No. 22-81

IN THE
Supreme Court of the United States

NATHANIEL LAMBERT,

Petitioner,

v.

LOUISIANA,

Respondent.

On Petition for a Writ of Certiorari to the Louisiana Court of Appeals for the Fourth Circuit

REPLY IN SUPPORT OF CERTIORARI

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REPLY IN SUPPORT OF CERTIORARI

I. Respondent All But Concedes The First QP Satisfies The Court's Certiorari Criteria.

By its own terms, the BIO's only argument against certiorari on the first question presented is that this case is "a poor vehicle." BIO ii, 12. The BIO does not contest that—beginning as early as 1976 and reaffirmed as recently as 2020—lower courts have adopted different tests for evaluating due-process-based sentencing delay claims, which conflict as to whether prejudice is required and what kind of prejudice counts. *See* Pet. 10-13. The BIO does not dispute that, here, respondent failed to pursue a sentence for over eighteen years—as respondent previously put it, "an extraordinary amount of time to wait for resentencing." Brief in Opposition at 17, *Lambert v. Louisiana*, 141 S. Ct. 225 (2020) (No. 19-8149). And the BIO does not dispute that the effect was to deny petitioner

basic schooling, vocational training, and other rehabilitative programs, all of which also bears on petitioner's ability to receive clemency. Pet. 9.

Lacking any good argument related to the criteria for certiorari, the BIO's chief tactic is to dissuade the Court from caring about this case by repeated misrepresentations that the delay in this case simply "went unnoticed" over the years. BIO 1, 5. None of this passes the straight-face test, and the Court should grant certiorari.

A. Respondent's Claim That The 18-Year Delay Simply "Went Unnoticed" Is Not Credible.

The BIO goes to great effort to shift the equities, claiming that petitioner "failed to take any meaningful action" to obtain a sentence and "failed to appear at numerous scheduled hearings." BIO 1, 6, 9. As a result, respondent says, the error here "apparently went unnoticed." BIO 1, 5.

This argument is dubious from the get-go. The responsibility to secure a conviction and sentence in a manner that complies with due process lies with the state, not the defendant. *See Barker v. Wingo*, 407 U.S. 514, 527 (1972). ("A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process." (footnote omitted)). The absurdity of respondent's argument jumps off the page: petitioner "failed to appear at numerous scheduled hearings," BIO 1, 6, 9, because *he was in respondent's custody and respondent did not produce him*. *See also* La. R.S. 15:706(D) (unambiguously directing that it is the

district attorney's responsibility to secure the presence of a defendant incarcerated in the state).

In any event, respondent's repeated assertion that petitioner "failed to take any meaningful action to pursue his resentencing for decades," BIO 1, blatantly misrepresents the record. As early as 2000, petitioner, acting *pro se*, specifically asked that he be brought to court "for an [sic.] RESENTENCING HEARING, (as order [sic] by the Fourth Circuit Court of Appeal)." Ex. A (emphasis original). He then filed a second letter containing the same plea. *See* Ex. B. In other words, within approximately a year of respondent's failure to pursue a sentence on remand, petitioner filed two capitalized requests for a sentence.

The record even shows that petitioner continued to complain that he had "never been resentenced" in his separate habeas proceedings against respondent. Pet. for Writ of Habeas Corpus at 8, 13, *Lambert v. Cain*, No. 2:06-cv-00721 (E.D. La. Feb. 13, 2006), ECF No. 1.[1] Then, over the years that followed, the court actually scheduled sentencing hearings for which respondent failed to produce petitioner. When a hearing finally took place in 2014, the court still refused to sentence petitioner, stating it "denied the defendant [sic] claim" and declared "this case is closed for this defendant." Ex. C. Even when petitioner sought resentencing for the umpteenth time in 2017, that request was ignored until petitioner sought a supervisory writ

[1] The record for petitioner's state postconviction proceedings between has been destroyed, so we do not know how many times petitioner raised his lack of sentence in those proceedings as well. However, petitioner's federal petition references several additional letters that he sent during this time. *Id.*

from the court of appeals, which ordered the trial court to finally address the issue. Ex. D.[2]

Respondent's attempt to characterize its own failure to pursue a sentence as a lack of diligence on the part of petitioner is belied several times over by the record, which shows that petitioner repeatedly raised it.

