

No. 22-7778

ORIGINAL

Supreme Court, U.S.
FILED

JUN 13 2023

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

KENNETH UEDING — PETITIONER

VS.

THE PEOPLE OF THE STATE OF COLORADO
THE ATTORNEY GENERAL OF THE STATE OF COLORADO—
RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Tenth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Kenneth Ueding #141324

Centennial Correctional Facility

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QUESTION(S) PRESENTED

In the first Issues questions of discussion for this court to consider is: Did Mr. Ueding hold the right to challenge his state convictions in a habeas corpus pursuant to 28 U.S.C. 2254? Was the United States District Courts dismissal of the action without authority and caused prejudice? This court shall find cause in the independent topics of 1. Presentation of a Constitutional Speedy Trial in the State Trial Court; 2. Presentation of a Constitutional Speedy Trial in the Highest State Court; 3. The Right to File and Available Relief in a Habeas Corpus for Violations of Constitutional and State Laws; and 4. Prejudice of Habeas Corpus upon the Filing of the Magistrate Judge's Recommendation to Show a Schematic Whole in the Dismissal of Ueding's Claim.

In the second Issues questions of discussion for this court to rule is: Did the state trial court violate Ueding's constitutional and statutory right to speedy trial which this court holds the power to rule on federal and state rights to his claim. And does Mr. Ueding request and is he entitled to the remedy of a discharge from custody. In this issue the topics of independent discussions for a schematic whole are: 1. The Arraignment Procedures and Dates; 2. The Preliminary Hearing Procedures and Date; 3. The Speedy Trial Process and Calculations; and 4. Preservation of Right and Remedies.

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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APPENDIX A

The Appellate Decision was decided on December 9, 2021 in criminal appellate case 2018CA382 and is on the record at ECF No. 10-7.

APPENDIX B

The Colorado Supreme Court denied the Writ of Certiorari on April 11, 2022 in case 2022SC30 and is on the record at ECF No. 10-8.

APPENDIX C

The United States District Court for the District of Colorado dismissed Mr. Ueding's Habeas Corpus Pursuant to U.S.C. 2254 challenging state convictions on November 3, 2022 in case 22-cv-02166-LTB-GPG and is on the record at ECF No. 18.

APPENDIX D

The United States Court of Appeals for the Tenth Circuit denied Mr. Ueding's request for a certificate of appealability on March 28, 2023 in case 22-1417 and is on the record at ECF No. 28.

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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 (2022-cv-02166-LTB-GPG and 22-1417):

The opinion of the United States Court of Appeals for the Tenth Circuit appears at Appendix D 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 for the District of Colorado 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.

For cases from state courts (cases 2017CR948, 2017CR1781, and 2017CR4361; 2018CA382; and 2022SC30):

The opinion of the highest state court (Appeal) 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 Colorado Supreme 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.

JURISDICTION

For cases 22-cv-02166-LTB-GPG and 22-1417 from federal courts:

The date on which the United States Court of Appeals decided my case was March 28, 2023.

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. _____.

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

For cases 2017CR948, 2017CR1781, 2017CR4361, 2018CA382, and 2022SC30 from state courts:

The date on which the highest state court decided my case was April 11, 2022. A copy of that decision appears at Appendix B.

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. _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

•United States Constitution, Sixth Amendment-Rights of the Accused:

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.

•Colorado Constitution, Article II, Section 16 Criminal Prosecutions-Rights of the Defendant:

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to have process to compel the attendance of witnesses in his behalf; and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

•28 U.S.C. 2254 State Custody; Remedies in Federal Courts:

(b) (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted unless it appears that-
(A) the applicant has exhausted the remedies available in the court of the state

•Colorado Codes of Judicial Conduct

Canon 2. A judge shall perform the duties of judicial office impartially, competently, and diligently.

Rule (2.2): Impartiality and Fairness,

A judge shall uphold and apply the law.

Rule (2.5): Competence, Diligence, and Cooperation.

A judge shall perform judicial and administrative duties competently and diligently.

•Colorado Rules of Criminal Procedures Rule 35. Postconviction Remedies.

