Appendix A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 22-12565-A

STEVEN JUSTIN VILLALONA,

Petitioner-Appellant,

versus

WARDEN, OAKDALE, FCI 1,
STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

Steven Villalona appeals the district court's order denying his 28 U.S.C. § 2254 petition and motion to amend judgment, raising a claim that his constitutional right to a speedy trial was violated and that the Florida state court rulings denying his speedy trial claims were contrary to, or involved an unreasonable application of, clearly established federal law. Villalona now moves for a certificate of appealability ("COA").

As background, Villalona was arrested in October 2011, on federal charges. In April 2013, an Information was filed in Broward County state court, charging him with conspiracy to traffic cocaine. He was released from federal custody and booked into the Broward County Jail on September 24, 2014, and was arraigned on the state charge on or about October 2, 2014.

In January 2015, Villalona asked for a continuance and stated that he "would like to waive [his] right to a speedy trial." On April 17, 2015, Villalona moved to dismiss the case on speedy trial grounds. On April 29, 2015, the trial court heard argument on the motion and subsequently denied the motion on the merits, stating that Villalona had not shown that his speedy trial rights were violated.

On May 21, 2015, Villalona filed a demand for speedy trial, citing Fla. R. Crim. P. 3.191(b). On May 26, 2015, he filed a "Notice of Appeal" of the trial court's order denying his motion to dismiss on speedy trial grounds. The appeal was dismissed as premature on July 22, 2015. Villalona then filed nine motions for continuances between November 4, 2015, and October 27, 2016.

A jury found Villalona guilty of the one count, and the court sentenced him to 15 years' imprisonment. Villalona appealed, raising his speedy trial claim. The Fourth District Court of Appeal ("Fourth DCA") affirmed *per curiam*.

In March 2022, Villalona filed the instant § 2254 petition, which proceeded solely on the speedy trial claim. The district court denied the § 2254 petition, finding that, under the factors outlined in *Barker v. Wingo*, 407 U.S. 514 (1972), Villalona had not shown that his speedy trial rights had been violated. Villalona filed a "Motion to Alter or Amend Final Judgment and Order Denying Habeas Petition," which the court denied the motion, finding that none of Villalona's arguments required amended findings of fact or warranted an alteration to the judgment.

To merit a COA, Villalona must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Villalona has not shown that reasonable jurists would debate the district court's determination that the state court's

resolution of his speedy trial claim was not contrary to, or an unreasonable application of, clearly established federal law, as determined by the Supreme Court, or based on an unreasonable determination of the facts.

The first *Barker* factor, the length of the delay, weighed in favor of Villalona, regardless of the start of the speedy trial clock, because 44 months had elapsed between the date of the information being filed and the start of trial. The second factor, the reason for the delay, did not weigh against the state, due to Villalona's numerous continuances. The third factor, assertion of the speedy-trial right, did not weigh against the state because, although Villalona filed a demand for speedy trial in May 2015, he had stated that he waived his right to a speedy trial in January 2015 and filed then ten continuances.

As for the last factor, prejudice, because the first three factors did not all weigh against the state, Villalona had to prove actual prejudice from the delay, in order for the factor to weigh in his favor. However, he failed to make such a showing. Accordingly, as the first three factors did not heavily weigh against the state, and Villalona did not prove actual prejudice, the state appellate court's rejection of this claim was reasonable. Because Villalona failed to make the requisite showing, his motion for a COA is DENIED.

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE

Appendix B

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-12565

STEVEN JUSTIN VILLALONA,

Petitioner-Appellant,

versus

WARDEN, OAKDALE, FCI 1,
STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:22-cv-60503-WPD

Before: JORDAN AND NEWSOM, Circuit Judges.

BY THE COURT:

Steven Villalona has moved for leave to file an out-of-time motion for reconsideration of this Court's January 9, 2023, order, denying him a certificate of appealability, on appeal from the denial of his 28 U.S.C. § 2254 petition and motion for reconsideration. He has also filed a motion for reconsideration.

Villalona's motion for leave to file an out-of-time motion for reconsideration is GRANTED. Because, however, Villalona has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motion, his motion for reconsideration is DENIED.

Appendix C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

STEVEN VILLALONA,

Petitioner,

vs.

WARDEN, OAKDALE FCI 1;
STATE OF FLORIDA,

Respondent.