B. The BIO's Vehicle Arguments Are Weak.

The BIO offers three arguments why this case is a "poor vehicle" to articulate the test for due-process-based sentencing delay claims. None is persuasive.

1. First, the BIO says this is a poor vehicle to resolve whether prejudice is required and what prejudice counts because petitioner "was already serving one valid life sentence" and he cannot show the absence of delay would have reduced his prison time. BIO 12-13. That gets it backwards.

It is precisely *because* the prejudice here does not concern reduced prison time that this case squarely presents whether other types count. The very way that the decision below renders Louisiana an outlier among all courts was by concluding that other harms—such as the undisputed deprivation of basic education and rehabilitation—"do not constitute prejudice as contemplated by the jurisprudence." Pet. App. 19a; *see* Pet. 12-13 (explaining that all other courts on both side of the split have recognized personal prejudices, including inhibiting rehabilitation); *see also* Pet. 14 (explaining that this Court specifically

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[2] Therefore, even respondent's assertion that the trial court "promptly scheduled a resentencing hearing" in 2017, BIO 13, misstates the record.

acknowledged other forms of prejudice in *Barker*). Respondent's contention that the excessive delay did not change the length of petitioner's sentence, BIO 12-13, just begs the merits.

2. Second, the BIO tells the Court to forgo this opportunity to articulate the correct due process test because "this is an atypical delayed-sentencing case." BIO 2. According to respondent, petitioner's case is "dramatically different" from cases involving sentencing delay because the delay here took place after petitioner's sentences were vacated on appeal. BIO 2, 12-13.

Just what is "dramatically different" between waiting with no sentence and waiting—with no sentence—after your sentence was vacated, respondent never says. In both circumstances, a criminal defendant is identically situated: trapped in the system with a conviction but no sentence. Respondent does not, and could not, contest that the Due Process Clause applies equally to a sentencing proceeding that follows vacatur as it does to a first sentencing. And respondent has never suggested (and still does not suggest) that this difference would have any impact on which test applies to such due process claims. The court below did not think it relevant, either.

3. Third, respondent regurgitates the argument from its last BIO that the question "has not percolated sufficiently in the lower courts." BIO 13-16. Respondent gets there by asserting that this Court's conclusion that sentencing delay cannot be challenged under the Speedy Trial Clause in *Betterman v. Montana*, 578 U.S. 437 (2016), obviates lower court precedent concerning the test for challenging sentencing delay under the Due Process Clause. *Id*. The logic to that

argument is bad on its own. But it also conflicts with this Court's explicit instruction in *Betterman* and how every court has understood it.

Upon rejecting a speedy-trial-based claim in *Betterman*, the Court explicitly stated that its decision should be understood to "express no opinion" as to the Due Process Clause. 578 U.S. at 448 & n.12; *id*. at 450 (Thomas, J., concurring) (same); *id*. at 451 (Sotomayor, J., concurring) (same). And that's how courts on both side of the conflict have treated it. As the Third Circuit recently put it, "while *Betterman* overruled our speedy sentencing precedent under the Sixth Amendment, our precedent under the Due Process Clause survives." *United States v. Lacerda*, 958 F.3d 196, 219 (3d Cir. 2020). It has thus continued to "apply the same framework adopted by the Supreme Court in *Barker*." *Id*.; *see also United States v. James*, 712 F. App'x 154, 161 (3d Cir. 2017) ("Because [in *Betterman*] the Supreme Court put forward no holding on the availability of a speedy sentencing claim under the Due Process Clause, our prior precedent under the Due Process Clause survives *Betterman*" and *Betterman* "does not disturb this precedent"). On the other side of the conflict, the Second Circuit has repeatedly reaffirmed its *Lovasco* test after *Betterman*, including that "prejudice is 'necessary but not sufficient to prove a due process violation,'" treating it as settled precedent. *See United States v. Cain*, 734 F. App'x 21, 25 (2d Cir. 2018) (quoting *United States v. Ray*, 578 F.3d 184, 199 (2d Cir. 2009)); *United States v. Nieves*, 648 F. App'x 152, 154 (2d Cir. 2016) ("[W]e are bound to follow *Ray* until it is overruled by this court en banc or by the Supreme Court.").