(c) (3) One who is aggrieved and claiming either a right to be released or to have a judgment of conviction set aside on one or more of the grounds enumerated in section (c) (2) of this Rule may file a motion in the court which imposed the sentence to vacate, set aside, or correct the sentence, or to make such order as necessary to correct a violation of his constitutional rights. The following procedures shall apply to the filings and hearings of such matters:

(VI) The court shall deny any claim that was raised and resolved in a prior appeal or postconviction proceeding on behalf of the same defendant, except the following:

- (a) Any claim based on evidence that could not have been discovered previously through the exercise of due diligence; or
- (b) Any claim based on a new rule of constitutional law that was previously unavailable, if that rule has been applied retroactively by the United States Supreme Court or the Colorado Appellate Court.

•Colorado Rule of Criminal Procedures Rule 10. Arraignment.

Following preliminary proceedings pursuant to the provisions of Rules 5, 7, and 12, the arraignment shall be conducted in open court, informing the defendant of the offense/s with which he is charged, and requiring him to enter a plea to the charge.

•Colorado Rules of Criminal Procedures Rule 5. Preliminary Proceedings.

(a) Felony Proceedings.

(2) Appearance Before The Court. At the first appearance of the defendant in court, it is the duty of the court to inform the defendant and make certain that the defendant understands the following:

- (I) The defendant need make no statement and any statement made may be used against the defendant.
- (II) The right to counsel;
- (III) If indigent, the defendant has the right to request the appointment of counsel or consult with the public defender before any further proceedings are held;
- (IV) Any plea the defendant makes must be voluntary and not the result of undue influence or coercion;
- (V) The right to bail, if the offense is bailable, and the amount of the bail that has been set by the court;
- (VI) The nature of the charges;
- (VII) The right to a jury trial;
- (VIII) The right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged was committed by the defendant.

•Colorado Revised Statute 18-1-1001. Protection Order Against Defendant.

- (1) There is hereby created a mandatory protection order against any person charged with a violation of any of the provisions of this title, which order shall remain in effect from the time that the person is advised of his or her rights at arraignment or the person's first appearance before the court and informed of such order until final disposition of the action.

•Colorado Revised Statute 16-7-208. Failure or Refusal to Plead.

If a defendant refuses to plead, or if the court refuses to accept a plea of guilty, or a plea of nolo contendere (no contest), or if a corporation fails to appear, the court shall enter a plea of not guilty. If for any reason a plea of not guilty has not been entered, the case shall for all purposes be considered as one in which a plea of not guilty has been entered.

•Colorado Revised Statute 16-7-203. Irregularity of Arraignment.

No irregularity in the arraignment which does not affect the substantial rights of the defendant shall affect the validity of any proceeding in the cause if the defendant pleads to the charge or proceeds to trial without objecting to the irregularity.

•Colorado Rules of Criminal Procedures Rule 7. The Indictment and The Information.

- (h) (4) If, from the evidence, it appears to the district court that no probable cause exists to believe that any or all of the offenses charged were committed by the defendant, the court shall dismiss those counts from the information and, if the court dismisses all counts, discharge the defendant; otherwise, or subsequent to a dispositional hearing, it shall set the case for arraignment or trial.

•Colorado Revised Statute 18-1-405. Speedy Trial.

- (1) Except as otherwise provided in the section, if a defendant is not brought to trial on the issues raised by the complaint, information, or indictment within six months from the date of the entry of a plea of not guilty, he shall be discharged from custody if he has not been admitted to bail, and, whether in custody or on bail, the pending charges shall be dismissed, and the defendant shall not again be indicted, informed against, or committed for the same offense, or for another offense based upon the same act or series of acts arising out of the same criminal episode.
- (5) To be entitled to a dismissal under subsection (1) of this section, the defendant must move for dismissal prior to the commencement of his trial and prior to any pretrial motions which are set for hearing immediately before the trial or prior to the entry of a plea of guilty to the charge or an included offense. Failure to so move is a waiver of the defendant's right under this section.

•Federal Rules of Criminal Procedures Rule 10. Arraignment.

(a) In General. An arraignment must be conducted in open court and must consist of:

- (1) ensuring that the defendant has a copy of the indictment or information;
- (2) reading the indictment or information to the defendant or stating to the defendant the substance of the charge; and then
- (3) asking the defendant to plead to the indictment or information.

•Colorado Revised Statute 13-45-101. Petition for Writ- Criminal Cases.