CASE NO. 22-60503-CIV-DIMITROULEAS

_____/

FINAL JUDGMENT AND ORDER DENYING HABEAS PETITION

THIS CAUSE is before the Court on Petitioner Villlalona's *pro se* February 27, 2022 Petition for Writ of Habeas Corpus [DE-1], and his unsworn Memorandum [DE-1-1]. On March 17, 2022, Villalona asked this court to proceed only on the exhausted Constitutional Speedy Trial issue. [DE-6]. On March 30, 2022, this Court allowed Villalona to proceed only on his Constitutional Speedy Trial claim. [DE-10]. The Court has considered the Government's May 16, 2022 Response [DE-13] and Appendices [DE-14, 15] and Villalona's June 1, 2022 Reply [DE-17] and Appendix [DE-18] and finds as follows:

MIDDLE DISTRICT OF FLORIDA (11-375CR)

1. On or about October 3, 2011, Villalona was arrested in the Middle District of Florida. He was held in pre-trial detention until trial. [DE-8,11 in 11-375 M.D. Fla.]

2. On November 2, 2011, Villalona, along with Jean Ariel Mercedes and William Garcia, was indicted and charged with Conspiracy to Possess with Intent to Distribute Cocaine from September 28, 2011 through October 3, 2011 in Orange County, Florida. He was also

charged with Possession of a Firearm in Furtherance of a Drug Trafficking Crime. (DE-20 in 11-375 M.D. Fla.).

3. On January 4, 2012, Villalona pled guilty to both counts pursuant to a plea agreement. [DE-38 in 12-375 M.D. Fla.]. The agreement did not bind other federal, state or local prosecuting authorities. (Para. 6 of plea agreement).

4. On May 18, 2012, Villaona was sentenced to 180 months in prison [DE-82 in 11-375 M.D. Fla.].

5. On July 5, 2013, the Eleventh Circuit affirmed the trial court's denial of his motion to withdraw his plea. [DE-105 in 11-375 M.D. Fla.]. *U.S. v. Villalona*, 506 Fed. Appx. 902 (11th Cir. 2013). There is no showing when and if Agent Willets would have become aware of the outcome, and, if so, when it would have been communicated to Broward County prosecutors.

6. On August 24, 2018, the trial court denied a motion to vacate [DE-134 in 11-375 M.D. Fla.], *Villalona v. U.S.*, 2018 WL 4052389 (M.D. Fla. 2018). The Eleventh Circuit denied a certificate of appealability on February 27, 2019. *Villalona v. U.S.*, 2019 WL 1123753 (11 Cir. 2019). The United States Supreme Court denied certiorari on November 12, 2019. *Villalona v. U.S.*, 140 S. Ct. 497 (2019). Rehearing was denied on January 13, 2020. *Villalona v. U.S.*, 140 S. Ct. 863 (2020). On February 6, 2020, the trial court denied a motion to recuse and motions for relief from judgment. *Villalona v. U.S.*, 2020 WL 6600361 (M.D Fla. 2020). The Eleventh Circuit denied a certificate of appealability on August 3, 2020. *Villalona v. U.S.*, 2020 WL 8615606 (11th Cir. 2020). The United States Supreme Court denied certiorari on February 22, 2021. *Villalona v. U.S.*, 141 S. Ct. 1429 (2021).

7. On April 4, 2013, an Information was filed. [DE-18, pp. 6-7]. Villalona alleges that a detainer was lodged against him at his federal prison on March 13, 2013 [DE-14-1, p. 38]. The jacket of the Broward County state court file indicates,(and this Court assumes erroneously), that on April 14, 2014[1], Villalona had been taken into state custody on an active warrant (#12-299AF10) that had been signed by Broward County Circuit Judge Michael Usan on September 19, 2012[2]. A detainer was lodged against Villalona on March 6, 2013. [DE-15-3, p. 23]. In September, 2013, Villalona's conviction became final in the Middle District of Florida. On June 24, 2014, Villalona signed a request for action. [DE-18, p.4]. On August 5, 2014, Villalona signed a request for final disposition. [DE-18, p. 3]. He was booked into the Broward County Jail on September 24, 2014. [DE-18, p. 11]. Villalona concedes that he was arrested on that date at the federal prison. [DE-17, p. 2]. Villalona was arraigned on or about October 2, 2014, and the Public Defender was appointed. [DE-18, p. 39]. On December 2, 2014, defense counsel indicated he would not be ready for trial on such serious charges, (he had just received discovery yesterday [DE-18, p. 48]) on the scheduled trial date: December 8, 2014 [DE-18, pp. 40, 56]. Villalona objected to a continuance , and a state continuance was granted until January 12, 2015.[DE-18, p. 58].

8. On December 30, 2014, defense counsel had filed a Motion to Dismiss Pursuant to F.S. § 941.45. He alleged that more than 180 days had elapsed since the clerk received

[1] The are multiple alleged arrest dates in this case. The prosecutor calculated the date of arrest as being August 14, 2014. [DE-18, p. 34]. Indeed, Villalona was still in a federal prison when he wrote the June 24, 2014 letter requesting action on pending warrants. It appears that Villalona was still in federal prison when the prosecutor was instructed in a letter dated August 27, 2014 as to how to pick him up from federal custody. Nevertheless, the Court finds that he was arrested and taken into custody on the Broward charges on September 24, 2014. His arraignment apparently occurred on October 2, 2014. On January 12, 2015, Villalona calculated that the state's 175 day speedy trial time would elapse on February 14, 2015, which would have made his arrest date August 23, 2014.[DE-15-1, p. 3]. However, if he was referring to the 180 day Interstate Compact rule, then the triggering date was August 18, 2014. Again, this Court finds the arrest date to have been September 24, 2014.

