

No. 23-7623

In the Supreme Court of the United States

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ESTEPHEN CASTELLON,

*Petitioner,*

*v.*

STATE OF OHIO,

*Respondent.*

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*ON PETITION FOR WRIT OF CERTIORARI TO  
THE COURT OF APPEALS TO THE STATE OF OHIO, EIGHTH APPELLATE  
DISTRICT*

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**BRIEF IN OPPOSITION**

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### **THE PETITIONER'S QUESTION PRESENTED**

Whether the failure to preserve potentially exculpatory evidence under the Trombetta and Youngblood standards, coupled with delays in trial proceedings, constitutes a violation of the defendant's Sixth Amendment right to a speedy trial?

Whether law enforcement's application of Crim.R. 45 to extend the time limit for executing a warrant, in contravention of Crim.R.41, constitutes a circumvention of a defendant's Sixth Amendment right to a speedy trial, thus warranting review by this Court?

## LIST OF PARTIES

All parties appear in the caption of the cover page.

## TABLE OF CONTENTS

THE PETITIONER’S QUESTION PRESENTED .....	i
LIST OF PARTIES .....	ii
TABLE OF CONTENTS .....	iii
TABLE OF AUTHORITIES.....	iv
JURISDICTION .....	1
STATUTES OR OTHER PROVISIONS INVOLVED .....	1, 2, 3, 4
STATEMENT OF THE CASE .....	4, 5
REASONS FOR DENYING THE WRIT .....	5, 6, 7
CONCLUSION .....	7
PROOF OF SERVICE .....	9

## **TABLE OF AUTHORITIES**

### **Cases**

<i>Doggett v. United States</i> , 505 U.S. 647 (1992).....	7
<i>State v. Castellon</i> , No. 106813, 2019 Ohio App. LEXIS 661 (Ohio Ct. App. Feb. 21, 2019) .....	4, 6
<i>State v. Castellon</i> , No. 112522, 2023 Ohio App. LEXIS 4040 (Ohio Ct. App. Nov. 22, 2023).....	5, 6
<i>State v. Castellon</i> , 229 N.E.3d 121 (2024) .....	5
<i>State v. Kleyman</i> , No. 93896, 2010 Ohio App. LEXIS 3077 (Ohio Ct. App. Aug. 5, 2010) .....	6

### **Statutes**

Ohio Rev.Code §2953.21.....	1, 2, 5, 6
Ohio Rev.Code §2953.23.....	1, 2, 6
28 U.S.C. § 1257 .....	1

### **Rules**

Ohio Crim.R. 41.....	2, 6, 7
Ohio Crim.R. 45.....	3, 4, 7

## JURISDICTION

The petitioner is seeking review, pursuant to 28 U.S.C. § 1257(a), of the Supreme Court of Ohio's decision not to accept an appeal from the decision of an intermediate state court of appeals to affirm the trial court's denial of a post-conviction petition. For reasons discussed in the argument section, this Honorable Court should not exercise discretion over this matter.

## STATUTES OR OTHER PROVISIONS INVOLVED

Ohio Rev.Code §2953.21(A) provides as follows:

(A)(1)(a) A person in any of the following categories may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief:

(i) Any person who has been convicted of a criminal offense or adjudicated a delinquent child and who claims that there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States;

...

(2)(a) Except as otherwise provided in section 2953.23 of the Revised Code, a petition under division (A)(1)(a)(i), (ii), or (iii) of this section shall be filed no later than three hundred sixty-five days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication or, if the direct appeal involves a sentence of death, the date on which the trial transcript is filed in the supreme court. If no appeal is taken, except as otherwise provided in section 2953.23 of the Revised Code, the petition shall be filed no later than three hundred sixty-five days after the expiration of the time for filing the appeal.

...

Ohio Rev.Code §2953.23(A)(1) provides as follows:

(A) Whether a hearing is or is not held on a petition filed pursuant to section 2953.21 of the Revised Code, a court may not entertain a petition filed after the expiration of the period prescribed in division (A) of that section or a second petition or successive petitions for similar relief on behalf of a petitioner unless division (A)(1) or (2) of this section applies:

(1) Both of the following apply:

(a) Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, subsequent to the period prescribed in division (A)(2) of section 2953.21 of the Revised Code or to the filing of an earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based on that right.

(b) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted or, if the claim challenges a sentence of death that, but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.

...

Ohio Crim.R. 41(C) provides as follows:

...