(1) If any person is committed or detained for any criminal or supposed criminal matter, it is lawful for him to apply to the supreme or district courts for a writ of habeas corpus, which application shall be in writing and signed by the prisoner or some person on his behalf setting forth the facts concerning his imprisonment and in whose custody he is detained, and shall be accompanied by a copy of the warrant of commitment, or an affidavit that the said copy has been demanded of the person in whose custody the prisoner is detained, and by him refused or neglected to be given. The court to which the application is made shall forthwith award the writ of habeas corpus, unless it appears from the petition itself, or from the documents annexed, that the party can neither be discharged nor admitted to bail nor in any other manner relieved. Said writ, if issued by the court, shall be under the seal of the court, directed to the person in whose custody the prisoner is detained, and made returnable forthwith.

STATEMENT OF THE CASE

On February 14, 2017 Ueding was advised of his rights, the mandatory protection order, and informed of the charges against him in case 2017CR948. The prosecution filed this felony complaint with the trial court on February 22, 2017. The trial court set the preliminary hearing in this case to be held on March 23, 2017. On March 23, 2017 the prosecution requested a two week continuance to prepare, so the trial court rescheduled it for April 6, 2017. (**ECF No. 10-1, p. 14**).

On March 29, 2017 Mr. Ueding was advised of his rights, the mandatory protection order, and informed of the charges against him in case 2017CR1781. The prosecution filed this felony complaint with the trial court on April 6, 2017 and the parties discussed the intentions to set preliminary hearings of both cases on the same date. (**ECF No. 10-2, p. 12**).

On April 10, 2017 the trial court set the preliminary hearing in both cases to be held on May 4, 2017. On May 4, 2017 a joint request to continue the preliminary hearing was made so that parties could obtain evidence and the preliminary was rescheduled for May 22, 2017. On May 22, 2017 Mr. Ueding waived his right to have a preliminary hearing and the trial court set 2017CR948 and 2017CR1781 for an arraignment to be held on June 19, 2017. On June 19, 2017 Mr. Ueding was not arraigned of any new or existing charges but the trial court entered not guilty pleas in both cases and set for the jury trial to commence on October 30, 2017. (**ECF No. 10-2, p. 11**).

On July 31, 2017 Mr. Ueding was advised of his rights, the mandatory protection order, and informed of the charges against him in case 2017CR4361. On August 4, 2017 the prosecution filed this felony complaint with the trial court. On August 7, 2017 the trial court set the preliminary hearing to be held on August 17, 2017. On August 17, 2017 Mr. Ueding allowed a continuance so that a new prosecutor could prepare for the preliminary hearing and it was rescheduled for August 31, 2017. On August 31, 2017 the trial court found probable cause at the preliminary hearing, entered a not guilty plea in 2017CR4361, and the trial in this matter was set to commence on December 4, 2017. (**ECF No. 10-3, p. 11-12**).

On September 19, 2017 Mr. Ueding filed a pro se motion to dismiss 2017CR948 and 2017CR1781 for a speedy trial violation when his counsel failed to draw up a motion on behalf of the defendant. On October 30, 2017 the trial court denied Ueding's motion to dismiss due to the court believing it had six months from the irregular arraignment/plea entered on June 19, 2017 to hold trial, and the trial court continued the jury trial to October 31, 2017. On October 31, 2017 the trial court continued the jury trial in 2017CR948 and 2017CR1781 to December 4, 2017 due to another case having priority. (**ECF No. 10-2, p.11**).

On November 1, 2017 the prosecution filed a motion for joinder/notice of intent to introduce similar transactions. On November 15, 2017 Mr. Ueding filed an objection to the prosecution's request for an improper joinder on constitutional speedy trial grounds as well as similar transactions ground. (**ECF No. 17, Exhibit 12**). On November 16, 2017 the trial court granted the prosecution's motion to join cases 2017CR948 and 2017CR1781 with the trial of 2017CR4361 to be held on December 4, 2017 only on the grounds of similar transactions. On December 4, 2017 the jury trial in all cases commenced. (**ECF No. 10-2, p. 9-10**).

On February 28, 2018 Mr. Ueding filed a timely notice of appeal in criminal appellate case 2018CA382. On April 1, 2020 Mr. Ueding filed his Opening Brief alleging a constitutional and statutory speedy trial violation in all three state convictions. Ueding argued both improper calculations of the speedy trial time limitations and when such times were to start. (**ECF No. 10-4, p. 16-27**).