Respondent cannot cite *a single case in any jurisdiction* that has interpreted *Betterman*'s speedy trial decision to alter their interpretation of the Due Process Clause—indeed, it's hard to imagine what that reasoning would even look like. The notion that the conflict has "not percolated sufficiently," BIO 13, is unconvincing—it has developed and sustained over the course of decades.

II. The Court Should Grant And Reverse As To The Second QP.

A. The Court Should Summarily Reverse Or GVR Given Respondent's Express Reversal Of Its Position Below.

The petition explained that finality has "a long-recognized, clear meaning" under federal law, under which *cases* not *counts* become final. Pet. 15-18 (quoting *Clay v. United States*, 537 U.S. 522, 527 (2003)). It explained that the decision below flatly contradicted *Griffith v. Kentucky*, 479 U.S. 314 (1987), and causes perverse results. Pet. 9, 18-20.

In the proceedings below, respondent conceded petitioner would prevail if finality was defined according to federal law. It told the court that "whether the conviction in this case is final depends in part on whether the answer is found in state or federal law." Response to Motion to Vacate Stay at 6. Respondent explicitly conceded that petitioner would prevail under the federal definition of finality: "Under federal law, finality is determined by the resolution of the conviction and sentence together." *Id*. at 9. It thus urged the court to apply state law retroactivity rules to decide that Petitioner's case had become final. *See* Brief in Opposition at 2, 9-11, *Lambert*, 141 S. Ct. 225 (No. 19-8149); Brief

on Remand at 11, 13; Response to Motion to Vacate Stay at 6-7.

Having prevailed on its state law argument below, respondent now changes course and admits that "federal law defines what makes a decision final for purposes of retroactivity analysis involving new rules of federal constitutional law." BIO 25 (cleaned up). In other words, respondent has engaged in a bait-and-switch, convincing the lower court to (incorrectly) resolve this case based exclusively on the state law authority, and now conceding federal law controls. The Court should accordingly summarily reverse or vacate, and remand for further proceedings.

This result is further supported by respondent's chief argument against plenary review: that the Louisiana Supreme Court has recently granted review in a case that would be dispositive as to petitioner. *See* BIO 17-19. It would be grossly inequitable if respondent's bait-and-switch of the court below resulted in depriving petitioner of the benefit of a favorable decision in *Louisiana v. Vaughn*, 338 So. 3d 479 (La. 2022).

B. Alternatively, The Court Should Grant Plenary Review To Confirm That A Judgment Becomes Final When All Counts Are Resolved, Not On A Count-By-Count Basis.

To the extent that the Court does not summarily reverse or vacate in light of respondent's effective confession of error, it should grant plenary review to resolve the question of whether finality under federal law is determined on a case-wide basis or count-by-count. As the petition described, respondent's interpretation of finality flatly contradicts *Griffith* and

causes the perverse result of *requiring* piecemeal appeals to this Court. Pet. 15-20.

Respondent attempts to justify that perverse result by claiming it is permitted by 28 U.S.C. § 1257, the statute providing jurisdiction to review state court decisions. *See* BIO 19-26. But *Griffith* provides a single rule which, by its terms, applies equally to "all cases, state or federal." 479 U.S. at 328. There is no reason to interpret *Griffith*'s rule differently depending on whether a case originated in state or federal court. In fact, the decision in Griffith itself disposed of two consolidated cases, "one state and one federal." *Id.* at 316. Nothing about § 1257 conflicts with *Griffith*'s clear rule. Section 1257 simply addresses when this Court has jurisdiction to review a state court decision; it does not address when a decision becomes final for retroactivity purposes. Although the Seventh Circuit—the one court to join Louisiana—has concluded otherwise, it is mistaken.

Respondent's interpretation that § 1257 displaces *Griffith* is simply a merits argument (and a bad one at that). In the event the Court does not summarily reverse or vacate, it should resolve the merits on plenary review.

CONCLUSION

The Court should grant certiorari on the first question and should either grant plenary review or summarily resolve the second question.

