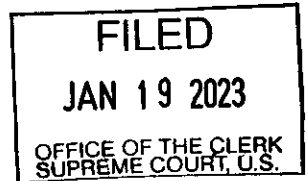


No. **22 - 7495**



IN THE
SUPREME COURT OF THE UNITED STATES

Rudolfo Gil — PETITIONER
(Your Name)

VS.

Lumpkin, Director TDCS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Rudolfo Gil
(Your Name)

11950 FM 998
(Address)

Dalhart TX 79020
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. On his COA, did petitioner (Gill):
 - a) make a substantial showing of the denial of his Constitutional rights;
 - b) show that reasonable jurists should have agreed that the issues presented were adequate to deserve encouragement to proceed further; and
 - c) show that reasonable jurists could debate whether the petition should have been resolved in a different manner?
2. Does U.S. S.Ct. Rule 10(c) apply to this instant case in that the 5th Circuit decided an important question of federal law that has not been, but should be, settled by this Court or has decided an important federal question in a way that conflicts with relevant decisions of this Court, namely, *Indiana v. Edwards*?

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

Indiana v. Edwards, no 07-208, 128 S.Ct. 741 (2007).
Edwards v. State, 866 N.E. 2d 252 (Ind 2007).
Indiana v. Edwards, 554 U.S. 164, 128 S.Ct. 2379, 171 LEd 2d 345 (2008).
Massey v. Moore, 348 U.S. 105, 75 S.Ct. 145, 99 LEd 135 (1954).

* * *

Gill v. Lumpkin, U.S.D.C. No. 5:19-cv-101
Gill v. Lumpkin, U.S. Court of Appeals 5th Cir No. 22-10407

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A - *Opinion of the United States Court of Appeals*

APPENDIX B - *Opinion of the United States District Court*

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Indiana v. Edwards, no 07-208, 128 Sct 741 (2007)	
Edwards v. State, 866 NE. 2d 252 (Ind 2007)	
Indiana v. Edwards, 554 US 164, 128 Sct. 2379, 171 LEd 2d 345 (2008)	
Massey v. Moore, 348 US 105, 75 S.Ct. 145, 99 LEd 135 (1954),	

West's Key number reference

STATUTES AND RULES Criminal Law 641.6(2)7

U.S. Tex 1954. One who is not insane in sense of being incapable of standing trial may nevertheless lack capacity to stand trial without benefit of counsel. Amend 14. Massey v. Moore, 348 US 105, 75 S.Ct. 145, 99 LEd 135

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 _____; 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 B 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 _____ 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 October 21, 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: _____, 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 60 days from 9/27/23 (date) on 4/2/23 (date) in Application No. 21A 21A 21A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**: N/A

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

STATEMENT OF THE CASE

Though indicted on 3 counts of sexual assault/Bigamy under Tex. Penal Code (T.P.C.) 22.011(f) on April 28, 2015, petitioner (Gill) withstood a 3-day trial and was convicted of 3 counts of sexual assault under T.P.C. § 22.011(a) on September 13, 2017 in case DCR-5301-15.

Judgment of conviction wrongfully reflected Gill had taken a guilty plea bargain. Thus, his right to appeal being denied.

On September 8, 2018, Gill filed a state writ of habeas corpus application, where he claimed, *inter alia*, a denial of his speedy trial right and a denial of his right to counsel.

On January 9, 2019, the Texas Court of Criminal Appeals denied said application without written order on the findings of the trial court without hearing.