On November 18, 2020 the People filed their Answer Brief alleging that the trial court honored the speedy trial time limitations. The People argued that even though Ueding's trial calculated ten (10) months in 2017CR948, eight (8) months in 2017CR1781, and four (4) months in 2017CR4361 that Ueding was the cause of the delayed preliminary hearing continuances prior to May 22, 2017. The People also argued that Ueding first brought up a constitutional error in the appellate court. (ECF No. 10-5, p. 15-21).

On January 22, 2021 Mr. Ueding filed the Reply Brief that again argued incorrect calculations on the violation of a speedy trial and who was the cause of delays in the preliminary hearing. (ECF No. 10-6, p. 5-9). On December 9, 2021 the Colorado Court of Appeals upheld Mr. Ueding's convictions on the grounds that the trial court honored speedy trial and that Mr. Ueding was the cause of the two continuances before the preliminary hearing even though the appellate court reviewed the issue of a constitutional speedy trial error. (ECF No. 10-7).

On April 11, 2022 the Colorado Supreme Court case 2022SC30 denied Mr. Ueding's Writ of Certiorari after reviewing the petition and case files. (ECF No. 10-8).

On May 23, 2022 Mr. Ueding filed a Postconviction Relief Pursuant to Colo. R. 35 (c). (ECF No. 10-9). On July 22, 2022 the trial court denied Mr. Ueding's Postconviction due to incorrect calculations. (ECF No. 10-10).

On August 23, 2022 Mr. Ueding filed a timely Federal Habeas Corpus Pursuant to 28 U.S.C. 2254 case 2022-cv-02166-LTB-GPG with a claim that the state trial court violated his right to both a constitutional and statutory speedy trial in all criminal convictions. (ECF No. 1, p. 4-8).

On September 12, 2022 the Attorney General's counsel filed a Pre-Answer Response on the ground to dismiss for an unexhausted remedies due to a procedural defaulted claim because Mr. Ueding allegedly failed to present a constitutional speedy trial error in a state court. (ECF No. 10).

On September 18, 2022 Mr. Ueding ^{filed} ~~filed~~ a Reply to the respondents Pre-Answer Response on the ground that he presented a constitutional speedy trial error in all relevant state courts and showed with exhibit 12 that he held the right to raise a claim in the state appellate court. (ECF No. 13).

On October 14, 2022 the Magistrate Judge filed a recommendation to dismiss on the ground of a procedurally defaulted claim due to the exhaustion requirement is satisfied once a federal claim has been fairly presented in the highest state court. (ECF No. 16).

On October 23, 2022 Mr. Ueding filed an objection to the recommendation of the magistrate judge, again showing that he made a fair presentation of a constitutional speedy trial error in every state court that was relevant. (ECF No. 17).

On November 3, 2022 the United States District Court ordered a dismissal on the ground that the action is procedurally barred from a constitutional speedy trial claim. (ECF No. 18).

On November 28, 2022 Mr. Ueding filed his United States Court of Appeals for the Tenth Circuit case 22-1417 in a timely manner. The U.S. Court of Appeals instructed Ueding to file an appellant's combined opening brief and application for a certificate of appealability in which Ueding complied. (ECF No. 20).

On March 28, 2023 the United States Court of Appeals for the Tenth Circuit denied Mr. Ueding's request for a certificate of appealability in this case. (**ECF No. 28**).

REASONS FOR GRANTING THE PETITION

ISSUE I. MR. UEDING IS ALLEGING THAT THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO IMPROPERLY DISMISSED HIS FEDERAL HABEAS CORPUS PURSUANT TO 28 U.S.C. 2254 ON A PROCEDURALLY DEFAULTED CLAIM DUE TO UEDING DID NOT PRESENT A CONSTITUTIONAL SPEEDY TRIAL IN A STATE TRIAL COURT; THAT HE DID NOT EXHAUST ~~22~~ HIS CLAIM IN THE HIGHEST STATE COURT; THAT AN HABEAS RELIEF IS UNAVAILABLE FOR VIOLATIONS OF STATE LAW; AND THE PREJUDICE OF THE ACTION REGARDING THE MAGISRTATE JUDGES RECOMMENDATION TO DISMISS.

1. Presentation of a Constitutional Speedy Trial Error in a State Trial Court.

Mr. Ueding believes he holds the right to file a Habeas Corpus Pursuant to **28 U.S.C. 2254 (b) (1) (A)** because he exhausted all the available remedies in the state courts. When the United States District Court dismissed Ueding's habeas action challenging his state convictions 2017CR948, 2017CR1781, and 2017CR4361 on the allegation that he failed to present a constitutional speedy trial error in the state trial court it dismissed the claim without authority. Mr. Ueding respectfully objects and proves through substantial evidence that he did present the constitutional speedy trial before the commencement of his jury trial.