[2] It was based on an affidavit signed by Detective Greg Lacerra indicating that as of September, 2012, co-defendant Miguelna Perez was still trying to purchase cocaine in Broward County.[See also, DE-14-1, p. 38]

Villalona's request for action. Villaluna did not allege when the prosecutor had received the request. Indeed, Villalona has conceded that the prosecutor was not served with his request. [DE-1-1, p. 10]; [DE-14-1, p. 63]. The motion was denied on January 6, 2015 for the reasons set forth on the record. However, this Court has not been furnished a copy of that transcript. On January 12, 2015, Villalona waived his right to speedy trial. [DE-15-1, pp. 3-4]. On January 12, 2015, an Amended Information was filed charging Villalona, along with Miguelna Perez and Jean Mercedes[3], with Conspiracy to Traffick in Cocaine over 400 grams from August 21, 2011-September 21, 2012[4] in Broward County, Florida. On February 13, 2015, the trial court granted Villalona's *pro se* Motion to Disqualify Judge [DE-18, p. 19[. Another Amended Information was filed on August 18, 2016. [DE-14-1, pp. 14-15].

9. On April 29, 2015, the trial court denied a *pro se* Motion to Dismiss on Speedy Trial grounds. On May 21, 2015, Villalona filed a *pro se* Demand for Speedy Trial [DE-14-1, p. 216] and an appeal. On June 9, 2015, the State requested an Extension of the Speedy Trial Time Period for 90 days based upon a frivolous appeal. [DE-14-1, pp. 230-231]. The appeal was dismissed as premature on July 22, 2015 (4D15-2279). On November 4, 2015, defendant requested a continuance. [DE-24-1], pp. 237-238]. Another request for a defense continuance was filed on February 21, 2016. [DE-14-1, pp. 239-40]. Another request for a defense continuance was filed on March 31, 2016. [DE-14-1, pp. 241-243]; another request for a defense continuance was filed on April 17, 2016. [DE-14-1, pp. 245-246; another request for a defense continuance was filed on June 15, 2016. [DE-14-1, pp. 247-248]; another request for a defense

[3] Although Mercedes was charged in the Middle District of Florida, Perez was not. The conspiracy in Broward County lasted a year longer and was 200 miles away.

[4] It was represented to the state court judge at the April 29, 2015 hearing that the Orlando agents requested that Villalona not be arrested in Broward County in 2011 because of their on-going investigation. [DE-15-2, p. 23]. Deferring to the federal prosecution was a permissible basis for a delay. *U.S. v. Marler*, 756 F. 2d 206, 214-15 (1st Cir. 1985); *see also, U.S. v. Ellis*, 622 F. 3d 784, 791 (7th Cir. 2010).

continuance was filed on June 27, 2016. [DE-14-1, pp. 249-250]; another request for a defense continuance was filed on August 29, 2016 [DE-14-1, pp. 258-259]. A "Last Continuance" was granted on August 29, 2016. [DE-141, p. 260]. Another motion for a defense continuance as filed on October 27, 2016. DE-14-1, pp. 260-263].

10. On December 2, 2016, Villalona was found guilty as charged. [DE-14-1, p. 17]. On January 12, 2017, he was sentenced to fifteen (15) years in prison with credit for 844 days time served[5]concurrent[6] with any active sentence. [DE-14-1, pp. 23-25]. On May 23, 2019, the Fourth District Court of Appeal affirmed. [DE-14-1, p. 163]. *Villalona v. State*, 272 So. 3d 1277 (Fla. 4th DCA 2019). On June 18, 2019, rehearing was denied. [DE-14-1, p. 175]. Mandate issued on July 12, 2019. [DE-14-1, p. 177]. On October 21, 2019, the Florida Supreme Court denied certiorari. [DE-14-1, p. 198]. Villalona's conviction became final when the U.S. Supreme Court denied his petition for a writ of certiorari on October 21, 2019. [DE-14-1, p. 198]. *Villalona v. Florida*, 140 S. Ct. 444 (2019).

11. Villalona filed a Motion for Post Conviction Relief on October 1, 2020. [DE-14-1, p. 200-214]. Said motion is still pending in state court. On July 16, 2021, the Clerk told Villalona that the motion had been sent to the judge for consideration. When this court dismissed the habeas petition as unexhausted on March 9, 2022 [DE-3], Villalona asked this court to proceed on the one exhausted issue: constitutional speedy trial [DE-6]. On March 30, 2022, the Court re-opened the case to consider that one issue [DE-10].

