

No. 23-5956

IN THE  
SUPREME COURT OF THE UNITED STATES

ORIGINAL

ERIQ R. MCCORKLE (PRO SE) - PETITIONER

VS.

NORM ROBINSON, Warden, - RESPONDENT (s)

Supreme Court, U.S.  
FILED

OCT 18 2023

OFFICE OF THE CLERK

On Petition for the Writ of Certiorari to  
United States Sixth Circuit Court of Appeals

Petition for Writ of Certiorari

Eriq R. McCorkle c/o A777698

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Lancaster, Ohio 43130

QUESTION(S) PRESENTED

1. When the death of a material witness occurs during Pre-Trial delay, does there need to be a showing of whether and/or what the witness would have testified to for the defense to meet the prejudice standard set by Barker v. Wingo (1972)?
2. Is it error for the Federal Courts to apply the 5<sup>th</sup> and 14<sup>th</sup> Amendment Pre-Indictment Delay standard in the analysis of a 6<sup>th</sup> Amendment Speedy Trial Claim when determining prejudice during Pre-Trial Delay?

### LIST OF PARTIES

Names of all parties appear in the caption of the case on the cover page.

1. NORM ROBINSON, Warden, - RESPONDENT(s)
2. ERIQ R. MCCORKLE, *Prose*, - PETITIONER

### RELATED CASES

- State v. McCorkle, No. 2020-CA-36, 2021 Ohio 2604, 2021 WL 3234783 (Ohio Ct. App. July 30, 2021)
- McCorkle v. Warden, Southeast Corr. Inst., No. 3:21-cv-345, 2022 U.S. Dist. LEXIS 65681, 2022 WL 1062783 (S.D. Ohio, Apr. 8, 2022)
- McCorkle v. Warden, Southeast Corr. Inst., No. 3:21-cv-345, 2022 U.S. Dist. LEXIS 96350, 2022 WL 1751387 (S.D. Ohio, May 31, 2022)
- McCorkle v. Robinson, 2023 U.S. App. LEXIS 19733 (6th Cir. July 31, 2023)

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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 Judgement below.

**OPINIONS BELOW**

For cases from the Federal Court:

The opinion the United States Court of Appeals appears at Appendix page 1 to the Petition and is reported at McCorkle v. Robinson, 2023 U.S. App. LEXIS 19733

The opinion of the United States District court appears at Appendix page 5 to the Petition and is reported at McCorkle v. - Warden, 2022 U.S. Dist. LEXIS 96350 (S.D. Ohio May 31, 2022)

For Cases from the State Court:

The opinion of the highest State Court to review the merits appears at Appendix page 8 to the Petition and is reported at State v. McCorkle, 2021-Ohio-2604 (Ohio Ct. App., Greene County July 30, 2021)



## JURISDICTION

For cases from the Federal Court:

The date on which the United State Court of Appeal decided my Case was July 31, 2023.

No Petition for rehearing was timely filed in my Case.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Fifth Amendment of the U.S. Constitution
- Sixth Amendment of the U.S. Constitution
- Fourteenth Amendment of the U.S. Constitution
- 28 U.S.C. § 2254(d)(1)
- 28 U.S.C. § 1254(1)

## STATEMENT OF THE CASE

McCorkle and co-defendant Timothy Buckles was indicted and arrested on or about December 6, 2018 on drug-trafficking charges. On or about September 2, 2020 McCorkle filed a motion to dismiss the indictment based on Federal and State Speedy Trial violations. This motion was denied, and Trial commenced September 14, 2020. According to the State's Witness Timothy Buckles died shortly before trial. Mr. McCorkle's Defense was hinged on Timothy Buckles testimony, as he was the only witness to the crime. On or about September 17, 2020 a jury convicted Mr. McCorkle of all counts, and the trial court sentenced him to seven years in prison. The Court of Appeals of Ohio affirmed his conviction and sentence on appeal, concluding in relevant part that his federal speedy-trial rights had not been violated, and the Ohio Supreme Court declined to review the case. *State v. McCorkle*, No. 2020-CA-36, 2021 Ohio 2604, 2021 WL 3234783 (Ohio Ct. App. July 30, 2021), perm. app. denied, 165 Ohio St. 3d 1426, 2021 Ohio 3730, 175 N.E.3d 580 (Ohio 2021).