In the Respondents Pre-Answer Response motion (**ECF No. 10**) to dismiss on the ground of an unexhausted claim due to procedural default it alleges that Mr. Ueding failed to present a constitutional speedy trial claim in the state trial court. Mr. Ueding show that he exhausted the Respondents argument with the presentation of this constitutional error.

In Ueding's Reply to the Respondent's Pre-Answer Response (**ECF No. 13**) he sent exhibit 12 "Objection to Prosecution's Joinder" of the state trial court that proves in the following grounds that the constitutional error was presented:

▪ Ground 3. On October 31, 2017 when the two lower case numbers

were set to begin trial the cases were bumped by another defendant due to speedy trial priority. On October 30, 2017 both sides had announced ready on each of these cases. Mr. Ueding's speedy trial on these lower case numbered cases is set to run on 12-16-2017. It is logical and reasonable conclusion that the prosecution filed this request in fear that one of Mr. Ueding's trial could get dismissed due to speedy trial running out.

▪ Ground 11. Under the 6th Amendment of the U.S. Constitution and

Article II, Section 16 of Colorado's Constitution Mr. Ueding is entitled to a fair trial. These rights will be violated if joined of the cases or the introduction of the requested 404 (b) evidence is permitted

This must not be confused or misinterpreted with the grounds of **Colorado Rule of Evidence 404 (b)**. These grounds presented above are considered the bringing of a constitutional speedy trial during the state trial court proceedings.

Mr. Ueding secured his right to file the issue in the state appellate court and in the federal action when he presented the constitutional speedy trial error. The federal constitution does

not need to be cited “book and verse” for it to be a fair presentation. **Picard v. Connor, 404 U.S. 270 (1971)**. With this Ueding shows that he properly presented the constitutional speedy trial error in the state court as required rendering the Respondents Pre-Answer Response in the habeas action moot.

2. Presentation of a Constitutional Speedy Trial in the Highest State Court.

The United States District Court ruled in favor of the magistrate judge’s recommendation (**ECF No.16**) to dismiss Mr. Ueding’s habeas action on a procedurally defaulted claim due to allegations that he failed to present a constitutional speedy trial error in the highest state court and that Mr. Ueding first presented the constitutional speedy trial in the state appellate court after Ueding showed he presented the error in the states trial court.

To satisfy this court Ueding presents a factual basis that he did exhaust the remedies in the highest state court. On December 9, 2021 the state appellate court upheld Mr. Ueding’s appellate issues (**ECF No. 10-7**) on the grounds that a constitutional speedy trial error was first brought and that the state trial court honored statutory speedy trial. A fair presentation requires that the federal constitution be properly presented to the highest state court either by direct review of the convictions (on appeal) or in a postconviction attack. **Dever v. Kansas State Penitentiary, 36 F.3d 1531 (10th Cir. 1994)**. Since Ueding shows that he presented the constitutional speedy trial claim in the states trial court and it was raised in the states appellate court then his claim is exhausted in accordance with state procedures. **Shinn v. Ramirez, 142 S. Ct. 1718 (2022)**.

In the state of Colorado and in this matter the state appellate court is the highest state

court. Mr. Ueding did file a postconviction attack on a statutory speedy trial violation pursuant to **Colorado Rules of Criminal Procedures Rule 35 (c) (2)**. Regarding any postconviction attack pursuant to the section (c) (2) the trial court shall deny any claim that was raised and resolved in a prior appeal or postconviction proceeding on behalf of the same defendant.

Colorado Rules of Criminal Procedures Rule 35 (c) (3) (VI). Since Mr. Ueding filed a direct review of his convictions this is the highest state court and along with the showing that a constitutional speedy trial was presented in the states trial court then the magistrate judge's recommendation is improper and moot.

3. The Right to File and Available Relief in a Habeas Corpus for Violations of Constitutional and State Laws.

The speedy trial is a fundamental right that is protected by a habeas corpus in the State of Colorado when a person is charged with a higher class crime such as a felony. **Radar v. People, 138 Colo. 397, 334 P.2d 437 (1959)**. Mr. Ueding challenged his state trial convictions on both constitutional and statutory speedy trial rights in a federal habeas action when he was charged with a felony and sentenced to twenty-four years in the Colorado Department of Corrections. Furthermore, the United States District Court improperly dismissed Mr. Ueding's habeas action against a speedy trial error. Not only is this a serious constitutional right infringement but Ueding also shows that he is entitled to a discharge from custody and a dismissal of charges as cited in **Colorado Revised Statute 13-45-101 (1)**. And this is the appropriate remedy of his habeas corpus.

