

JUL 07 2023

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No. 22-7413

IN THE  
SUPREME COURT OF THE UNITED STATES

NATHAN FLEMMING

— PETITIONER

Vs.

STATE OF TENNESSEE

— RESPONDENT

PETITION FOR REHEARING OF ORDER DENYING WRIT OF CERTIORARI TO

UNITED STATES SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

PRO-SE PETITIONER:

Nathan Flemming

# 568387

T.C.I.X.

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ORIGINAL

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1965

111-0-5039

CHARGE OF THE CERBERUS

The petitioner herein respectfully moves this court for an order (1) vacating its denial of the petition for writ of certiorari, entered on June 23, 2023, and (2) granting the petition. As grounds for this motion, petitioner states the following:

None of my other attorneys will help me; In fact, they have said that I am simply unlucky. (See attached exhibit. A letter that my Trial attorney sent me and my post conviction attorney refused to submit to the Court.)

The grant of certiorari in *Betterman v. Montana* 557 U.S. —, 136 S.Ct. 582, 193 L. Ed. 2d 464 (2015).

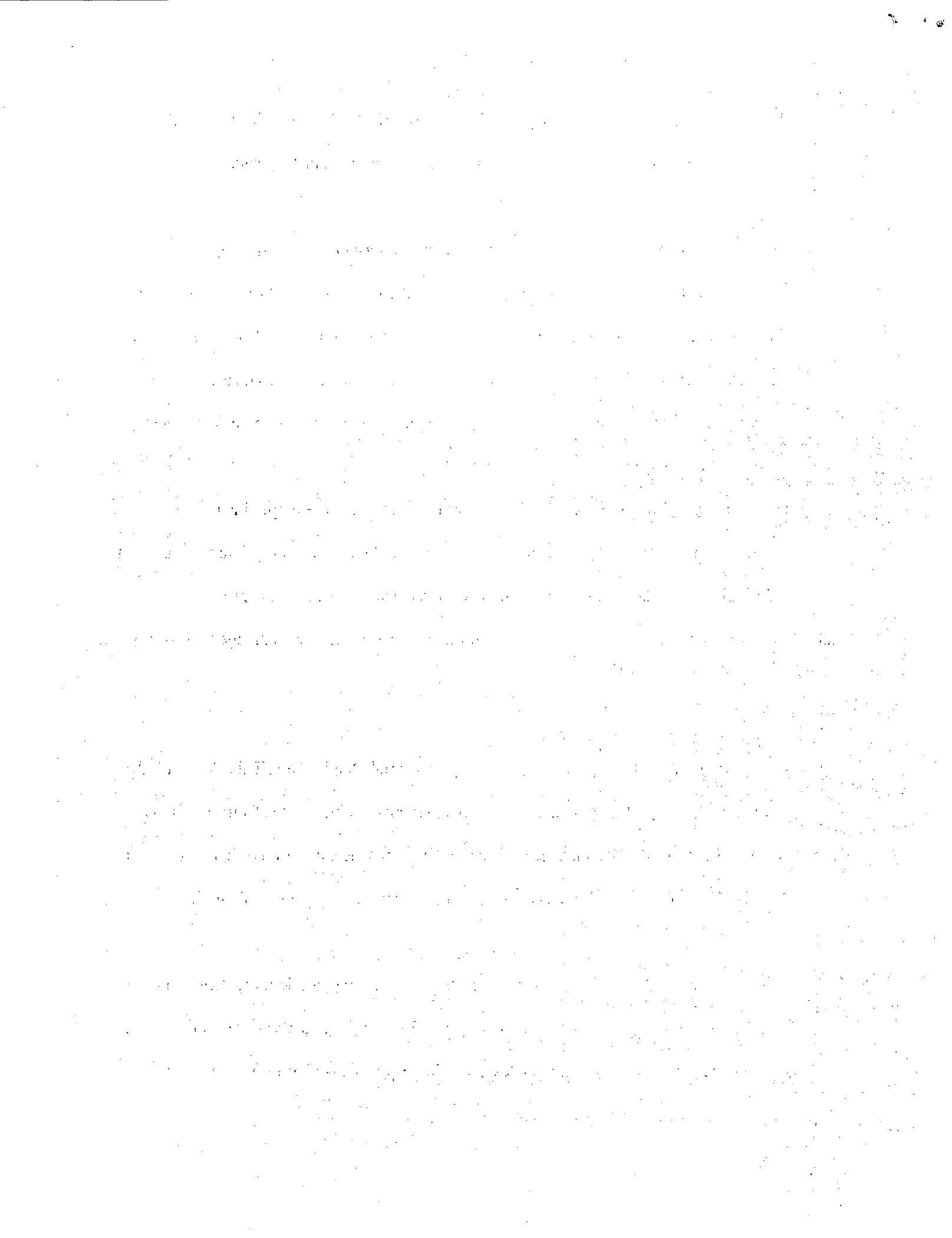
On June 20, 2023, this Court denied certiorari in the instant case, however in 2015, this court granted Certiorari in *Betterman v. Montana* 557 U.S. —, 136 S.Ct. 582, 193 L. Ed. 2d 464 (2015),

