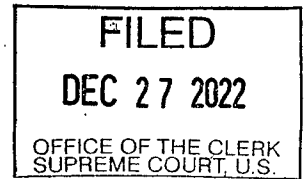


No. 22-6766



IN THE
SUPREME COURT OF THE UNITED STATES

Michael A. Weis — PETITIONER
(Your Name)

vs.

People of the State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Illinois Supreme Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

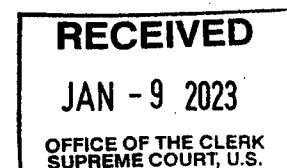
PETITION FOR WRIT OF CERTIORARI

Michael A. Weis #Y44990
(Your Name)

5835 State Rte 154
(Address)

Pinckneyville, IL 62274
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

- I. Did the Illinois courts violate Petitioner's Fourth Amendment Right to be free from illegal search and seizure when the police seized his cell phone from March 2017 and conducted a second, warrantless search in August 2018?
- II. Did the Illinois courts violate Petitioner's federal and statutory rights to Speedy Trial under the Sixth Amendment and 725 ILCS 5/103-5 when the trial court took a Motion to Suppress under advisement for over a year (March 2019 to June 2020) without a Motion to Continue filed by either party during that period and with Petitioner objecting in writing five times?
- III. Did the Illinois courts violate Petitioner's Fourteenth Amendment right to due process in state courts when the court counted delays every month from March 2019 to June 2020, even where Petitioner did not request any delay, and objected to delays?
- IV. Did the Illinois courts go against precedent set in both Illinois and federal courts that "under advisement" delay cannot be attributed to a defendant, as such delay is unilaterally engaged in by the trial 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:

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STATUTES AND RULES

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 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 Illinois Supreme Court court appears at Appendix C 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 _____.

☐ 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 September 28, 2022.
A copy of that decision appears at Appendix C.

☐ 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

- I. U.S. Constitution, Fourth Amendment
- II. U.S. Constitution, Sixth Amendment
- III. U.S. Constitution, Fourteenth Amendment
- IV. Section 103-5 of the Illinois Code of Criminal Procedure of 1963
725 ILCS 5/103-5(b)

"(a) Every person in custody of this State for an alleged offense shall be tried by the court..."

"(b) Every person on bail or recognizance shall be tried by the court having jurisdiction within 160 days from the date defendant demands trial unless delay is occasioned by the defendant, by an examination for fitness ordered pursuant to Section 104-13 of this Act, by a fitness hearing, by an adjudication of unfitness to stand trial, by a continuance allowed pursuant to Section 114-4 of this Act after a court's determination of the defendant's physical incapacity for trial, or by an interlocutory appeal. The defendant's failure to appear for any court date set by the court operates to waive the defendant's demand for trial made under this subsection."

- V. Section 114-4 of the Illinois Code of Criminal Procedure of 1963
725 ILCS 5/114-4(a)

"(a) The defendant or the State may move for a continuance. If the motion is made more than 30 days after arraignment the court shall require that it be in writing and supported by affidavit."

- VI. Illinois Constitution, Article I, Section 2

"Due Process and Equal Protection. No person shall be deprived of life, liberty, or property without due process of law nor be denied equal protection of the laws."

VII.