4. Prejudice of a Habeas Corpus Upon the Filing of the Magistrate Judge's Recommendation.

The United States Magistrate Judge's motion of Recommendation to dismiss for procedural default on grounds that Ueding failed to present a constitutional speedy trial error in the state court and that Ueding failed to exhaust remedies in the highest state court prejudiced Ueding's habeas action. Mr. Ueding shows that he presented a constitutional speedy trial claim in the state court. He also shows that he exhausted the claim in the highest state court. The Magistrate Judge's recommendation to dismiss is to investigate the grounds of the motions filed by the petitioner and the respondents and to recommend a relief to the court. Any other outside duty is an abuse of discretion. **Gee v. Estes, 829 F.2d 1005, 1987 U.S. App. LEXIS 12721 (10th Cir. 1987).**

The courts of the land holds the right to uphold and enforce all state and federal laws impartially, ^{competently} ~~competently~~, and diligently. When Mr. Ueding shows that he presented such errors in the state convictions than he is entitled to bring forth a federal habeas action. **Colorado Codes of Judicial Conduct Cannon 2 (2.2 and 2.5).** Mr. Ueding shows that the Magistrate Judge's motion to recommend a dismissal of Ueding's habeas action was improper.

ISSUE II. MR. UEDING BELIEVES THAT THE EL PASO COUNTY, COLORADO DISTRICT COURT VIOLATED HIS RIGHT TO A CONSTITUTIONAL AND STATUTORY SPEEDY TRIAL IN CRIMINAL CONVICTIONS 2017CR948, 2017CR1781 AND 2017CR4361 THAT WAS CAUSED BY THE IMPROPER HANDLING OF THE ARRAIGNMENT PROCEDURES; THE PRELIMINARY HEARING PROCEDURES; THE SPEEDY TRIAL PROCESS AND CALCULATIONS; AND THE PRESERVATION OF THE RIGHT AND REMEDIES INVOLVED.

A. Arraignment Procedures and Dates.

In most states to include Colorado the suspect is to be brought to court within twenty-four hours after their arrest. At this hearing, called the arraignment, the judges duty is to read the defendants their rights (**Colorado Rules of Criminal Procedures Rule 5 (a) (2)**), the mandatory protection order against the defendant (**Colorado Revised Statute 18-1-1001 (1)**), and read to the defendant the offenses with which he/she is charged and to require ~~the~~ entry of a guilty or not guilty plea to the offense charged (**Colorado Rules of Criminal Procedures Rule 10**). If a defendant does not plead at this hearing the trial court shall enter a plea of not guilty (**Colorado Revised Statute 16-7-208**). This is governed by the federal statute of **Federal Rules of Criminal Procedures Rule10**.

The record shows that Mr. Ueding's arraignment consisting of the advisement of rights, the mandatory protection order, and the informing of charges and possible penalties was held on February 14, 2017 in 2017CR948, and on March 29, 2017 ~~in~~ 2017CR1781. The trial court failed to either demand a plea or enter a not guilty plea on these dates when Ueding didn't verbally speak one. The main element of an arraignment is to arraign a defendant upon his charges. The plea comes directly after the main element.

The trial court held an irregular second arraignment on June 19, 2017 in cases 2017CR948 and 2017CR1781 after Ueding waived his right to a preliminary hearing on May 22, 2017 which affected his speedy trial time limitations. **Colorado Revised Statute16-7-203**. This second arraignment didn't include Ueding being arraigned of any new charges but showed that the court entered pleas of not guilty, which should have already been considered entered, and then both cases were set for a trial date to commence on October 30, 2017.

The trial court improperly denied Ueding's motion to dismiss on October 30, 2017 and rescheduled the jury trial beyond November 22, 2017.