Respectfully submitted,

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New Orleans, LA 70119

Counsel for Petitioner

**Admitted only in Pennsylvania; practicing under supervision of the MacArthur Justice Center.*

NOVEMBER 2022

ADDENDUM

EXHIBIT A

IN THE
CRIMINAL DISTRICT OF
PARISH OF ORLEANS

Docket Number 387-752

NATHANIEL LAMBERT

Petitioner

versus

HONORABLE RICHARD STALDER

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM

Petitioner, through respectfully request the Court to order the respondent, Richard Stalder to produce him for an RESENTENCING HEARING (as order by the Fourth Circuit Court of Appeal on November 17, 1999), and pursuant to the law on the subject matter.

Petitioner is incarcerated at the Louisiana State Prison in Angola, Louisiana.

Therefore, Petitioner desires that a Writ of Habeas Corpus Ad Testificandum be issue and directed to Honorable Richard Stalder, at the Louisiana Department of Public Safety and Corrections, to produce him for an RESENTENCING HEARING (as order by the Fourth Circuit Court of Appeal on November 17, 1999), on the ___ day of ___, 2001 at the time of ___, o'clock ___ .m.

WHEREFORE, premises considered, Petitioner prays that Writ of Habeas Corpus Ad Testificandum be issue herein, as hereinafter set forth, so that; he may be present for the hearing set in the above captioned cause.

Respectfully Submitted,

/s/ Nathaniel Lambert
Nathaniel Lambert
90883 Oak One
Louisiana State Prison
Angola, Louisiana 70712

IN THE
CRIMINAL DISTRICT OF
PARISH OF ORLEANS

Docket Number 387-752

NATHANIEL LAMBERT

Petitioner

versus

HONORABLE RICHARD STALDER

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM ORDER

IT IS ORDERED, that a Writ of Habeas Corpus Ad Testificandum be issued on the foregoing petition and be directed to the Honorable Richard Stalder, at the Louisiana Department of Public Safety and Corrections, to produce the person of Petitioner, for an RESENTENCING HEARING (as order by the Fourth Circuit Court of Appeal on November 17, 1999), to be held, on the ___ day of ___, 2001 at the time of ___, o'clock ___ .m.

THUS, DONE AND SIGNED, in the Parish of Orleans, Louisiana, this ___ day of _____, 2001

_____

Honorable Frank A. Marullo, Judge

IN THE
CRIMINAL DISTRICT OF
PARISH OF ORLEANS

Docket Number 387-752

NATHANIEL LAMBERT

Petitioner

versus

HONORABLE RICHARD STALDER

Respondent.

APPLICATION FOR APPOINTMENT OF COUNSEL

NOW INTO COURT, comes Petitioner, who respectfully ask this Honorable Court for the appointment of Counsel, to assist him in the presentation of his Resentencing, (as order by the Fourth Circuit Court of Appeal on November 17, 1999), to wit:

Petitioner submits the foregoing application and swears and/or affirms that all of the information therein is true and correct. He further swears or affirms that he is unable to employ counsel because he has no assets or funds which could be used to hire an attorney except moneys earned as Prison incentive wage at 0.4¢ per hours.

/s/ Nathaniel Lambert
Nathaniel Lambert
90883 Oak One
Louisiana State Prison
Angola, Louisiana 70712

IN THE
CRIMINAL DISTRICT OF
PARISH OF ORLEANS

Docket Number 387-752

NATHANIEL LAMBERT

Petitioner

versus

HONORABLE RICHARD STALDER

Respondent.

APPLICATION FOR APPOINTMENT OF COUNSEL ORDER

IT IS ORDERED, that a Movant's Motion for the appointment of counsel, be granted and issued on the foregoing petition, and be directed to:

[1] Joseph Rome, Attorney at Law, Post Office Box 740608, New Orleans, Louisiana 70174-068,

[2] Gary C. Wainwright, Attorney at Law, 2739 Tulane Avenue, New Orleans, Louisiana 70119,

[3] Richard C. Telssier, Attorney at Law, 5951 Tchoupitoulas Street, New Orleans, Louisiana 70115,

Thus the above, to assist Movant, for an RESENTENCING HEARING (as order by the Fourth Circuit Court of Appeal on November 17, 1999), to be held, on the ___ day of ___, 2001 at the time of ___, o'clock ___ .m.

