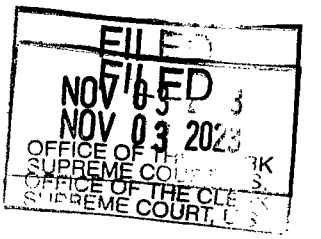
23-6083

No. _____ ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Chalmer E Detling II PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The 11th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

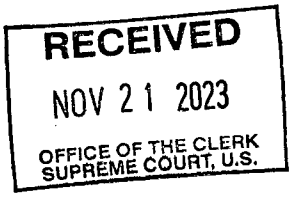
PETITION FOR WRIT OF CERTIORARI

Chalmer E Detling II (71805-019)
(Your Name)

FPC Montgomery 1001 Willow Street
(Address)

Montgomery, AL 36112
(City, State, Zip Code)

334-262-3531
(Phone Number)



QUESTION(S) PRESENTED

Detling appealed the district court's denial of his Speedy Trial Act motion to dismiss, a three-judge panel rejected the Government's argument but then raised its own argument *sua sponte* without giving the Detling notice or the opportunity to be heard on the argument prior to issuing its decision. Was this proper in light of this Court's holding in *Day v. McDonough*, that "a court must accord the parties fair notice and an opportunity to present their positions" before disposing of a case on a ground not raised in their filings?

If this Court finds that the Panel acted improperly then should it grant certiorari based on Supreme Court Rule 10(a) which says that certiorari is appropriate when "a United States court of appeals. . . has so far departed from the accepted and usual course of judicial proceedings. . . as to call for the Court's supervisory power."?

If this Court grants certiorari then was the panel's decision so clearly wrong that summary reversal is appropriate or is it enough to remand the case back to the panel for further consideration in light of this Court's holding in *Day v. McDonough*?

LIST OF PARTIES

All the parties appear in the caption of the case on the cover page.

RELATED CASES

There are no related cases.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Chalmer Detling, an inmate currently incarcerated at the Federal Prison Camp in Montgomery, Alabama, proceeding *sua sponte*, respectfully prays that a writ of certiorari issue to review the judgment below.

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

I. JURISDICTION

The date on which the United States Court of Appeals decided the case was September 18, 2023.

A timely petition for rehearing was denied by the United States Court of Appeals on October 16, 2023, and a copy of the order denying rehearing appears at Appendix C.

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

II. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The fifth amendment to the United States Constitution states that "No person...shall be...deprived of life, liberty, or property without due process of law...".

III. STATEMENT OF THE CASE

As this petition will show, it is inarguable that the panel based its rejection of Detling's Speedy Trial Act claim on an argument that was never raised by the Government. This court need only look at the Government's brief to confirm this. And while it is not this Court's job to fix every mistake made by the courts below it, this Court does have a significant interest in supervising the administration of the judicial system especially where, as in this case, the actions of the court below call into question the integrity of the judicial process.

Mr. Detling was indicted on August 8, 2018 and on October 30, 2018 he filed a number of pretrial motions. (Doc. 26,27,28,29,30) Those motions were referred to a magistrate judge in accordance with a unique local rule that seems to be specific to the Northern District of Georgia. The application of this local rule is central to this appeal.

Northern District of Georgia Local Rule 12.1(E)(1) reads as follows:

> (E) Determination of Motions-(1) Atlanta Division cases. All motions in criminal actions in the Atlanta Division shall be initially submitted to a magistrate judge who shall conduct any required or necessary hearings. When permitted by law, the magistrate shall issue a ruling thereon. When a magistrate is not authorized to rule on the matter, the magistrate judge shall submit a report and recommendation to the judge to whom the case is assigned.