On May 17, 2019, Gill signed his federal petition for writ of habeas corpus, which was denied on January 31, 2022 and wherein it is stated that:

"[I]n the States Answer to State writ of Habeas Corpus [r]espondent contends that [Gill's] [speedy trial] ground is likewise unexhausted (Dkt no. 15 at 10-14). The [U.S. District] Court is not persuaded. Despite the trial court's finding to the contrary (Dkt no 15-1 at 57, ¶ 39), the state habeas petition does allege a violation of [Gill's] right to a speedy trial under the Sixth and Fourteenth Amendments (Id at 33). That the majority of the cases [Gill] cited were state cases may have led the trial court to conclude that a federal claim was not being asserted. In any event, both federal and state constitutions guarantee an accused the right to a speedy trial and Texas courts apply the same test set forth in *Barker v. Wingo* [I]. The trial court analyzed the speedy trial claim and determined that the delays due to proceedings to determine and restore [Gill's] competency to stand trial were proper. (Id at 56-57). In other words, there was no violation of [Gill's] right to a speedy trial. Gill has not made any attempt to meet his burden under § 2254 of showing that the decision was contrary to clearly established federal law.⁵ (Note no. 5. Gill simply asks for de novo review or an evidentiary hearing (to which he is not entitled)). (Docket no 20 at 6.). He is not entitled to any relief on this ground." See Order Dismissing Petition for Writ of Habeas Corpus pp. 8-9.

As to this issue, the circuit judges assert that:

"[a]s Gill fails to make the required showing for a COA, we do not reach his assertion that the district court erred by failing to conduct an evidentiary hearing." See Appendix A

If that is the case, then it follows that Gill was denied trial counsel, which he never waived, because the standard for competency to stand trial is lower than the standard for competency to represent oneself in light of *Indiana v. Edwards*.

REASONS FOR GRANTING THE PETITION

In other words, Gill was denied trial counsel because the state should have insisted "that [Gill] proceed to trial with counsel, where the state court had found [him] mentally competent to stand trial, if represented by counsel, but not mentally competent to conduct that trial," in light of *Indiana v. Edwards*, 554 US 164, 128 S.Ct. 2379, 171 L.Ed. 2d 345 (2008). Therefore this Court should grant certiorari.

In upholding the decision of the U.S. District Court, the 5th Circuit Court of Appeals is in conflict with decisions of other appellate courts and has so far departed from the accepted course of judicial proceedings, and sanctioned such a departure by the U.S. District court, as to call for an exercise of this Court's supervisory power because a defendant cannot be allowed to represent himself upon a mere determination that "proceedings to determine and restore a defendant's competency to stand trial [were] proper," since *Faretta* and other cases have made it clear that the right of self-representation is not absolute. *Faretta v. California*, 422 U.S. 806, 835 n.46, 95 S.Ct. 2525 (no right to abuse the dignity of the courtroom").

The importance of this case is not only important to Gill but also to others similarly situated where a trial court has allowed them self-representation upon a finding of competent to stand trial — in that one might not be insane in the sense of being incapable of standing trial and yet lack the capacity to stand trial without benefit of counsel. See *Godinez v. Moran*, 509 U.S. 389, 399-400 n.10.

If a defendant has sufficient mental competence to stand trial and he insists on representing himself during trial, does the State have a Constitutional duty to limit his self representation right by insisting upon representation by counsel at trial on the ground that he lacks the mental capacity to conduct his trial defense unless represented? If yes, then the State denied Gill his right to counsel. Thus, this petition should be granted.

In his pro se COA filings Gill challenged the district court's determination that his § 2254 application was time-barred in that he asserted he was entitled to equitable tolling.

He should not be made responsible for the State's mistake in stating that Gill had taken a guilty plea, and therefore waived his right to an appeal, as reflected on original Judgment of Conviction.

The Judgment did not become final when the time for seeking direct appeal became final, October 13, 2017, because the State denied him his right to appeal.

As to the merits of his Speedy trial denial and denial of counsel claims, in its findings, the trial court stated that speedy trial claim was unexhausted because it did not allege a violation of Gill's right to a speedy trial under the 14th Amendment. Therefore, in adopting the USDC's stance that "there was no violation of [Gill's] right to a Speedy trial. [He] has not made any attempt to meet his burden under § 2254 of showing that the decision was contrary to clearly established Fed. law" because Gill couldn't make such showing, being that the State adjudicated said claim as unexhausted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kudrinski

Date: March 28, 2023