ordered on the second trial of the defendant, on remaining charges, after prior jury acquitted in part on the charge of traffic violations, the initial alleged cause for vehicle stop and arrest on September 6th 2015. The jury could not come to any decision on the charge of possession of weapon in the second degree, the trial judge moved for mistrial of weapons charge, at the initial trial in Supreme Court of the State of New York Indictment No.03622/2015. The petitioner was remanded for further proceedings. The retrial of petitioner was held several months later, despite repeated reiterate oral and written motion for speedy trial. Petitioner was retried and convicted on March 27th 2019. The retrial court did not consider the circumstances surrounding my arrest, or that the stop of the petitioner himself was improper. That the police were improper in stopping the petitioner or in this case officers had done racial profiling, inappropriate and inaccurate, arrest of petitioner, by not reading his maranda rights; or explaining as to the reason for waving petitioner to pull over to the side of the road. This court may construe the retrial court judge Stolz, had departed from the accepted and usual course of judicial proceeding by said hearing judge presiding over retrial proceedings which prejudice mirrored the hearings. Petitioner timely filed his appeal via counsel, in the Supreme Court of the State of New York Appellate Division, First Judicial Department. The Appellate Division Affirm the conviction. Petitioner filed a second timely appeal in the State of New York Court of

Appeals. Prerequisite to denial of reconsideration petition in the lower court being denied. The Court of Appeals Denied petition to grant leave to appeal. ADDITIONALLY, the court of appeals, ordered that the reconsideration is denied,"with leave to renew within 30 days after the Court renders a decision in People v. Pablo Pastrana and People v. Ramon Cabrera".

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REASON FOR GRANTING THE PETITION

The Questions presented in this petition for certiorari, is so important that plenary review is warranted. The State of New York Court of Appeals has so far departed from the accepted and usual course of judicial proceeding by it's quid pro quo denial of a case on relatively sound jurisdictional grounds, magnified within petition for reconsideration, as to call for an exercise of this courts supervisory powers.

The trial court error, compounded by the Appellate Division and the Court of Appeals, rest at a point where it ought properly never to repose. The Equal Protection Clause of the Fourteenth Amendment forbids discrimination. Jurist of reason could conclude that the Court of Appeals, has discriminated against appellant and or appellant's case. To deny substantive application of CHATMON, or the SPEEDY TRIAL STATUTORY RIGHTS, and FRUIT OF A POISONOUS TREE DOCTRINE, with the case on point MIRANDA, would compromise our justice system's consistency and legitimacy.

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CONCLUSION

To determine whether appellant has properly invoke his right to Speedy Trial, and thus not waived any right to a speedy trial, the court must determine whether (1) The request is unequivocal and timely asserted. (2) The defendant has not engaged in conduct which would present the fair and timely exposition of the issues. This case presents the opportunity for the U.S. Supreme Court to provide further guidance regarding this analytical framework. HERE, the court of appeals affirmed the denial of Mr. Brown's clear, unequivocal request for binding authority stare decisis, because the court sought a decision in other matters. ADDITIONALLY, not considering unequivocal request for speedy trial, that is supported by the records.

The petition for writ of certiorari should be granted. Thank You.

Respectfully Submitted,

November 10th 2022.

Re: 
11-20-2022