

23-5494

No. 3:20-CR-00038

ORIGINAL

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SUPREME COURT, U.S.

GMG-RWT

IN THE

SUPREME COURT OF THE UNITED STATES

court of Appeals

DOMINIC ASQUITH — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

~~THE FOURTH CIRCUIT~~ — SUPREME COURT OF THE U.S.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DOMINIC ASQUITH
(Your Name) E.R.J

94 GRAPEVINE ROAD
(Address)

MARTINSBURG WV. 25405
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

MR. ASQUITH, HAS GREAT CONCERNS OF TO MANY EXCESSIVE CONTINUOUS DELAYS IN GETTING APPELLANT'S AND HIS CO-DEFENDANT'S CASE TO TRIAL.

ALSO, DEFENDANT'S BEEN IN THE FEDERAL HOLD OVER FOR 27 MONTHS WITH OUT PRETRIAL, AND DEFENDANT PASSED HIS 70 DAYS SPEEDY TRIAL ACT WAY LONG BEFORE HE ENTER A NOT GUILTY PLEA IN- 2021 YEAR 24 MONTHS OF THE 27 MONTH SHOULD NOT BE EXCLUDABLE FROM THE SEVENTY-DAY MAXIMUM.

A federal criminal defendant was not judicially estopped from challenging the excludability, from the "clock" of the speedy trial act 18 3161 of a 91-day continuance granted by a federal district court

① The U.S. Supreme Court was unwilling to recognize an estoppel based on the defendant's asserted promise not to move for dismissal/ under 18-3162 because B doing so would entirely swallow the act's policy of not permitting prospective waivers

② A valid basis for estoppel was not provided by the defendant's assertedly implied (and mistaken) agreement that such prospective waiver and produced a form for the defendant to sign; and (b) while the other relevant factors concerning estoppel (clear inconsistency and unfair advantage or detriment) might in isolation support the federal gov's position in favor of estoppel, these factors did not predominate where as in the case at hand, the federal government itself had accepted the district court's interpretation without objection.

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

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STATUTES AND RULES

<u>28 U.S.C. § 1254</u>	
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OTHER

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE UNITED STATES

The Petitioner, DOMINIC ASQUITH, respectfully Prays that
A writ of certiorari issue to review the judgment and opinion of the
Judgment, unpublished opinions of the FOURTH circuit court of Appeals,

OPINION BELOW

The Fourth circuit court of Appeals Denies the Petition For rehearing
en banc June 6, 2023

JURISDICTION

The original opinion of The Fourth circuit of Appeals was entered
April 25, 2023. A timely motion to that court For rehearing was
denied ON June 6, 2023

THE Jurisdiction of this Court is invoked under 28 U.S.C. 1254.
For violation of (speedy Trial Act) 18 U.S.C. 3161.
And civil

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 + B 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 _____ 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 June 6, 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: June 6, 2023, and a copy of the order denying rehearing appears at Appendix B.

☐ 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. § 1254(1).

yes

☐ For cases from **state courts**:

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

1. U.S. CONST., AMEND. VI
2. U.S. CONST., AMEND. XIV

STATEMENT OF THE CASE - BACK GROUND

(1) ON October 7, 2020, A Grand Jury in West Virginia Martinsburg returned A Indictment Against, MR. DOMINIC, ASQUITH. The defendant is charged with 'count one & co-conspiracy, That occurred from A date unknown by from A date at least on or about June 1, 2019 and continuing to on or about, October 6, 2020, in the Northern District West Virginia.

Mr. Asquith enter a not guilty plea on April 7-2021

(2) From That day on. The speedy Trial Act (18 U.S.C. 3161 et seq.), in 18 U.S.C. 3161(c)(1), generally required a federal criminal trial to begin within 70 days after a defendant was charged or made an initial appearance.

But That didn't happen, MR. Asquith been force with over 13 teen, continuances, not by him, or the defendants, Attorney But

By other co-defendants Attorneys, MR. Asquith been in the E.R.D. Prison awaiting pretrial - for over 27 months, This kind of Excessive Delays, outways the speedy Trial For The defendant

MR. Asquith never waive his speedy Trial Act, and never sign A waiver And under The speedy Act This defendant should not be judicially estopped From challenging the excludability of the 27 months-day continuance

(3) The district court has been reluctant to carefully and conscientiously Apply the test set forth in United States v. Gonzalez Claudio, 806 F.2d 334, 340 (ad.cir. 1986), which requires the court to determine whether pretrial detention ~~violates~~ violates the defendant's right to Due Process - By considering