STATEMENT OF THE CASE

On March 23, 2017, Petitioner was charged in a five count Information with two counts of Aggravated Criminal Sexual Abuse, Class 2 Felonies, and three counts of Criminal Sexual Assault, Class 1 Felonies, against a minor who was over the age of 13, but under 17, in violation of 720 ILCS 5/16-1.60(d) and 720 ILCS 5/11-1.20(a)(4), respectively. The trial was set for September 4, 2018 as of May 2018 on these five counts. The State, after the police performed a second, warrantless search of Petitioner's cellular phone, tendered another nearly 15,000 pages of discovery on Petitioner after the final pre-trial conference on August 27, 2018. Petitioner filed a Motion to Bar or to Continue Trial on August 29, 2018, which was denied, but the trial court granted the continuance to allow Petitioner time to review the new evidence. On October 25, 2018 the State introduced the data from the August 2018 search to a grand jury, and thereafter Petitioner was indicted on the original five counts, as well as three unrelated charges of child pornography. Petitioner filed a Motion to Suppress Evidence relating to the August 2018 warrantless search of his cellular phone and a hearing for that Motion to Suppress was set for March 13, 2019. At this hearing both parties were heard and the trial court took the Motion under advisement. A trial date was set for every month from April 2019 to April 2020 and continued by Trial Orders of the judge. On these Trial Orders, the trial court checked a box to state trial is continued on "motion of defendant", yet no Motion to Continue was ever filed by Petitioner during this timeframe. On Trial Orders from April and May 2019, as well as October 2019, the trial court notes that the March 2019 Motion to Suppress is awaiting disposition and is under advisement by the trial court. On October, November, December of 2019, Petitioner's counsel hand-wrote that defendant announces ready for trial. On January 31, 2020, Petitioner filed a Motion to Dismiss for speedy trial violations due to the trial court refusing to rule on the Motion to Suppress filed January 2019. The trial court denied that Motion to Dismiss on June 4, 2020 without providing reasons, only stating an order would follow. Trial was set for September 24, 2020. The Order denying the Motion to Dismiss was filed by the trial court on September 18, 2020. Petitioner was convicted on all eight counts on September 24, 2020 and sentenced to an aggregate sentence of 37 years

REASONS FOR GRANTING THE PETITION

I. This Court should rule on the merits of this case to solidify precedence that police cannot indefinitely seize evidence, such as a cell phone, and search it years later to find evidence of unrelated crimes. When an initial search is unresponsive to the charges and returns nothing of contraband, this Court should mandate the government immediately return seized items. Indefinite seizures fly in the face of the Fourth Amendment, and this case presents an opportunity to solidify the rules as they apply to electronics. This situation is not a search of a copy made, but an entirely new physical search of the cell phone, along with a second copy made at time of search.

II. This Court should overturn Petitioner's convictions to uphold the essential right to a speedy trial. In this case, Petitioner filed two demands for a speedy trial, objected to delays by the trial court and filed a motion to dismiss due to violation of his right to a speedy trial. In Illinois, any continuance should be in written motion and supply a valid reason for the requested continuance (725 ILCS 5/114-4 et seq). In this case, Petitioner's attorney signed "Trial Orders" stating continuances were requested over a 17 month period while the trial court refused to rule on a January 2019 Motion to Suppress. If Petitioner's attorney did not sign these Trial Orders, Petitioner's bail would have been revoked and Petitioner placed back in jail. Nowhere in these Trial Orders does the trial court supply any reason for the continuance, only that a Motion to Suppress was under advisement. The trial court's 17 month under advisement delay caused the Petitioner's right to speedy trial to be violated.

III. Finally, this Court should overturn this conviction to uphold this

Court's own rulings in *Zedner v. U.S.*, 547 U.S. 489 (2006) and the State of Illinois precedence cases of *People v. Ladd*, 185 Ill.2d 602, 607, 708, N.E.2d 359, 236 Ill. Dec 773 (5th Dist 1999) and *People v. Tamborski*, 415 Ill. 466, 473, 114 N.E.2d 649, 653 (1953). In *Zedner*, this Court upheld the Speedy trial rights of the petitioner because the trial court blanket-approved continuances without good reason. In *Ladd* and *Tamborski*, Illinois courts upheld the speedy trial rights due to delays by the trial courts. Here both issues exist. The trial court was the delaying party and the courts above refused to offer relief even in the face of ~~set~~ precedence. This case is ripe for review and would set the precedent that States cannot override a petitioner's right to a speedy trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Michael A. Weis #Y44990

Date: November 29, 2022