

No. 22-6451

ORIGINAL

Supreme Court, U.S.
FILED

DEC 14 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Dwayne Edmund Wilson PETITIONER
(Your Name)

vs.

Randee Rewert — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Sixth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Dwayne Edmund Wilson
(Your Name)

G. Robert Correctional Facility 3500 N. Elm Rd.
(Address)

Jackson, Michigan 49201
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Is Liberty at the heart of the Speedy Trial Right or Defense Impairment.
- 2) Can you do a Speedy Trial Claim without weighing the Incarceration
- 3) Is 5 years 3 months enough for Oppressive Incarceration
- 4) ~~Am~~ I protected by the Sixth Amendment Speedy Trial Right
Is it a real "Guaranteed" protection. If it is how can any Court refuse to weight 5 years 3 months of Incarceration.
5. ~~Am~~ I Protected by the Due Process Clause of the 14th Amendment and if so how could I be denied a full fair hearing on my Speedy Trial Claim. Where I was incarcerated for 5 years 3 months, and the lower Court refused to weight it.
6. Does a Reversal of a Indictment make you lose Speedy Trial Protection For once and for all this Court should decide what is the real purpose of the Sixth Amendment Speedy Trial Right is it for Liberty of a defendant or for Defense Impairment of the defendant.

Because Court use defense Impairment as a excuse to deny Claims (Speedy Trial) regard less if a defendant has been held for 5 years 3 months.

So What does this Court mean when it's say Liberty is at the core of the Speedy Trial Right. This court need to make this Clear.

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

1. People v. Wilson, No. 09-2637 FC (Macomb Cty. Cir. Ct. July 6, 2012)
2. People v. Wilson, No. 309493 (Mich. Ct. App Apr. 18, 2012)
3. People v. Wilson, 494 Mich. 853; 830 N.W.2d 383 May 24, 2013
4. Wilson v. Michigan, No. 14-12490 (E.D. Mich. July 17, 2014)
5. Wilson v. Parish No. 2:18-cv-10906 May 28, 2021
6. Wilson v. Rewerts N. 21-1428 July 20, 2022

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APPENDIX D	People v. Wilson, Docket No. 324856 (May 10, 2016)
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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Barker v. Wingo, 407 U.S. 514 (1972)	<i>passim</i>
Doggett v. United, 505 U.S. 647 (1992)	<i>passim</i>
Klopfer v. North Carolina, 386 U.S. 213 (1967)	
Moore v. Arizona, 414 U.S. 25 (1973)	
Dillingham v. United States, 423 U.S. 64 (1975)	
United States v. Marion, 404 U.S. 307 (1971)	
United States v. Macdonald, 456 U.S. 1 (1982)	
United States v. Loud Hawk, 474 U.S. 302 (1986)	
Cain v. Smith, 686 F.2d 374 (1982) 6th Cir.	
United States v. Graham, 128 F.3d 376 (1997) 6th Cir.	
Maples v. Stegall, 427 F.3d 1020 (2005) 6th Cir.	
Redd v. Sawders, 809 F.2d 1266 (1987) 6th Cir.	
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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 A to the petition and is

☐ reported at 21-14128; 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 E to the petition and is

☐ reported at 21-1828 CV-10906; 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 NO. 324856; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Appeals, Mi court appears at Appendix E to the petition and is

☐ reported at No. 296693; 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 July 20, 2022.

☐ 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: Sep 15, 2022, 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 May 10, 2016.
A copy of that decision appears at Appendix D.