(1) THE length of detention that has occurred and the nonspeculative Nature of future detention; (2) the extent to which the prosecution bears responsibility for the delay in starting trial; AND (3) The Facts concerning the risk of Flight. In so doing, (4) The district court doesn't recognized that "The due process limit on the duration of - Preventive detention Requires Assessment on A case-by-case basis, Since due process does not necessarily set A Bright limit For length of pretrial confinement." Id. quoting United States v. Salerno, 794 F.2d 64, 78-79 (2d Cir. 1986)

③ By contrast, 18 U.S.C. 3162 (A)(2) is A Statute that actually states A consequence - For failure to comply with A time limit: if A defendant is not brought to Trial within the time limit required the information or indictment shall be dismissed on motion of defendant. The Supreme Court has confirmed that "the Sanction for A violation of the [Speedy Trial] Act is dismissal..." Zedner v. United States, 547 U.S. 489, 509, 126 S.Ct. 1976, 164 L. Ed. 2d 749 (2006). Thus, the Supreme Court has amply distinguished between statutes that impose consequences and statutes that do not.

④ MR. Asquith put in motions For bond in to the magistrate, And district Judge Both were denied, on Numerous times

⑤ MR. Asquith Brought up issues inside his motions About his medical health dealing with his Backpain and slip disc near his "spin" The district court didn't take MR. Asquith health into consideration

Also (E.R.J.)-EASTERN REGIONAL JAIL- lacks the Medical Attention towards this Defendant And this defendant suffers A lot of cronicle PAINS

(6)

FOURTEENTH AMENDMENT- PRETRIAL DETAINEEES

Hartsfield V. Colburn, 371 F. 3d 454 (CA 8 2004)

Pretrial detainees are entitled to at least as much protection

under the Fourteenth Amendment as under the Eighth Amendment

See Spencer v. Knapheide Truck Equip. Co., 183

REASONS FOR GRANTING THE PETITION
I. THE FOURTH CIRCUIT'S MISAPPLICATION OF
THE SPEEDY TRIAL

WARRANTS THIS COURT'S ATTENTION.

The Fourth Circuit's opinion misapplied The Speedy Trial Act 18 U.S.C. § 3161
The Speedy Trial Act, 18 U.S.C. § 3161 et seq., requires criminal trials to
commence within 70 day after a defendant is indicted or appears in court
whichever is later, after certain periods prescribed by the statute are excluded.

IN the zedner case - Zedner v. United States, 547 U.S. 489

The exclusion of delay resulting from an ends-of-Justice continuance is the most
open-ended type of exclusion recognized under the Speedy Trial Act of 1974 and,
in allow district courts to grant such continuances, Congress clearly meant
to give district judges a measure of flexibility in Accommodating
unusual, complex, and difficult cases. But it's equally clear that Congress,
knowing that the many sound grounds for granting ends-of-Justice Continuances
could not be rigidly structured, saw a danger that such continuances
could get out of hand and subvert the Act's detailed scheme. The
strategy of 18 U.S.C. § 3161(h)(8), then, is to counteract substantive
open-endedness with procedural strictness.

This provision demands on-the-record findings and specifies in some detail
certain factor that a Judge must consider in making those findings.

② ON 4-25-2023

Attorney David Frame Ask for a six month continuance because He didn't
know how to work AN-USB towards the laptop, and The District
Court granted it This out ways The ends-of-Justice and clearly violates
The 18 U.S.C. § 3161(h)(8)

The Sixth Amendment to the United States guarantees that in All Criminal prosecutions, the Accused shall enjoy the right to A Speedy trial. U.S. Const Amend. VI. The United States Supreme Court has Articulated A Four-Factor balancing test For determining whether A defendant Has been deprived of this Speedy trial right.,
(1) the length of delay, (2) the reason For the delay, (3) the defendant's Assertion of His right, and (4) prejudice to the defendant.

Taken all The Facts Above AS well AS MR. Asquith, is "Passed well over the one year "MARK" is Presumptively Prejudicial Towards MR. Asquith, AND MR. Asquith Been in Prison well over 27-months. MR. Asquith has met all Four-Factor balancing Test To A Violation of The Speedy Trial Act 3161(h)(7)(A) and senseless continuances over 10 Times.

MR. Asquith would like For The supreme court to dismiss his Indictment Against, MR. Asquith, or grant Him Bond on Home confinement.

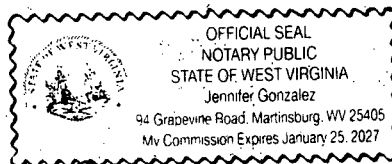
CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dominic Aquila

Date: July 24, 2023



J. Gonzalez
7/24/2023