The magistrate ruled on all of the pre-trial motions except the Petitioner's Motion to Strike Surplusage (Doc. 29) and Motion to Allow Participation in Voir Dire (Doc 30). The magistrate "deferred" those two motions to the district court which granted the Motion to Allow Participation in Voir Dire and "deferred" the Motion to Strike Surplusage until the pretrial conference. (Doc. 52) The Court conducted the pretrial conference on October 13, 2022, and October

19, 2022. (Doc. 168) The motion to strike was never directly addressed during either of these hearings though a later-filed motion in limine which, arguably, raised overlapping issues was discussed.

Just before the trial was set to begin, Detling made an oral motion to dismiss his case based on a violation of the Speedy Trial Act. (Doc. 212) The Speedy Trial Act says that a defendant must be brought to trial within 70 days of his first appearance, but it allows for certain days to be excluded from that computation. 18 U.S.C. 3161(c)(1). For motions which require a hearing, the time between the filing of the motion and the hearing on that motion are excluded. 18 U.S.C. 3161(h)(1)(F). But for all other motions, no more than thirty days may be excluded. Id. Detling argued that (1) only the magistrate judge was allowed to hold a hearing on the motion and (2) even if the district court was authorized to hear the motion there was no actual hearing because that particular motion was never discussed at the pre-trial conference. (Doc. 212)[1] [2]

[1] The Court heard Detling's motion, denied it orally, and then proceeded to trial. Id.
[2] The Government conceded, by not arguing to the contrary, that all of the issues raised by Detling on appeal were properly preserved. The panel seemingly agreed.

On direct appeal Detling renewed his argument that the Speedy Trial Act had been violated and argued that the district court was not permitted under the local rule to conduct a hearing on the Motion to Strike. (App. F. pp. F-22).

In his appeal brief, Detling argued that "the local rules for the Northern District of Georgia [Atlanta Division] require [non-dispositive] pre-trial motions to be referred, heard, and decided by a magistrate judge" and that "only the Magistrate could conduct a hearing on the motion to strike." (App. F. pp. 22-23). He argued that the language in the rule was unambiguous when it states that the magistrate "shall conduct any required or necessary hearings." (Id. at 23). He further argued that the local rule had the power of law and that it must be followed by the magistrate and district court. Id. If the district court was authorized to conduct a hearing, Detling argued, then the speedy trial clock would have been tolled from the time he filed the motion until the hearing. But, if the district court was not authorized then the speedy trial clock would have began running again 30 days after the motion was filed, in which case the Speedy Trial Act would have been violated. (Id. at 30).

The Government conceded in its brief, by not arguing to the contrary, that the applicability of the local rule was the determinative question. (See generally App. G. pp. 28-36). The government never argued that the rule was vague or that Detling's reading of the rule was incorrect. The government's argument, which was ultimately rejected by the panel, was that "the magistrates judge's decision to defer the motion to strike to the district court accords with this Court's binding precedent." Id at 33. The case that the Government referenced was *United States v. Awan*, 966 F. 2d 1415, 1426 (11th Cir. 1992). Detling, in his reply brief, argued, convincingly it seems, that the Awan case could be easily distinguished from his case and did not relieve either the district court or magistrate court of following the local rule. (App. H. pp. 7-8).

On September 6, 2023 the panel issued a short unpublished opinion denying Detling's Appeal. (App. A.). The panel found that the district court had in fact conducted a hearing, but the panel did not address Detling's argument that local rule did not permit the district court to conduct the hearing in the first place. Detling promptly filed a motion for panel rehearing. (App B.). In response, the panel vacated its

previous opinion and entered a new opinion. (App. C.) This opinion was identical in all respects to the prior opinion except that the panel included a second footnote. Included in that footnote was the following sentence which gives the panels rationale for rejecting Detling's argument regarding the local rule:

> Mr. Detling asserts that the district court was not permitted to hold a hearing on his motions because N.D. Ga. Local Rule 12.1(E)(1) only authorized the magistrate judge to do so. We disagree. By providing that motions are 'initially assigned' to a magistrate judge, Rule 12.1(E)(1) contemplates that the district court can and will handle such matters as well.

