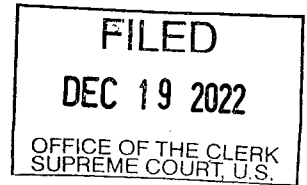


No. 22-7022



IN THE
SUPREME COURT OF THE UNITED STATES

LeAnthony T. Winston — PETITIONER
(Your Name)

vs.

U.S. Dist. Ct of Va. (Nort. Div.) et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Appeal Court (4th Cir.) Richmond
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

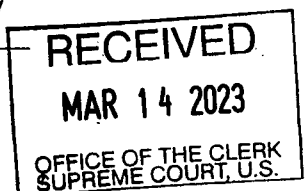
PETITION FOR WRIT OF CERTIORARI

LeAnthony T. Winston
(Your Name)

P.O. Box 019001
(Address)

Hampton, VA 23061
(City, State, Zip Code)

757-373-1354 (message serv.)
(Phone Number)



QUESTION(S) PRESENTED

- 1.) Does a Court deny due process, if it fails to submit a notice of Appeal, when presented?
- 2.) Is it unconstitutional for a Federal prosecutor to indict without notice, during the period after Grand Jury return in the ~~the~~ State prosecution?
- 3.) Does it violate the Sixth Amendment, to terminate a State prosecution in the accused's absence, without notice, once he has plead not guilty?
- 4.) Does Local Rule of Crim. P. 49~~0~~ in Virginia Federal District Courts violate due process, during constitutional challenge in the State, when executed?
- 5.) Should leniency have been applied, when the Chief judge Davis applied a ends of justice continuance (18 U.S.C. § 3161(c)(7)(A)) instead of Judicial Implementation under 18 U.S.C. § 3174?
- 6.) Did the Virginia Circuit Court abuse its discretion, by nolle processing the prosecution in my absence, on the day of my trial?
- 7.) Can ~~the~~ a District Court know of a constitutional violation and provide no remedy.

Continuance: Question(s) Presented

8.) How does the "in all criminal prosecutions" clause apply, guaranteed by the Sixth Amendment of the U.S. Constitution?

~ Barker Test Examination ~

"The Four Factors the Court considers are (1) Whether the delay before trial was uncommonly long; (2) Whether the Government or Defendant is more to blame for that delay; (3) Whether, in due course, Defendant asserted his right to a speedy trial; and (4) Whether he suffered prejudice from the delay." *United States v. Kurara*, 2021 U.S. Dist. LEXIS 6 (quoting *United States v. Shealy*, 641 F.3d 627, 634 (4th Cir. 2011)). Thus, we examine these issues in that order, starting:

(1) The defendant's Sixth Amendment Speedy Trial rights attached on May 27, 2020 (*Getterman*, 2016 U.S. LEXIS at 10), and my trial did not begin until Oct. 26, 2021, well over 17 months later. See *Hackley v. Clarke*, 2020 U.S. Dist. LEXIS 16 (citing *United States v. Woolfolk*, 399 F.3d 590, 597-98 (4th Cir. 2005)); also see *United States v. Haymond*, 139 S.Ct. 2369, 2379 (2019) ("a 'criminal prosecution' continues and the defendant remains an 'accused' with all the rights provided by the Sixth Amendment, until a final sentence is imposed.")

(2) Because the Government employed the Local Criminal Rule 49 to seal the indictment, in violation of the Sixth Amendment guarantee "to be informed of the nature and cause of the accusation", causing the petitioner to be deprived of the liberty interest to invoke Speedy Trial protection when violated, the Government is wholly to blame for any resulting delay.

(3) Because the State Court proceedings were terminated without notice to the defendant, after I had already plead "not guilty", and I filed the timely motion to dismiss pro se on 4/7/2021, after filing ineffective assistance of counsel, because they ignored my request to do so, made earlier.

(4.) This Final Factor has been clearly violated, under 28 U.S.C. § 1652. As Va Code § 19.2-243 attached on Sep. 1, 2020, and its relief was deprived without due process, as the Government has admitted to spoliation of evidence (*Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001)); then the prosecutor used the Grand Jury to obtain pre-trial discovery to better prepare for the trial of a already-indicted defendant. *U.S. v. Gros Constr. Co. of Ohio*, 219 F.3d 300, 314 (4th Cir. 2000). Moreover, I was "adversely affected" by "agency action" transferring me to a facility with a long history of Covid-19 infection, where the facility has deliberately disregarded the Executive Order concerning indoor gatherings, increasing the risk of Covid-19 infection, which lead to my contraction Covid the Month before my trial, and resulting in brain-damage of the petitioner.