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[5] Which would calculate to an arrest date of September 22, 2014. However, credit was supposed to be given back to an arrest date of August 14, 2014. [DE-15-3, pp.29-30].

[6] The state has appropriately not argued that the "Concurrent sentence doctrine" would moot this collateral attack. It would seem that the additional fine or different credit for time served are collateral consequences. Indeed, Villalona contends that he will have to serve an additional three (3) years on the state charge. [DE-1-1, p. 12].

12. In this barely, timely petition, Villalona complains that his speedy trial rights were violated under the Sixth Amendment. He also alludes to a violation of the Interstate Agreement on Detainees[7]. No basis for relief has been shown.

13. Villalona was arrested based upon an arrest warrant that had been issued on September 19, 2012. He contends that the case was delayed 43 months after his arrest; 43 months before his trial began would be May 1, 2013. Whether his arrest was in 2011, 2013[8] or 2014 (this Court finds the record supports an arrest on September 24, 2014); nevertheless, the delay was presumptively too long. Here, the length of the delay is measured from the date of the Information being filed on April 4, 2013 until the commencement of trial on November 28, 2016 (almost 44 months). *Dillingham v. U.S.*, 423 U.S. 64 (1975). However, when applying the four prongs of *Barker v. Wingo*, 407 U.S. 514 (1972), there is no showing that the state court erroneously denied Villalona his constitutional (Sixth Amendment) right to a speedy trial. The State Court decision was not objectively unreasonable. The second and third prongs of *Barker v. Wingo* (reason for the delay[9] and less than prompt assertion of his right to speedy trial[10]) do not weigh heavily against the state. Finally, Villalona's conclusory allegations do not establish that he was prejudiced by the delay. There was no oppressive pretrial incarceration; indeed, he was serving a federal sentence and was not going anywhere; there is no showing of an objective basis

[7] He does not explain how the act was violated. He was not shuttled back and forth, and he received a defense continuance before either the 120 day deadline or the 180 day deadline had elapsed. *Schuhart v. State*, 647 So. 2d 1049 (Fla 5th DCA 1994). Moreover, the alleged Interstate Compact violation remains unexhausted. Point One on his direct appeal only involved his Sixth Amendment claim [DE-14, p. 59,].

[8] Villalona concedes that a detainer does not constitute an arrest. [DE-17, p. 2].

[9] Two state continuances and ten defense continuances. There were voluminous filings by Villalona. *Bolden v. Vandergraff*, 2022 WL 522891 *8 (E.D. MO. 2022). Here, the reasons for the delay are at best neutral or weigh against Villalona.

[10] Villalona waited fifteen (15) months after a detainer was filed to sign a request for action and another two (2) months to file a request for disposition. In December, 2014, Villalona wanted a speedy trial, but then waived it the next month. He demanded a speedy trial in May, 2015 and then requested nine defense continuances. The trial court found that the case was complicated and justified the two state continuances. [DE-18, p. 54-58].

for anxiety and concern (standing backwards in an elevator and not playing football and basketball do not suffice). These and other conclusory allegations are insufficient. *U.S. v. Machado,* 886 F. 3d 1070, 1082 (11th Cir 2018) *citing, U.S. v. Hayes,* 40 F. 3d 362, 366 (11th Cir. 1994).. Villalona has not met his burden of showing prejudice by particularized allegations; a mere possibility of prejudice is insufficient. *Jackson v. Ray,* 390 F. 3d 1254, 1264 (10th Cir. 2004) *cert. denied* 546 U.S. 834 (2005).

14. If his argument is that his due process rights (Fifth Amendment) were violated by the delay in filing formal charges, then there is no showing that the government did it to gain a tactical advantage, rather it was done so as to not jeopardize an on-going investigation. Here, the pre-indictment delay (twenty months) was not inordinate. *U.S. v. Oliva,* 904 F. 3d 910, 922 (11th Cir. 2018). Alternatively, even if both delays are combined, no constitutional violation has been shown. *See, U.S. v. Ingram,* 446 F. 3d 1332, 1339 (11th Cir. 2006).

Wherefore, Villalona's habeas petition [DE-1] is DENIED.

The Clerk shall close this case and deny any pending motions as MOOT.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 9th day of June, 2022.

WILLIAM P. DIMITROULEAS
United States District Judge

~~U.S. v. Moore~~

Bond v. Moore, 309 F.3d 770 (11th Cir. 2002)(conviction becomes "final" ninety days after the judgment on direct appeal is issued, within which petition for writ of certiorari could have been filed).

Additional material from this filing is available in the Clerk's Office.