☐ 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

Fed. R. App. P. 34

U.S. Const. Am VI

U.S. Const. Am V

U.S. Const. Am XI V

STATEMENT OF THE CASE

My Case was 5 years 3 months Case # 09-2687-FC, the State Courts and Federal Courts refuse to weigh the 5 years 3 months of Incarceration I suffered the Memory Loss of witnesses, the Destruction of Evidence by the Police. This clearly violate Due Process and the Sixth Amendment Speedy Trial Right. I haven't found any Supreme Court case law where the length of Incarceration wasn't weighed. This Court has made clear that the lower Courts "Must" follow *Barker v. Wingo* 407 U.S. 514, when look in a Speedy Trial Claim. Neither Court weighed my Incarceration, or Memory of witnesses or Destruction of Evidence. This not only violate the Speedy Trial right, but it violate Due Process. This panel of the Sixth Circuit is in conflict with long standing Sixth Cir. Precedent where they always weighed Incarceration in a Speedy Trial Claim. We are talking about 5 years, 3 month of Incarceration, so I ask this Court what do the Sixth Amend. Speedy Trial Right protect me from, is the Sixth Amend. Speedy Trial Right really a Guaranteed Right. I ask for Rehearing in the Sixth Cir. but the still refused to weigh the Incarceration I suffered. How does this not violate Due Process. How is this not Prejudice. The District Court say I have to put "Meat on Bones" to prove that 5 years 3 months was Oppressive. This Court has never said this even in *Barker* this Court said the 5 years in that case was Excessive, and he was out on Bond I was NOT now my case not Excessive, I was Incarcerated 5 years 3 months on this case to not weigh the Incarceration and Prejudice I suffered stand in the face of the Sixth Amend. Guaranteed Protections and everything the Speedy Trial Right has stood for in this Court. What the lower Courts has done in my case has made these Protection mean nothing. To not weigh any of the Prejudice I suffered is a clear Due Process Violation.

I ask this Court to take my case serious and see how not only unfair this was but how the lower Court just disregarded the Sixth Amend. and the (your) Precedent. What is Supreme Court Case law for, what is the Constitution for. I suffered.

(11)

REASONS FOR GRANTING THE PETITION

Justice Thomas stated in *Nguyen v. INS*, 533 U.S. 529 (2001) (We have long identified the "Major Evil" against which the Speedy Trial Clause is directed as undue and Oppressive Incarceration and Anxiety and Concern accompanying public accusation *United States v. Marion*, 404 U.S. 307. "This Court does not and cannot seriously dispute that those two concerns lie at the heart of the Clause. If this is true then this Court should grant my Petition because both concerns are implicated in my case and was (Not Weighed) which Violate Due Process. This Court has made clear that the Sixth Amendment is a Guaranteed Protection *Laurel Hawk*, 474 U.S. 302. Again if this is true how is this not a Violation of the Speedy Trial Right and Due Process. 5 years 3 months of Incarceration on one case, continued Incarceration, Memory loss, Destruction of Evidence. What good is Supreme Court Precedent and Case Law, if a lower court just refuse to follow it. What good is the Sixth Amendment if a court can just Deny it, What good is Due Process if a court can just Deny it, "What Good." Because I represent my self and was found not guilty of murder is not a reason to punish me and deny my Sixth Amend. Rights. This violate Due Process. What the Sixth Circuit has done, not only Violate the Constitution but it now make "Oppressive Incarceration" and "Liberty" a one factor in the Speedy Trial Right. Which clearly Violate Due Process and the Sixth Amend. Protection. Everyone say the Constitution is a Guaranteed Right but is it really or is it only for people that a court like, or is it really a Guarantee. The lower court refuse me Oral Arguments, because they knew they could say with a straight face that 5 years 3 month was not Oppressive to be able to hide behind a Order with out weighing the Prejudice I Suffered, Violate Due Process. I ask this Court for Oral Arguments No way anyone can say 5 year 3 months of Incarceration is not Oppressive. Or this Court should Order the Sixth Circuit to Weigh the Incarceration I Suffered.

The issue of two conflicting lines of authority, one declaring that "limiting the possibility that the defense will be impaired" is an independent and fundamental objective of the Speedy Trial Clause e.g., "Barker" and the other declaring that it is not e.g. Marion, 404 U.S. 307 (1971) Macdonald, supra; Lord Hawk supra.

As Justice Thomas state that, this Court refuses to acknowledge this conflict. "Doggett"

So the lower Courts use defense prejudice as a way to deny my Speedy Trial Claim, without even considering the 5 years 3 months of Oppressive Incarceration I suffered.

This Court made clear in "Barker" there are three forms of Prejudice to consider (1) Oppressive Incarceration, Anxiety and Concern, Defense Prejudice.

