No. 23-6192

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

David Lewis Holland — PETITIONER
(Your Name)

vs.

The State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Texas 7th Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

David Lewis Holland
(Your Name)

12071 F.M. 3522 Abilene, TX 79601
(Address)

Abilene, TX 79601
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

QUESTION 1:

Whether the new Speedy Trial requirement created by the Texas 7th Court of Appeals in the instant case is in conflict with current case law precedent, and federal and state constitutional provisions?

Specifically, the newly-established requirement that a defendant must cease trial preparation once a speedy trial has been requested if they are to have any hope of a successful appeal on the issue of Speedy Trial.

QUESTION 2:

Whether a defendants opposition and objection to a State request for a continuance made through his appointed counsel constitutes a valid assertion of right to Speedy Trial as required by this Courts decision in Barker v. Wingo?

TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

FEDERAL

STATE

STATUTES AND RULES

OTHER

LIST OF PARTIES

[X] 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

State of Texas v. David Lewis Holland, No. 80908-E-CR; 80977-E-CR; 80921-E-CR; 81045-E-CR. 108th District Court of Potter County, TX. Judgement entered on May 24, 2022.

David Lewis Holland v. State of Texas, No. 07-22-00162-CR; 07-22-00163-CR; 07-22-00164-CR; 07-22-00165-CR. Texas 7th Court of Appeals. Judgement entered May 1, 2023.

In re Holland, No. PD-0272-23; PD-0273-23; PD-0274-23; PD-0275-23; Texas Court of Criminal Appeals. Discretionary Review refused on September 6, 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 judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals 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 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.

[X] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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 _____.

[ ] 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: _____, 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. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was Sept. 6, 2023. A copy of that decision appears at Appendix C.

[ ] 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

STATEMENT OF THE CASE

This is a case where a loud and repeated demand for a speedy trial can effectively be ignored with impunity, regardless of any length of delay, reason for the delay or prejudice to an accused.

In addition, this case also consists of a situation where the Petitioner's ability to effectively assert his right to speedy trial was hindered by his uncooperative appointed counsel and unconstitutional actions of the trial court.

STATEMENT OF THE PROCEDURAL HISTORY

Petitioner was charged by indictment in Cause No. 80908-E-CR with the felony offense of arson of a habitation, enhanced. He was also charged by indictment in Cause No. 80921-E-CR with the third-degree felony offense of unlawful possession of a firearm by a felon, enhanced. In another case, he was charged by indictment in Cause No. 80977-E-CR with the third-degree felony offense of evading arrest with a motor vehicle, enhanced. Finally, Petitioner was also charged by indictment in Cause No. 81045-E-CR with the second-degree felony offense of aggravated assault with a deadly weapon. In that Cause, the State filed a notice of enhancement, using the same conviction alleged in the other causes.

Petitioner was arrested on May 10, 2021. He was appointed trial counsel a few days later.

On September 9, 2021, the State filed a request for a contin-

(statement of the procedural history continued)

uance, which the defense opposed and objected to. A copy of the Order Setting Hearing Date is attached as Attachment A to this petition.

When matters were called for trial, Petitioner pled not guilty to all of the charges and proceeded to a jury trial. On May 24, 2022, the jury found Petitioner guilty on all four charges. Petitioner pled true to the enhancement allegations in all four cases. On May 25, 2022, the jury found the enhancement allegations to be true and assesed punishment at 99-years confinement in the Texas Department of Criminal Justice and a $10,000 fine, and 20 years confinement in the Texas Dept. of Criminal Justice, 5 years confinement in the Texas Dept. of Criminal Justice, and a fine of $10,000, and 80-years confinement in the Texas Dept. of Criminal Justice, respectively. Petitioner then filed a notice of appeal with the trial court.

The Texas 7th Court of Appeals affirmed the decision of the trial court by an unpublished decision issued on May 1, 2023. A Motion for Rehearing En Banc Reconsideration was denied on June 14, 2023.

Petitioner's appointed appelate counsel filed a Petition for Discretionary Review with the Texas Court of Criminal Appeals on August 15, 2023. The Texas Court of Criminal Appeals refused discretionary review without written order on September 6, 2023, therefore this Petition for Writ of Certiorari is timely filed.