B. Preliminary Hearing Procedures and Dates.

During the preliminary hearings in Colorado the trial court must either find probable cause through the evidence that a defendant committed the offense charged or dismiss the charge. Furthermore, at the conclusion of the preliminary hearing, whether the trial court finds probable cause or the defendant waives the right to a preliminary hearing, the trial court shall set the case/s for an arraignment, if it has not already been held, or set the case/s for a jury trial. **Colorado Rules of Criminal Procedures Rule 7 (h) (4).**

If this court investigates it will find that after a plea of not guilty is entered the defendant has the option to request a preliminary hearing. Meaning the preliminary hearing is not triggered until the plea which is during the advisement of rights and arraignment of charges.

Colorado Rules of Criminal Procedures Rule 5 (a) (2) (VIII).

Mr. Ueding shows that the arraignments in cases 2017CR948 and 2017CR1781 were held before the waived preliminary hearing on May 22, 2017. If this court concurs then at the waiver of Ueding's preliminary hearing on May 22, 2017 ~~then~~ the trial court should have set these cases for a jury trial instead a second arraignment. Mr. Ueding shows, to detour any of the calculations regarding the continuances of the preliminary hearings before May 22, 2017, that the cases at the latest date should have been set for a trial within six months from May 22, 2017.

C. Speedy Trial Process and Calculations.

1. Statutory Right.

In Colorado the statutory law for speedy trial cites "if a defendant is not brought to trial on the issues raised by the complaint, information, or indictment within six (6) months from the date of the entry of a plea of not guilty, he shall be discharged from custody if he has not

been admitted to bail, and, whether in custody or on bail, the pending charges shall be dismissed.” **Colorado Revised Statute 18-1-405 (1).**

For this court to better understand the statute regarding speedy trial the calculation of the six month speedy trial is to start from the entry of the not guilty plea that occurs at the arraignment before the preliminary hearing is held which is the initial court appearance. Mr. Ueding is hereby showing that the trial court took more than six months from the time that the trial court should have set the cases 2017CR948 and 2017CR1781 for trial at the waived preliminary hearing on May 22, 2017. Since the plea of not guilty was considered entered before May 22, 2017 it shows that if speedy trial was calculated from the true plea than it would be longer than the aforementioned time. Six months from May 22, 2017 would place Mr. Ueding’s trial deadline on or before November 22, 2017, unless the date lands on a weekend or holiday than it shall be held on the following Monday. Not December 4, 2017.

The trial court erred when it set these cases for a second arraignment after this preliminary hearing. The time difference between the waived preliminary hearing on May 22, 2017 and the second irregular arraignment on June 19, 2017 is twenty-eight (28) days which is accredited to the states delays. This means that the trial would have been set within speedy trial time restraints if the court didn’t hinder the dates by this time period. For this Mr. Ueding is entitled to a dismissal since the trial court failed to preserve this right. **People v. Chavez, 779 P.2d 375 (Colo. 1989).**

2. Constitutional Speedy Trial Right.

Every defendant in a criminal prosecution within the United States shall enjoy the right to have a speedy trial. **Sixth Amendment of the United States Constitution; and Article II, Section 16 of the Colorado Constitution.** The constitutions of speedy trial leaves the

discretion of each state to place a period of time in which trial shall be held.

Mr. Ueding correctly presented a constitutional right to speedy trial after the trial court denied his motion to dismiss for a speedy trial violation and reset his trial past the six month deadline when he filed the motion objecting to a joinder on speedy trial issues. Moreso, when Ueding requested the trial court reschedule the trial to be held within speedy trial deadline. Mr. Ueding is hereby eligible for plain error review on both statutory and constitutional speedy trial violation error.

C. Preservation of Rights and Remedies.

1. Entitlement to a Dismissal.

To be entitled to a dismissal on speedy trial grounds a defendant must move for a dismissal before the commencement of their trial. **Colorado Revised Statute 18-1-405 (5).** Mr. Ueding preserved this right to a dismissal of charges 2017CR948 and 2017CR1781 when he filed a pro se motion to dismiss for a speedy trial violation on September 19, 2017. This motion was filed before the commencement of the original trial date of these cases that was set for October 30, 2017. Even though these cases were not yet in violation Mr. Ueding believed that the trial court would set these cases for a jury trial past the speedy trial deadline. This was due to Ueding was informed that the cases would be continued on the cause of improper calculations of arraignment. On October 31, 2017 Ueding requested the trial court reset speedy trial within the time limitations.