Because the Barker Court Stated "the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system

Because of this Quote, lower Court deny Speedy Trial Claims without even weighing the other two forms of Prejudice "Oppressive Incarceration" and Anxiety and Concern.

If Liberty is at the heart of the Clause then this Court must make it clear to the lower courts that defense prejudice is not be all end all of the Speedy Trial Right. They must still weigh the Other forms of Prejudice.

Then the refusal of the lower court to start my Speedy Trial Clock from the time of arrest. I was arrested May, 2009, my trial was held Sep, 2014.

In *Dillingham v. United States*, 423 U.S. 64, this Court stated: "It is either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge that engage the particular protections of the Speedy Trial Provision of the Sixth Amendment."

The lower court says because my case was reversed on appeal then all these years I was incarcerated don't count. Quoting *Macdonald* 456 U.S. 1.

In *Macdonald* he was charged and they drop the charges one year later. Then a grand jury indicted him four years later for the murders.

To be clear when the first indictment was dismissed *Macdonald* was set free for four years when he was indicted again.

Nothing was dismissed in my case. I was never set free, I am indicted same case # 09-2637-FC same charges.

Yet the lower court says because of *Macdonald* case, they not starting my Speedy Trial Claim from the time of my arrest.

This make no sense and it go against everything this Court said in Macdonald.

Here what this Court stated:-

"With no charges outstanding, personal liberty is certainly not impaired to the same degree as it is after arrest while charges are pending.

After the charges against him are dismissed a citizen suffers no restraints on his liberty and is no longer subject of public accusation.

I was never set free, my case was never dismissed how on earth can any of the lower courts think Macdonald case and mine is the same.

Dismissal and Reversal are different this make no sense that the lower court couldn't know and see this.

If anything the Macdonald case prove that my right to a Speedy Trial was violated.

* This Court must and should make clear the difference between a Dismissal of a Indictment and a Reversal of a Indictment.

Because it's clear the lower courts don't know the difference. I was continually held since I was arrested back in 2009, until my trial 2014

Macdonald was free, I was not how is that the same.

Not only is this erroneous, the issue of the lower court decision will hurt others in similar situation.

Once a defendant is arrested and held he is protected by the Sixth Amendment, and this court should make it clear that the Speedy Trial Protection is not lost because a case was reversed, and the defendant is still being held from date of arrest.

Everything, or ruling this court has made on this issue, the lower courts are in conflict with it.

In every other case in the Sixth Circuit they started the Speedy Trial clock from the time of arrest.

At what point does this become a clear Due Process violation that this court must decide or act?

These issues I bring before this court is important not only to me but to others who will come behind me.

Plus the issue of what is the actual core concern of the Speedy Trial is Liberty or Defense Prejudice. This important question needs to be answered.

Also the question if a defendant loses his Sixth Amendment Protection, because his case was reversed on appeal is very important to the Speedy Trial Right.

* Note to the court my case was reversed because the trial court refused me my Constitutional right to Represent my self. So I ^{lose} my Speedy Trial Protection because of this.

There is NO doubt that the lower Courts is in Conflict with Supreme Court Precedent and Case law. There is no doubt that the lower Courts has Conflict Over what is the true Core concern Liberty or Defense Atjudice in Speedy Trial Right. This Court has many options, it can grant Certiorari, and finally make clear what the true Core concern of the Speedy Trial Right is. Or it can send my case Back to the Sixth Cir Appeals Court with orders to Weigh the Prejudice I Suffered Years of Incarceration, Memory Loss, Destruction of Evidence, This Supreme Court made Clear the lower Courts "Must" the Prejudice I Suffered, Has "Barker" lost ^{its} weight and authority, now lower Courts don't have to follow it. My case is more than about erroneous factual finding or misapplication of a Proper stated rule of law. This is a Clear Conflict about what is the Core concern of the Speedy Trial Right. This Court should finally make Clear what it is Because if 5 years 3 months is not Oppressive then this Court should make Clear how long is enough before it become Oppressive Incarceration. **CONCLUSION** I thank this Court and ask at least Weigh the Prejudice I Suffered and tell me my Speedy Trial Right and Due Process was Violated. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dwayne Wilson

Date: Dec. 16 2022