ARGUMENT:

ISSUE ONE: Whether the new Speedy Trial requirement created by the Texas 7th Court of Appeals in the instant case is in conflict with current case law precedent, and federal and state constitutional provisions? -Specifically, the newly-established requirement that a defendant must cease trial preparation once a speedy trial has been requested if they are to have any hope of a successful appeal on the issue of Speedy Trial.

Here the State made the argument and the 7th Court of Appeals agreed, that because Petitioner requested a speedy trial and then continued to prepare for trial, that he wasn't really ready for trial. This argument has no basis in the law or the record. Petitioner can find no authority in the law, and the State has cited none for the proposition that an accused must be done with trial preparation once a speedy trial has been requested. In fact, in almost every case where speedy trial is at issue, the opinion stresses the necessity of the accused asserting his right for a speedy trial early on and consistantly. In this case, the Petitioner did just that and as a result the Texas 7th Court of Appeals used his compliance with that speedy trial requirement to violate his constitutional right to a speedy trial. This is akin to the argument that because someone is carefully obeying all the traffic rules that their behavior is suspicious and therefore a police officer would be justified to pull them over. Just a hypothetical example for comparison. But that's exactly what happened here.

Petitioner would argue that it would be extremely foolish not to be as prepared as possible for trial. That would make it prudent to keep working on one's case all the way to the very day of trial. And now Petitioner is being penalized for being prudent. How does one reconcile that with the ideals of fairness the justice system is supposed to espouse?

In deciding this case, the Texas 7th Court of Appeals has created a new speedy trial requirement at the state level where none has previously existed and then used that new requirement to misapply the Barker balancing test.

Specifically, the 7th Court improperly discounts some of Petitioner's pro se demands for a speedy trial, ostensibly because the record was unclear as to whether or not he was actually represented by counsel, or proceeding pro se. This sort of outcome-based approach undermines the serious nature of constitutional claims such as a demand for a speedy trial. Moreover, Petitioner's subsequent demands for a speedy trial were discounted, because when they were ignored by the trial court, Petitioner had the audacity to represent to the court that he was going to continue preparing his defense. According to the Texas 7th Court:

> "Appellant next made a request for a speedy trial at a hearing in January of 2022, when his appointed counsel was allowed to withdraw. At that point the trial court advised Appellant that the speedy trial matter was resolved, as the case was set for trial in April. We note

that Appellant subsequently moved the trial court for additional forensic and investigative services to prepare his defense. As late as April of 2022, motions filed by Appellant referenced his need to "properly prepare for trial," indicating that he was not ready to proceed to trial. Appellant's desire for further investigation and apparent lack of readiness during these months suggests that he acquiesced to the delay at that point.

***

We conclude that this factor weighs in favor of the State". (Mem. Op. pg 7-8)

The Texas 7th Court of Appeals could not have gotten this more wrong. The court failed to recognize the import of the Texas Court of Criminal Appeals' decision in Robinson v. State of Texas with regards to the argument made by the State concerning pro se motions filed by Petitioner. The undisputed evidence in the record establishes Petitioner diligently and timely asserted his right to and desire for a speedy trial. And he did it more than once. There is no evidence in the record to establish that Petitioner did not actually want a speedy trial. Petitioners speedy trial demand was clear and unambiguous, and no waiver can reasonably be asserted. This factor should have weighed heavily in favor of a speedy trial

violation. According to the decision of the Texas 7th Court of Appeals, the only way to [possibly] prevail on a speedy trial claim on appeal following an unfavorable decision by the trial court would be to cease all trial preparations once a speedy trial has been requested. Today the Texas 7th Court of Appeals has announced a new rule that states a litigant must cede the trial in favor of a potential speedy trial claim. Litigants are no longer allowed to be as prepared for trial as possible if they desire to maximize the possibility of success on a speedy trial claim at the appellate level. Actually wanting a speedy trial and also having additional trial preparation indicated in any given case are not mutually exclusive possibilities, nor should they be, despite the decision of the Texas 7th Court in this case. That notwithstanding, the Court of Appeals analysis still fails to support their conclusion with respect to the third Barker factor: that it weighs in favor of the State. This factor should have strongly favored Petitioner, and should not have been considered neutral or in favor of the State under any circumstances.