limited to the question whether:

the speedy trial clause applies to a sentencing delay in which this court held that the clause does not apply to a delayed sentenced... After a conviction, a defendant's due process right to liberty, while diminished, is still present. He retains an interest in a sentencing proceeding that is fundamentally fair, 136 S.ct, 1609.

The same question is posed and pending before this court in the following petition for writ of certiorari filed in march term 2023: *Flemming v. Tennessee* No. 22-7413.

While the instant case involves the constitutionality of the Due Process Clauses of the Sixth and Fourteenth Amendments (§T.C.A.40-35-102 as incorporated by §40-35-101) of the Tennessee Criminal Sentencing Reform Act 1989, much of the same considerations are involved as will be before this court as in *Betterman* when it reconsiders the validity of the Tennessee Criminal Sentencing Act requirements. In the earlier decision now to be reconsidered, *Betterman v. Montana* 557 U.S. —, 136 S.Ct. 582, 193 L. Ed. 2d 464 (2015), this court in part premised the validity of the Due Process Clause requirements to sentencing delays by referring to *Baker v.*



Wingo, 407 U.S. 514, 530-533, 92 S.ct. 2182, 33 L.Ed. 2d 101(1972), where the basic validity of the Due Process Clause to sentencing was sustained as a backdrop against exorbitant delay.

Indeed, the whole tenor of the matters reviewed in *Betterman* bears a striking resemblance to the considerations necessarily involved in the instant case at bar. Does a person retain an interest to a prompt sentencing proceeding that is fundamentally fair? Does the fact that the Due Process Clause which is incorporated into Tennessee statutes and rules direct the courts to "impose sentencing without unnecessary delay", whereas a violation of such laws and rules excuse or justify the violation of a constitutional right?

The similarity of the issues in my case and in the *Betterman* case amply justifies a reconsideration of the denial of certiorari here. In fact, it would be quite appropriate for this court to hear and consider the instant case as it would had *Betterman* preserved a due process challenge, thereby exploring the appropriate test for a Due Process clause challenge to a speedy sentencing for the law of the land.

### **Conclusion**

There is no uniform law of the land regarding Post Trial Due Process. This Court has the authority, and now the opportunity to establish such a precedent. Without this Court's action a state court can postpone a defendants appeal or sentencing until the expiration of his sentence or indefinitely. This is evidenced by Tennessee's delay in my case and by Montana's in the *Betterman* case.

For the above reasons and the reasons set forth in the original petition, the denial of certiorari should be reconsidered to the end that this case be heard and to clarify the constitution and the right to due process for Post Trial delays. Petitioner prays this Court for such relief.

**RULE 44.2 CERTIFICATION**

Undersigned petitioner here certifies that, Pursuant to Rule 44.2 Rules of the Supreme Court, this motion to rehear is limited to a substantial ground and is presented in good faith and not to delay.



Nathan Flemming  
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