THUS, DONE AND SIGNED, in the Parish of Orleans, Louisiana, this ___ day of _____, 2001

_____

Honorable Frank A. Marullo, Judge

EXHIBIT B

IN THE
CRIMINAL DISTRICT OF
PARISH OF ORLEANS

Docket Number 387-752

NATHANIEL LAMBERT

Petitioner

versus

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Respondent.

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WHEREFORE, premises considered, Petitioner prays that Writ of Habeas Corpus Ad Testificandum be issue herein, as hereinafter set forth, so that; he may be present for the hearing set in the above captioned cause.

Respectfully Submitted,

/s/ Mr. Nathaniel Lambert
Nathaniel Lambert
#90883 Oak One
Louisiana State Prison
Angola, Louisiana 70712

IN THE
CRIMINAL DISTRICT OF
PARISH OF ORLEANS

Docket Number 387-752

NATHANIEL LAMBERT

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Respondent.

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THUS, DONE AND SIGNED, in the Parish of Orleans, Louisiana, this ___ day of _____, 2001

_____

Honorable Frank A. Marullo, Judge

IN THE
CRIMINAL DISTRICT OF
PARISH OF ORLEANS

Docket Number 387-752

NATHANIEL LAMBERT

Petitioner

versus

HONORABLE RICHARD STALDER

Respondent.

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IN THE
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versus

HONORABLE RICHARD STALDER

Respondent.

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IT IS ORDERED, that a Movant's Motion for the appointment of counsel, be granted and issued on the foregoing petition, and be directed to:

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[3] Richard C. Telssier, Attorney at Law, 5951 Tchoupitoulas Street, New Orleans, Louisiana 70115,

Thus the above, to assist Movant, for an RESENTENCING HEARING (as order by the Fourth Circuit Court of Appeal on November 17, 1999), to be held, on the ___ day of ___, 2001 at the time of ___, o'clock ___ .m.

THUS, DONE AND SIGNED, in the Parish of Orleans, Louisiana, this ___ day of _____, 2001

_____

Honorable Frank A. Marullo, Judge

EXHIBIT C

CRIMINAL DISTRICT COURT OF ORLEANS PARISH, LOUISIANA

SECTION "D" THE HONORABLE FRANK
JUDGE: MARULLO, III
MINUTE CLERK: FRANK A. MARULLO, III
COURT REPORTER: A. CHARLES BORRELLO
ASSIST. D.A.: LAUREN FAVRET
DONALD CASSELS, III
OIDP ATTORNEY: BRIAN WOODS
OIDP ATTORNEY: ANDREW LEE

Date: THURSDAY, July 31, 2014
Case Number: 387-752
State of Louisiana
versus
NATHANIEL LAMBERT Violation: RS 14 60
RS 14 89.1
RS 14 42

THE DEFENDANT, NATHANIEL LAMBERT, APPEARED WITHOUT COUNSEL FOR RESENTENCING.

THE COURT DENIED THE DEFENDANT CLAIM ON THIS DATE.

THIS CASE IS CLOSED FOR THIS DEFENDANT.

_____
Frank A. Marullo, III, Minute Clerk

EXHIBIT D

NO. 2017-K-0081

COURT OF APPEAL, FOURTH CIRCUIT
STATE OF LOUISIANA

STATE OF LOUISIANA
VERSUS
NATHANIEL LAMBERT

IN RE:	NATHANIEL LAMBERT
APPLYING FOR:	SUPERVISORY WRIT
DIRECTED TO:	HONORABLE PAUL A. BONIN CRIMINAL DISTRICT COURT ORLEANS PARISH SECTION "D", 387-752

WRIT DENIED

Relator, Nathaniel Lambert, sought a writ of mandamus on a motion for clarification of sentence that he represented was filed in the district court on September 11, 2017. On November 6, 2017, this Court issued an order requesting the district court to respond to the relator's request to act. On November 14, 2017, the district court complied with this Court's order. Accordingly, relator's supervisory writ is denied as moot.

New Orleans, Louisiana this 20th day of November, 2017.

/s/_____
Judge Paula A. Brown

/s/_____
Judge Edwin A. Lombard

/s/_____
Judge Rosemary Ledet