ISSUE TWO:

Whether a defendants opposition and objection to a State request for a continuance made through his appointed counsel constitutes a valid assertion of right to speedy trial as required by this Courts decision in Barker v Wingo?

ARGUMENT:

In this case, the State made the argument, and the Texas 7th Court of Appeals agreed, that Petitioners assertion of his right to a speedy trial were "procedurally flawed" and that the trial Court was free to disregard any pro se motions filed by Petitioner. It has been held that a defendants failure to object to delay by the State amounts to a waiver of right to speedy trial. Under that same logic, shouldn't objecting to the States attempt to delay trial count as a valid speedy trial assertion? The fact that in this case (where it was done through Petitioners appointed counsel), this should be counted as a valid assertion of right that can not reasonably be considered as "procedurally flawed".

Also in this case, the record undeniably shows that Petitioner tried repeatedly to get his appointed counsel to file for a speedy trial, which he refused to do. Is it any wonder why Petitioner filed a grievance against his appointed counsel in light of the lack of cooperation from his appointed counsel? But that raises the question, how is an accused supposed to assert his right to a speedy trial when his appointed counsel refuses to request it and the trial court disregards his pro se motions? What good is a right guaranteed by the constitution if the courts are free to make up new rules and requirements that prevent one from asserting that right? In this case Petitioner did absolutely everything he could have possibly done to assert his speedy trial right, both through his uncooperative appointed counsel and pro se, yet the Texas 7th Court of Appeals h

Court of Appeals has deemed Petitioners efforts insufficient. So what must an accused in the same predicament as Petitioner do when his appointed counsel refuses to pursue and protect a constitutional right and when he tries to assert that right himself, the Courts are allowed to prevent him from effectively asserting that right? Is it really even a right if courts are allowed to make up new rules and requirements in order to violate that right? This is a no-win situation. One that flies in the face of justice and should not be allowed to stand.

ANALYSIS:

LENGTH OF THE DELAY SUFFICIENT TO TRIGGER ANALYSIS

The Texas 7th Court of Appeals held that the length of delay was indeed sufficient to trigger a full analysis and therefore that factor weighed in Petitioners favor, albeit slightly. So we wont quibble with this point, other than to say that it should be noted that by the time the State filed her first motion for continuance, Petitioners trial case had already suffered prejudice from the death of his grandmother. This is partly what induced Petitioner to, a month later, begin demanding a speedy trial [repeatedly]. Still it took the State approximately another seven months to bring him to trial. It is noteworthy that this period of time is almost long enough in and of itself to be sufficient to trigger speedy trial analysis.

REASON FOR THE DELAY

The State offered no reason for delay at trial, and neither have they offered any legititimate reason for the delay in argu-

ment on appeal. The burden is on the State to bring an accused to trial. The State filed a Motion for Continuance purportedly due to the fact that DNA results had not been obtained. But at no time after Petitioners speedy trial demand(s), did the State offer reasons to justify further delay. Even assuming, for the sake of argument, that the unavailability of DNA results was a reason that could have been offered by the State after Petitioners speedy trial demands- a fact that this Court cannot do based upon the evidence in the record- at no time did the State offer reasons why the DNA was critical to their case, or why they could not proceed to trial without it. With eyewitnesses to testify at trial, DNA evidence was arguably superflous and cumulative. One could argue that since the record is silent on this, that the delay was obtained strictly for the purpose of strengthening the States case with unnecessary evidence, which makes this delay done specifically to gain a tactical advantage over the Petitioner. Furthermore, at no time did the State offer any date certain when DNA results would be available, and neither did they offer any testimony from lab employees as to why DNA results could not be obtained sooner. The record is completely silent on this, yet the 7th Court of Appeals allows the State to re-invoke the purported absence of DNA results for the first time on appeal as justification for delay. Correct me if I'm wrong, but I thought the appeals courts were only supposed to consider things contained in the trial record. The State also argued, again for the first time on appeal, that delay was justified because Petitioners cases were consolidated. This reference is

puzzling because it not only does nothing to support any reason for delay but if anything it should have made it easier for the State to bring Petitioner to trial, rather than have to consider four seperate cases. Again the trial record is silent on this. In fact, at trial the State offered no reason whatsoever for delay in the face of Petitioners speedy trial demands.