This argument does not appear in the Government's brief. It is by definition a forfeited argument.

The argument that the local rule could be interpreted as "contemplat[ing] that the district court can and will handle such matters as well" was never made by the Government. Detling then filed a Second Petition for Panel Rehearing pointing out that the Government never made this argument and that he should be given the chance to respond and be heard on that argument. (App. D.). The panel denied that motion without comment. (App. E.).

IV. Reasons for Granting the Writ

Certiorari is appropriate when "a United States court of appeals...has so far departed from the accepted and usual course of judicial proceedings...as to call for an exercise of this Court's supervisory power." Supreme Court Rule 10(a). And that is what happened here. In *Day v. McDonough* this Court held that "A Court must accord the parties fair notice and an opportunity to present their positions" before disposing of a case on a ground not raised in their filings." *Day v. McDonough*, 547 U.S. 198, 210 (2006). This is a fundamental right under the constitution and is especially important to criminal defendants whose liberty is at stake. Where, as here, the Government declines to make a substantive argument, the court of appeals should have, at a minimum, afforded Detling the opportunity to meaningfully respond to the argument before adopting an argument on the Government's behalf. This is a clear violation of this Court's precedent and undermines the integrity of the judicial process.

It's even more important for the Court to exercise its supervisory power in cases, like this one, where the Court's behavior is intentional,

not merely negligent. Mr. Detling made the panel aware that it had denied him the right to comment on the argument when he filed his second motion for panel rehearing. (App. B.). In that motion he explained in detail why the panel was wrong to decide the issue without first hearing from him and stated the panel should "at a minimum vacate its opinion and order both sides to brief the issue. (Id. at 4). But, the panel responded by denying his petition without comment. The panel's decision to rule against Detling without first hearing from him and then denying his request for rehearing shows that the panel was acting intentionally, rather than negligently, when it chose to base its ruling on an argument without first giving Detling notice and the opportunity to respond.

Furthermore, this is the only Court that can correct this error. The panel disposed of Detling's appeal in an unpublished opinion. In the Eleventh Circuit only published opinions are subject to en banc review so this Court is the only avenue of relief. 11th Cir. R. 34-3. It is likely that an en banc panel would have reversed the three-judge panel because Eleventh Circuit precedent regarding the party-presentation rule is perhaps even stronger than this Courts. See *U.S. v. Smith*, 30 F.

4th 1334, 1341 (11th Cir. 2022) ("We have said that the complete denial of the opportunity to be heard on a material issue is a violation of due process which is never harmless error'"). In the Eleventh Circuit a party fails to adequately "brief" a claim when it does not "plainly and 'prominently" raise it, "for instance by devoting a discrete section of his argument to those claims." *Cole v. U.S. Att'y Gen.*, 712 F.3d 517,530 (11th Cir. 2013)(internal marks and quotation marks omitted). The Government clearly did not adequately "brief" this issue under the Eleventh Circuits standards. The fact that Detling is prevented from bringing this issue to an en banc panel makes this Court's supervisory function even more critical.

V. Reasons Summary Reversal is Appropriate

Because the Court of Appeals decision to rely on a *sua sponte* argument without giving Detling notice and the right to respond is obviously wrong and squarely foreclosed by this Court's precedent summary reversal is merited. See *Presley v. Georgia*, 558 U.S. 209, 217, 130 S. Ct. 721 (2010) (Thomas J., dissenting). Since the Panel has already rejected the argument that the government actually made

and this Court's precedent forecloses the Panel from considering the *sua sponte* argument, there is no argument left in opposition to Detling's appeal. Summary reversal is therefore appropriate.

VI. Conclusion

For the foregoing reasons, Mr. Detling respectfully requests that this Court grant a writ of certiorari to review the judgment of the panel below and to either issue a summary reversal or remand to the panel with instructions to follow the clear precedent of this Court.

Respectfully submitted,

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