McCorkle timely filed a 28 U.S.C. § 2254 petition, claiming that the over 21-month delay in bringing him to trial violate his Sixth Amendment of the U.S. Constitution right to a speedy trial. Also claimed actual prejudice caused by the death of a material witness who was also his co-defendant. A magistrate judge recommended denying McCorkle's petition on the merits. *McCorkle v. Warden, Southeast Corr. Inst.*, No. 3:21-cv-345, 2022 U.S. Dist. LEXIS 65681, 2022 WL 1062783 (S.D. Ohio, Apr. 8, 2022). McCorkle timely filed objections, the district court adopted the magistrate judge's recommendation, denied the petition, and declined to issue a COA. *McCorkle v. Warden, Southeast Corr. Inst.*, No. 3:21-cv-345, 2022 U.S. Dist. LEXIS 96350, 2022 WL 1751387 (S.D. Ohio, May 31, 2022). McCorkle sought a COA from the Sixth Circuit court of Appeals concerning his speedy-trial claim. This was denied on July 31, 2023. *McCorkle v. Robinson*, 2023 U.S. App. LEXIS 19733 (6th Cir. July 31, 2023).

## REASON FOR GRANTING THE PETITION

In the case at bar, the Federal District Court and the Sixth Circuit Court of Appeals have applied a Pre-Indictment Delay Standard (Fifth Amendment of the U.S. Constitution Analysis) of review for Petitioner's Speedy Trial Claim under the Sixth Amendment. This Due Process Standard states: "A defendant does not show actual prejudice based on the death of a potential witness if he has not given an indication of what the witness's testimony would have been and whether the substance of the testimony was otherwise available."<sup>1</sup> Accordingly, both the Federal Courts opined:

*"He also argued that the delay of his trial prejudiced him because his sole witness died shortly before trial began. Yet McCorkle never explained what the witness's testimony would have been or how it would have affected his trial."* McCorkle v. Robinson, 2023 U.S. App. LEXIS 19733 (6th Cir. July 31, 2023) citing United States v. Bass, 460 F.3d 830, 838 (6th Cir. 2006)

This is contrary to what the United States Supreme Court has established in Barker v. Wingo, 407 U.S. 514 (U.S. June 22, 1972) stating: "If witnesses die or disappear during a delay, the prejudice is obvious." Doggett v. United States, 505 U.S. 647, 655-656 (U.S. June 24, 1992):

In a previous decision, the Sixth Circuit Court opined:

*"Because Roberts was apparently present at the scene, and was in contact with Petitioner at and around the time of the crime, he could very well*

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<sup>1</sup> See United States v. Corbin, 734 F.2d 643, 648 (11th Cir. 1984); United States v. Valona, 834 F.2d 1334, 1338 (7th Cir. 1987); United States v. Beszborn, 21 F.3d 62, 66-67 (5th Cir.); United States v. Dukow, 453 F.2d 1328 (3d Cir.); Jones v. Angelone, 94 F.3d 900 (4th Cir. Va. September 3, 1996); United States v. Bartlett, 794 F.2d 1285 (8th Cir. S.D. June 20, 1986); United States v. Munoz-Franco, 487 F.3d 25 (1st Cir. P.R. May 22, 2007); United States v. King, 560 F.2d 122 (2d Cir. N.Y. July 22, 1977); Lazarus v. Core, 2023 U.S. App. LEXIS 23508 (9th Cir. Cal. September 5, 2023); United States v. Garcia, 65 F.4th 1158 (10th Cir. N.M. April 17, 2023)

have provided beneficial testimony." *Maples v. Stegall*, 427 F.3d 1020, 1033 (6th Cir. Mich. October 25, 2005)

The Sixth Circuit then concluded; "Based on the record before us, we think it sufficiently likely that Roberts would have testified on Petitioner's behalf that Petitioner's inability to contact Roberts in September 1995 prejudiced him." *Id.* The Sixth Circuit conducted no inquiry as to what Roberts would have testified to or how it would have affected his trial, as the court did in *McCorkle v. Robinson*.

In the case at bar, during Petitioner's Trial, the State's Witness Chris Fischer testifies to making controlled buys from Timothy Buckles (co-defendant), and that Petitioner allegedly handed the undercover narcotics while Buckles was present in the room; *See Transcripts at 9/14/2020 Vol. 1 Pg. 179:1-2*. Chris Fischer also reveals the location where both controlled buys took place: 530 Newport Road Greene County Ohio. The Home of Timothy Buckles. *See Transcripts 9/14/2020 Vol. 1 Pg. 180:7-10*. Based on these facts, Buckles was present at the scene, and was in contact with Petitioner at and around the time of the crime. This makes the testimony of Buckles Material. He very well could have provided beneficial testimony for the defense.

### CONCLUSION

The United States Sixth Circuit court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Therefore, Petitioner humbly prays a Writ of Certiorari be granted.

Respectfully Submitted,

*McCorkle, eriq r.*

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Date *October 18, 2023*