The State argued, (also for the first time on appeal), that Petitioners case was complex versus an "ordinary" street crime. This was not offered as an explanation for delay at trial. Moreover, a close record examination reveals that the case was not complex. It did not involve novel issues of law, extensive law enforcement investigation, or complex determination of facts. The fact that the State chose to call fifteen witnesses in her case-in-chief and two in rebuttal does not impose artificial complexity. The State likely could have made her case with no more than three witnesses should it have chosen to do so. Most importantly, the trial record is completely silent concerning the reasons for delay in the face of Petitioners speedy trial demands.

ASSERTION OF THE RIGHT

The State argued, and the Texas 7th Court of Appeals agreed, that "Appellants assertion of his right to a speedy trial was procedurally flawed and conflicted with his other requests." (States Brief at 23) This argument has no basis in the law or the record. Petitioner can find no authority in the law and neither the State nor the 7th Court of Appeals have cited any. Yet inexplicably the 7th Court of Appeals has agreed. In this case, Petitioners speedy

trial demands were clear, unequivocal, and frequent. That he made other requests is immaterial as he, in no way, made any request to delay the trial. Petitioner is not required to make a speedy trial demand and do nothing. The fact of his other trial preparations does nothing to conflict with his speedy trial requests. The State cites Robinson v. State, 240 S.W. 3d 919,922 (Tex. Crim. App. 2007) for the proposition that "the trial court was 'free to disregard any pro se motions presented by' Appellant during this period." (Mem. Op. pg. 7). The Texas Court of Criminal Appeals, in apparent direct contradiction of the proposition offered by the State and held by the 7th Court of Appeals, held that it could. Id. In doing so, the Court of Criminal Appeals in Texas explicitly stated:

> "We agree that a defendant has no right to hybrid representation. We also agree that as a consequence, a trial court is free to disregard any pro se motions presented by a defendant who is represented by counsel. However, once a trial court actually rules on a pro se (or any) motion, we see no reason why that decision should be insulated from review on appeal. While it is true that a trial court's decision not to rule on a pro se motion in this situation would not be subject to review, a ruling that a trial court chooses to make is reviewable."

Robinson v. State, 240 S.W. 3d 919,922 (Tex. Crim. App. 2007) (Emphasis mine). Thus Robinson stands for the exact opposite proposition of law held by the Texas 7th Court of Appeals here. The

overwhelming evidence in the trial record establishes that in the Petitioners case, the trial court did not in any way disregard Petitioners speedy trial demand. On the contrary, he addressed it on multiple occasions and explicitly denied it.

Furthermore, as argued here in Issue Two of this Writ, Petitioners assertion of right to a speedy trial should have been considered valid when his appointed counsel opposed and objected to the States Continuance. (See Attachment A)

The undisputed evidence in the record establishes Petitioner diligently and timely asserted his right to and desire for a speedy trial. And he did so more than once. Both through his appointed counsel and then later while attempting to proceed pro se. There is no evidence in the record that can be reasonably interpreted as acquiescence to further delay. Petitioners speedy trial demands were clear, unambiguous, and frequent and no waiver can reasonably be asserted. This factor weighs heavily in favor of a speedy trial violation.

PREJUDICE ASSESMENT

On appeal, the State relied on four factors to demonstrate Petitioner was not prejudiced by delay. The States argument and the opinion of the 7th Court of Appeals wholly fails to recognize that the length of delay alone is sufficient to establish a presumption of prejudice, for which the State did nothing to overcome. This failure to overcome the presumption of prejudice at trial should carry the day alone. However in an abundance of caution,

Petitioner must respond to each of the factors argued by the State which were held by the 7th Court of Appeals to show no prejudice.