2. Objection to Joinder.

On November 1, 2017 the prosecution filed a motion to join cases 2017CR948 and

2017CR1781 to the same trial of 2017CR4361 on the grounds of similar transactions. On November 15, 2017 Mr. Ueding filed an objection to the prosecutor's joinder of the cases to the same trial on speedy trial grounds as well as similar transactions grounds. Mr. Ueding knew that after the trial of 2017CR948 and 2017CR1781 was continued on October 31, 2017 and reset for trial to be held December 4, 2017 that it was past the speedy trial deadline and now in violation. On November 16, 2017 when the trial court joined these cases to the same trial to be held on December 4, 2017 on only similar transactions grounds it brought 2017CR4361 to be entitled to the same dismissal of 2017CR948 and 2017CR¹⁷⁸¹ for a speedy trial violation because it failed to rule on the speedy trial grounds. **People v. Hernandez, 829 P.2d 392 (Colo. App. 1991).**

CONCLUSION AND RELIEF.

Due to the evidence presented in Issue I Mr. Ueding believes he brought forth a proper filing of his Federal Habeas Corpus Pursuant to 28 U.S.C. 2254 in case 22-cv-02166-LTB-GPG challenging his state convictions when he argued the violation of a constitutional speedy trial right and that he held the appropriate remedy of a discharge from custody. If this court concurs with Ueding's argument of the presentation of a constitutional speedy trial right in the lower courts then it shall apply one of the following reliefs:

- 1) If this court finds that Ueding raised a constitutional speedy trial error when he filed the "Objection to Improper Joinder" in the state trial court and/or this court finds that Ueding appropriately requested the remedy that he is entitled to a discharge from custody due to a speedy trial violation by challenging the state convictions in a habeas corpus and that the United States District Court did not prejudice the case when it dismissed the habeas action

than it shall reprimand the case back to such District Court to be retried; or

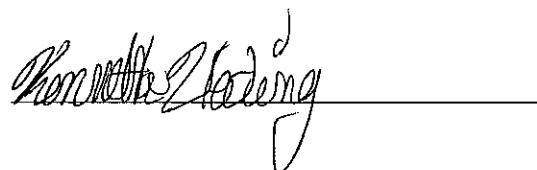
2) If this court finds that Ueding properly raised a constitutional speedy trial error or is entitled to a discharge from custody and the United States District Court prejudicially dismissed the case after Ueding presented the constitutional speedy trial error and argued in the “Objection to Recommendation” that for the District Court to dismiss the case would be against upholding and enforcing the laws, then it is appropriate for Ueding to request that this court grant all the remedies stated in the original habeas action to include both non-monetary and monetary reliefs.

In the remedy of Issue II this court holds the power to review and rule on this case of a speedy trial violation on both Federal Habeas Corpus and State Conviction grounds. If this court has already granted the remedy of Issue one than the federal relief is exhausted. This courts duty is also to rule upon whether the state trial court failed to hold Ueding’s trial within the six month statutory time limits and laws.

In order to determine whether this occurred the court must find 1) that the arraignment was the initial hearing before the preliminary hearing, 2) that the time between the preliminary hearing and trial held was more than six months, unless new charges were brought, and 3) only in Mr. Ueding’s case, this court must also find whether he properly attempted to keep the trials of 2017CR948 and 2017CR1781 separate from the trial of 2017CR4361 when he filed the objection to joinder on speedy trial grounds. If this court finds that these recommendations are correct that the state trial court hindered his right to a speedy trial by setting his cases for an irregular second arraignment after the preliminary hearing than it is the duty of this court to uphold and enforce the laws and reliefs which guarantees that Ueding’s remedy will be an immediate discharge from state custody and the dismissal of the State of Colorado convictions

2017CR948, 2017CR1781, and 2017CR4361. Ueding also requests that this case becomes retroactive for any showing by a defendant whose speedy trial right in Colorado was hindered by an irregular second arraignment where no new charges were presented regardless of whether a defendant's counsel didn't raise a speedy trial violation due to it being an ineffective assistance of counsel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jennifer Ueding", is written over a horizontal line.

Date: May 28, 2023

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Kenneth Ueding - PETITIONER

vs.

The People of the State of Colorado, and
The Attorney General of the State of Colorado - RESPONDENT(S)

Notice of Entry of Appearance

The Petitioner, Kenneth Ueding pro se, hereby respectfully submits this Entry of Appearance as a pro se counsel in this matter until duly notified to the court.

Kenneth Ueding

May 28, 2023

Kenneth Ueding #141324

Centennial Correctional Facility

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