Accordingly, the Court should take Judicial Notice pursuant to Rule 201(c) Fed. R. Evid., of the March 8, 2022 U.S. Today Article publishing the Doctors Findings, that Covid-19, even in mild cases, causes brain damage, specifically citing the memory as the area infected. This could not have been discovered by the petitioner with due diligence, prior to trial, as I lacked the ability to receive a medical examination. Nor could I notice the damage to my memory with such short notice. Further, since I am unvaccinated, my Covid was not a mild case, nor would I have had a fair trial pro se, when it is more than likely that I had brain damage.

So, on balance, each of these four factors weigh in favor of the petitioner, warranting relief in the form of Dismissal. *Beckerman*, 2016 U.S. LEXIS at 12 (citing *Strunk v. United States*, 412 U.S. 434, 440, 93 S.Ct. 2260, 37 L.Ed. 2d 56 (1973)).

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

U.S. E.D. Ct. Va. (Norfolk Div.) NO: 21-1785

Judge Mark Davis and Robert Dornier

V.

U.S. Appeal Court, Fourth Circuit (Richmond Div.) 22-1167

Maureen White, Megan Montoya, Jacqueline Zachara, Aidan Lyano - Mickelsen
and Agee (Judge), Wynn (Judge), and Richardson (Judge)

RELATED CASES

U.S. District Court for the Eastern District Court of Virginia
(Norfolk Div.) 2:20-cv-00108

(Prosecutor)

Judge Dornier, Judge Miller, and Montoya V.

Norfolk Circuit Court of the Commonwealth of Virginia

2:20 cv 323

Judge Davis and Magistrate Judge S.V. Perry (State Court), Judge Lammertini (State)
Mrs. Montoya (Prosec.) (Federal)

V.

U.S. Appeal Court for the Fourth Circuit (Richmond Div.) Case N. 21-1785

Judge Agee, Wynn, and Richardson

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	7
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	8
STATEMENT OF THE CASE	9
REASONS FOR GRANTING THE WRIT	10
CONCLUSION.....	11

INDEX TO APPENDICES

APPENDIX A *Appeal Court of United States decision*

APPENDIX B *Appeal Court of Virginia decision*

APPENDIX C *U.S. District Court decision*

APPENDIX D *Relevant Law*

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Wilson v. Scherf</i> , 365 U.S. 385, 386, 81 S.Ct. 632, 5 L.Ed.2d 620 (1961)	
<i>Printz v. United States</i> , 521 U.S. 924, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997)	
<i>Beckerman v. Montana</i> , 136 S.Ct. 1609, 194 L.Ed.2d 723 (2016)	
<i>Zedner v. United</i> , 547 U.S. 489 (2006); <i>Morrissey v. Brewer</i> , 408 U.S. 471, 481, 92 S.Ct. 2573, 33 L.Ed.2d 484 (1972)	
<i>Brewer v. Sung</i> , 2022 U.S. Dist. LEXIS 127395	

STATUTES AND RULES 5 U.S.C. § 706(2)(A)-(D); 18 U.S.C. § 241, 18 U.S.C. § 371
42 U.S.C. § 1985, 18 U.S.C. §§ 3161-3174.

Rule 57(c)(2)-(b), 26.2., 52(b), 46(h), 4(b)(1)(c) Fed. R. Crim. P.
Local Rule Crim. P. 49.

OTHER See Exhibits

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 8 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 8 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 _____ 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 Oct. 18, 2011, rehearing en banc

☐ 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: Oct. 18, 2011, and a copy of the order denying rehearing appears at Appendix 1.

☐ 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

- 1.) Article I, §9, cl. 2: The privilege of the writ of habeas corpus shall not be suspended... U.S. Constitution.
- 2.) The First Amendment to the U.S. Constitution provides the right to "petition the Government for a redress of grievances".
- 3.) The Fourth Amendment provides protection against "illegal search and seizure".
- 4.) The Fifth Amendment due process and double jeopardy clause prohibits the Federal indictment on 11/11/2020. (i.e. Sham Prosecution)
- 5.) The Sixth Amendment's speedy trial right guaranteed in all criminal prosecutions was violated by both the indictment during state prosecution, and the termination of the state proceedings. As well as the use of rule 49 of Local Rule of Criminal Procedure violates the right to "be informed of the nature and cause of the accusation".
- 6.) The 10th Amendment's "nor prohibited by it to the States, are reserved to the States respectively."
- 7.) Finally, §1 of the 14 Amendment prohibits the method the State employed the Nolle prosequi, terminating the procedure. (i.e. Rights Shall Not Be Abridged)
- 8.) 18 U.S.C. § 241 and § 371 "free exercise" of rights conspired to be deprived.
- 9.) 5 U.S.C. § 706(2)(A) - (D) Judicial Review of agency action. See 5 U.S.C. § 702.

