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In re: Lee Anthony T. Winston # 20492509

No. 22-7022

v.

Motion For Rehearing

United States District Ct. E.D. Va.

Now comes the petitioner, by way of pro se motion, pursuant to Rule 44.2 Sup. Ct. R., moving for the Court to issue a ORDER for rehearing, based upon the following:

I, hereby swear under penalty of perjury that I am the petitioner, and that this motion is being presented in good faith, due to the serious questions of right and law I hope to present better in summary.

1.) At the heart of this complaint, is the guarantee of the SIXTH Amendment of the United States Constitution, breached by the U.S. Dist. Ct. E.D. Va. deliberate indifference to the Findings in Wilson v. Schnettker, 365 U.S. 381, 5 L. Ed. 2d 620, 81 S. Ct. 632, reh. den. 365 U.S. 890, 6 L. Ed. 2d 200, 81 S. Ct. 1025 (1961) ("to interfere with or embarrass threatened proceedings in state courts").

2.) By issuing an indictment under Seal, executed in violation of Rules 4 and 5 Fed. R. Crim. P., and arresting me during the period for which I was allowed to appeal the Unconstitutional termination of the trial proceedings, without procedural due process.

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SUPREME COURT, U.S.

3.) The Interstate Agreement on Detainer (IAD) 18 U.S.C. Appx, which has been agreed to by the United States, the substantive rights that include the Sixth Amendment right to be "informed of the nature and cause of the accusation."

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Federal Question

Does the "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial" cease during continuous confinement?

Case History

The petitioner was arrested by both State and Federal Law Enforcement on May 27, 2020, without a due process hearing (i.e. Preliminary hearing) until Sep. 1, 2020, where the State Constitution and statutory right to a speedy trial, Va. Code § 19.2-243 attached. However, though the Court scheduled the trial date for Dec. 3, 2020, and I filed for a suppression hearing on or about Oct. 23, 2020. Then, on Nov. 19, 2020 the U.S. Dist. Ct. E.D. Va. triggered my Sixth Amendment Speedy Trial rights, by issuing a Federal indictment under Seal, in violation of Rule 57(a)(2) Fed. R. Crim. P....

Then, when the State Court entered an ORDER to nolle prosequi, on motion of the Government, without notice to the defendant, or due process for the suppression hearing. Further, I was immediately arrested by the U.S. prior to being given any notice of the termination of the proceedings by the State, in which the post judgment proceedings could be exercised, and a direct appeal of the termination could be exercised.

ANALYSIS

The IAD Governor in Va. Code § 53.1-210, required procedural due process, to be in with notice, *White-Bey v. Roanoke City Cir. Ct.*, 2006 U.S. Dist. LEXIS 11041, 2006 WL 482471, at *1 (W.D. Va. Feb. 25, 2006). Accordingly, I ask this Court to accept the following examination, based upon the four factors of

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Barker. Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 1182, 33 L. Ed. 2d 101 (1972).

(a) Length of Delay, approx. 7 month lapse between State arrest and Federal indictment, and the general rule "that a delay of eight months or longer is presumptively prejudicial." Hackley v. Marke, 2020 U.S. Dist. LEXIS 16 (quoting United States v. Woolfolk, 399 F.3d 590, 597-98 (4th Cir. 2005)). I upon examination must present the Va. Constitutional right to a speedy trial, in which requires "Where a district court has found that there is probable cause to believe that an adult has committed a felony" (which happened on Sep. 1, 2020) then "the accused, if he is held continuously in custody thereafter, shall be forever discharged from prosecution for such offense if no trial is commenced in the circuit court within five months from the date such probable cause was found by the district court" which should be enforced under the In all criminal prosecutions of the Sixth Amendment guarantee.

(b) Whether the Government or the defendant is more to blame for the delay? Ultimately the decision to prosecute fall to the Government, so they are more to blame for the delay....

(c) Whether, in due course, Defendant asserted his right to a speedy trial? Since the defendant has never been given the chance to present this test, prior to the deprivation of the Va. Constitutional right to a speedy trial, which triggered the Sixth Amendment Speedy Trial right. Nor have I ever been given a procedural due process hearing where I could fully argue this test.

(d) Whether he suffered prejudice from the delay, there is a fundamental right to be innocent until proven guilty, which is breach when the court takes away someone's liberty, based upon an accusation, then

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terminates the proceedings with a finding of other than innocents, to allow a second prosecution by another Sovereign, based upon the same conduct and evidence.

As the examination for prejudice, I must present this question to the Court which evokes the very spirit of the Sixth Amendment:

What happens to the time clock tolled in the State Court upon Federal arrest, if the accused is continuously confined, and the State terminates its prosecution without notice?

Because in *United States v. Haymond*, the Supreme Court held "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," 139 S. Ct. 2369, 2379 (2019); also see *Behterman v. Montana*, 136 S. Ct. 1609, 194 L. Ed. 2d 723 (2016) ("The speedy trial guarantee protects an accused from arrest or indictment through trial"). Thus, the total period to be considered is from May 27, 2020 - November 4, 2021, which is over 17 months of continuous confinement. In a clear violation of the 6th Amendment, and the due process clause. See *Lopic v. Ashcroft*, 355 F.3d 1075, 1087-88 (7th Cir. 2004).

Closing Argument

Infringing Constitutional rights generally constitutes irreparable harm. *Huss v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987); *Leaders of a Beautiful Struggle v. Balt. Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2012); *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L. Ed. 2d 547 (1976), also see *Rublero-Munales v. Boente*, 677 F. App'x 849, 852 (4th Cir. 2017) (Per Curiam). Recognizing that due process mandates "a meaningful opportunity to present

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a claim"). Thus, because of the plain conflict with the decision of the Supreme Court, and controversial actions of the district court, this court should award the writ, and relief required by the law and constitution.

Certificate of Service

I, hereby swear under penalty of perjury that the information herein is true, and that on this 10th day of May, 2023, that motion was entered into the institutional mailing system.

5/10/2023



In re Lee Anthony T. Winston #20492-509

No. 22-7022

v.

Affidavit of Good Faith in
Filing Rehearing en banc

U.S. Dist. Ct. E.D. Va.

I, hereby swear under penalty of perjury that I am the petitioner in this case, and the following is true and correct:

This petition/motion has been filed in good faith, because the Petitioner has been irreparably harmed by the conduct complained of, which inevitably lead to a wrongful conviction, and the lower courts have continuously deprived me of the ability to fully and fairly present my claim, in violation of 18 U.S.C. § 242. Seeking to keep me wrongfully imprisoned for years without the opportunity to present evidence of conduct prohibited by this Court, in a hearing where evidence can be presented to prevent further injury. Moreover, the continuous deprivation of liberty without due process is indeed horridous within the meaning of 42 U.S.C. § 2000dd, because it is cruel and unusual punishment defined by the 8th Amendment. Accordingly, I seek this Court to merely Order that I be given a evidence hearing, as it will finally put to rest, the legality of my imprisonment.

Certificate of Service

I, hereby certify that on the 22nd day of June, 2023, that this motion was entered into the institutional mailing system.

6/22/2023