First, the 7th Court of Appeals held that the death of his grandmother was not prejudicial simply because it occured before Petitioner demanded a speedy trial. However, the fact that the death occured before the speedy trial demand does not obviate prejudice as a result of the delay. Her death precluded any possibility of creating a bill of review to establish what her testimony would have been. The fact of her unavailabality alone was prejudicial to Petitioners case, without regard to what her testimony would have been at either the guilt stage or the punishment stage of the trial. The State asserts and the 7th Court held that "the passing of Appellants grandmother occured before any delay in the trial." (States Brief at 25) This is patently untrue. The State acknowledges it came three months after his arrest. Shortly, thereafter, Petitioner began filing speedy trial demands. If the State had brought this matter to trial within a reasonable amount of time thereafter, then perhaps this issue on appeal would turn on whether or not a four month delay might be sufficient to trigger speedy trial analysis in this case. However that is not the case, because it took the State another seven months to bring Petitioner to trial. The first factor used by the State and held by the 7th Court to establish a lack of prejudice is without merit.

Similarly, the 7th Court of Appeals held that there has been no showing that the alibi witnesses asserted by Petitioner to have failing memories would have offered anything beneficial. This is

a chicken and egg argument that improperly attempts to place an undue burden on Petitioner to establish the potentially beneficial testimony of a witness with a failing memory. This is an impossible task and should do nothing to establish a lack of prejudice. Instead, Petitioners record assertions should have been sufficient to establish the potentially beneficial nature of their testimony, if any. Petitioner did not make any secret of how he believed his defense was prejudiced by the delay. The State was free to call witnesses to demonstrate a lack of prejudice. The burden was on the State to demonstrate a lack of prejudice as a result of delay of the trial, and they wholly failed to do so. The trial record is completely silent on the subject.

Similarly, the Texas 7th Court of Appeals held that Petitioner was not ready for trial. Quite simply, this is not for them to determine, and neither should the 7th Court of Appeals speculate about Petitioners apparent trial readiness or lack thereof. As mentioned previously, Petitioner was free to do nothing, announce "ready" and put the State to her burden of proof. However, nothing in the law required him to do so, and in the face of a trial courts either refusal to act or bring an accused to trial in a timely fashion following a speedy trial demand, a defendants continued and ongoing trial preparation cannot and should not be held against him. This new speedy trial requirement created by the Texas 7th Court of Appeals in Petitioners case flies in the face of justice and integrity and all of the ideals and values the

justice system was supposed to stand for.

Last, the State argued, and the 7th Court of Appeals held "other considerations" to establish a lack of prejudice. (States Brief at 27). Namely, the State dismissively argues the fact that Petitioner lost his job and his home, and that these were inevitable consequences in light of Petitioners 99-year sentence. First, these considerations of harm and prejudice are well-settled and long recognized under the law as potentially harmful without regard to the ultimate outcome. Moreover, what the State and the 7th Court of Appeals fail to recognize is the underlying irony of that very argument. That is quite the point: these things were not foregone conclusions if the State had met her burden of bringing Petitioner to trial in a timely fashion, and if the trial court had acceded to his speedy trial requests.

BALANCING OF FACTORS

Not surprisingly and with little analysis, the State and 7th Court of Appeals both concluded that consideration ofthe Barker factors establish that Petitioners right to a speedy trial was preserved. This could not be further from the truth. The State had every opportunity to demonstrate these things at trial but wholly failed to do so.

Once again, the evidence in the record relevant to each of the four factors, when taken together, weighs heavily in favor of a finding that Petitioners right to a speedy trial was violated. He timely, diligently, and repeatedly asserted his right in every possible way available to him in his specific situation, and he

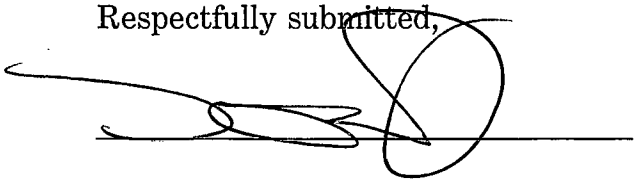
REASONS FOR GRANTING THE PETITION

The Memorandum Opinion of the Texas 7th Court of Appeals has decided an important question of state and federal law in a way that conflicts with the applicable decisions of the Texas Court of Criminal Appeals and the Supreme Court of the United States, and in doing so has so far departed from the accepted and usual course of judicial proceedings as will call for an exercise of the power of supervision of the United States Supreme Court. Specifically the Texas 7th Court of Appeals has created a new speedy trial requirement where none existed before and then used that newly-created requirement to misapply the balancing test established in the United States Supreme Court case of Barker v. Wingo, 407 U.S 514 (1972).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: November 25, 2023

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