STATEMENT OF THE CASE

(1.) The Federal Indictment from (Megan Montoya) Nov. 19, 2020, executed under Local Rule 49 Fed. R. Crim. P., violated The Sixth Amendment of the U.S. Constitution, and because the State Court (Va. Norfolk Circuit Court) Judge Lammitti terminated the proceedings on motion of the attorney for Virginia, without notice to the accused, violated due process protection.

(2.) The General Orders of the Chief Judge (Mark Davis) of the Eastern District Court of Virginia (Norfolk Division) for the U.S., issued between Nov 16, 2020 - Feb. 28, 2021 invoking a ends of justice continuance was a abuse of discretion, illegal, and unconstitutional. (a) Because he in his executive roll of Chief Judge may not invoke judicial power authorized to "the appropriate judicial officer" by Congress, as he performs none of the functions described therein. 18 U.S.C. § 3161(a). (b) 18 U.S.C. 271 prohibits this conduct, as well as Rule 57(b) Fed. R. Crim. P. (c) Congress authorized a Chief Judge to invoke such a suspension through 18 U.S.C. § 3174, subject to scrutiny of the judicial council, and appropriate limitations. Id. (d) This was perposital discrimination, designed to impair Speedy Trial exercise of the Sixth Amendment, in violation of 18 U.S.C. § 3173. See *United States v. #8,850*, 461 U.S. 555, 564, 103 S.Ct. 2005, 76 L. Ed. 2d 143 (1983).

(3.) The Federal Courts having threshold jurisdiction may not learn of a violation of Federal Right or Law, yet fail to cure the wrong done, or offer relief. *Harris v. Nelson*, 89 S.Ct. 1082, 22 L. Ed. 2d 286, 394 U.S. 286 (1979); also see U.S. Const. Art. I, § 9, Cl. 2 ("The privilege of the Writ of Habeas Corpus shall not be suspended...."); also see *Trees v. SEIU* Local 503, 570 F.Supp. 3d 954 (9th Cir. 2021).

(4.) In *Wilson v. Schmeidler*, 365 U.S. 385, 386, 81 S.Ct. 632, 5 L. Ed. 2d 620 (1961), this Court prohibited the same conduct of the attorney for the U.S. to Wilson, holding that they lacked jurisdiction. So this opinion should still hold.

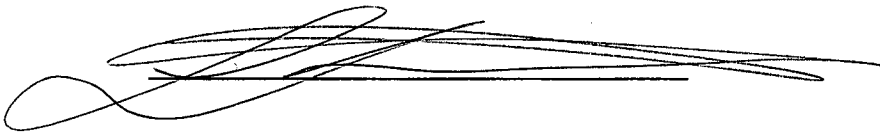
REASONS FOR GRANTING THE PETITION

- 1.) In *Wilson v. Schmeidler*, the Supreme Court held that the same conduct that was demonstrated by the U.S. Attorney Megan Montoya in this prosecution, as it is actually the same conduct prohibited to Wilson. 365 U.S. at 385; also see *Besterman v. Montana*, 136 S.Ct. 1609 (2016) (The Sixth Amendment right to a "Speedy trial guarantee protects an accused from arrest or indictment through trial").
- 2.) United States Constitution, Art. I, § 9, cl. 2 ("The privileges of the Writ of Habeas Corpus shall not be suspended...."); also see *Harris v. Nelson*, 89 S.Ct. 1082, 22 L. Ed. 2d 286, 394 U.S. 286 (1979).
- 3.) The Fourth Amendment ordinarily requires that Police Officers get a warrant before entering a home without permission. *Lange v. California*, 141 S.Ct. 2011, 210 L. Ed. 2d 486 (2021), also see *Bovatt v. Vermont*, 2020 U.S. LEXIS 5057 ("So, to comply with the Constitution, law enforcement agents not only need a warrant, exigent circumstances, or consent to enter a home, they usually need one of those things to reach the home's front door in the first place.") The agent's complained of sought to deprive this right by intentionally creating a objectionable scenario of exigent circumstances, by fraud in deliberate attempt to oppress free exercise of constitutional protection. This should have been viewed as a bar to use in a court of law, as I filed a suppression of any and all evidence derivative of this conduct, prior to federal indictment, that was never heard.
- 4.) The U.S. Local Rule 49 of Criminal Procedure in Virginia, authorizing my indictment under Seal, Violated Rule 57(a)(2)-(b) Fed. R. Crim. P., as it violates both State and Federal law. See Va. Code § 53.1-210, also see 28 U.S.C. § 2283. This is a clear denial of the 5th Amendment by the Federal Government, and the 14th Amendment by the State Government, requiring relief. See Exhibit

CONCLUSION

What happens to the Sixth Amendment rights that attached in the State Court upon Federal Indictment under Local Rule Crim.P. 49? Because Federal prisoners lacked State Law Research. The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke.

Date: 2-28-2023