(C) Issuance and contents (1) A warrant shall issue on either an affidavit or affidavits sworn to before a judge of a court of record or an affidavit or affidavits communicated to the judge by reliable electronic means establishing the grounds for issuing the warrant. In the case of a search warrant, the affidavit shall name or describe the person to be searched or particularly describe the place to be searched, name or describe the property to be searched for and seized, state substantially the offense in relation thereto, and state the factual basis for the affiant's belief that such property is there located. In the case of a tracking device warrant, the affidavit shall name or describe the person to be tracked or particularly describe the property to be tracked, and state substantially the offense in relation thereto, state the factual basis for the affiant's

belief that the tracking will yield evidence of the offense. If the affidavit is provided by reliable electronic means, the applicant communicating the affidavit shall be placed under oath and shall swear to or affirm the affidavit communicated. (2) If the judge is satisfied that probable cause exists, the judge shall issue a warrant identifying the property to be seized and naming or describing the person or place to be searched or the person or property to be tracked. The warrant may be issued to the requesting prosecuting attorney or other law enforcement officer through reliable electronic means. The finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant, the judge may require the affiant to appear personally or by reliable electronic means, and may examine under oath the affiant and any witnesses the affiant may produce. Such testimony shall be admissible at a hearing on a motion to suppress if taken down by a court reporter or recording equipment, transcribed, and made part of the affidavit. The warrant shall be directed to a law enforcement officer. A search warrant shall command the officer to search, within three days, the person or place named for the property specified. A tracking device warrant shall command the officer to complete any installation authorized by the warrant within a specified time no longer than 10 days, and shall specify the time that the device may be used, not to exceed 45 days. The court may, for good cause shown, grant one or more extensions of time that the device may be used, for a reasonable period not to exceed 45 days each. The warrant shall be executed in the daytime, unless the issuing court, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. The warrant shall provide that the warrant shall be returned to a designated judge or clerk of court.

...

Ohio Crim.R. 45(B) provides as follows:

...

(B) Time: enlargement When an act is required or allowed to be performed at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if application therefor is made before expiration of the period originally prescribed or as extended by a previous order; or (2) upon motion permit the act to be done after expiration of the specified



period, if the failure to act on time was the result of excusable neglect or would result in injustice to the defendant. The court may not extend the time for taking any action under Rule 23, Rule 29, Rule 33, and Rule 34 except to the extent and under the conditions stated in them.

...

### STATEMENT OF THE CASE

In August 2016, eighteen-year-old A.I. was living with her mother and Petitioner Estephen Castellon, who was dating A.I.'s mother. When A.I. arrived home from work after midnight, she slept in her mother's bed. Petitioner came home and saw A.I. sleeping in the bed and told her that he would go sleep on the couch. Later however, A.I. awoke and noticed Petitioner was engaging in sexual conduct with her. Petitioner later apologized to A.I. After a bench trial, the trial court found Petitioner guilty of rape and kidnapping. Petitioner was sentenced to seven years in prison which he has now served.

Petitioner pursued a direct appeal to the state intermediate appellate court. The transcripts were filed in that appeal on March 26, 2018. On February 21, 2019, his convictions were affirmed. *State v. Castellon*, No. 106813, 2019 Ohio App. LEXIS 661 (Ohio Ct. App. Feb. 21, 2019) (hereinafter "*Castellon I*"). The appellate court specifically rejected Petitioner's assignments of error relating to the sufficiency and manifest weight of the evidence. *Castellon I*, ¶¶ 28, 33.

On March 27, 2019, Petitioner filed a Petition to Vacate or Set Aside Judgement of Conviction or Sentence, raising a *Brady* claim and a claim of ineffective assistance of counsel. That petition was denied by the trial court. Petitioner did not appeal.

On February 10, 2023, Petitioner filed a petition for post-conviction relief pursuant to Ohio Rev.Code §2953.21, raising issues seemingly related to a search warrant executed with respect to his phone and the destruction of body camera evidence. The petition was denied by the trial court. The intermediate appellate court affirmed that decision. *State v. Castellon*, No. 112522, 2023 Ohio App. LEXIS 4040 (Ohio Ct. App. Nov. 22, 2023) (hereinafter “*Castellon II*”). It noted that a trial court “lacks jurisdiction over an untimely or successive petition for postconviction relief unless the petition” is supported by newly discovered evidence that the petitioner was unavoidably prevented from discovering. *Id.*, ¶ 20.

The state intermediate appellate court specifically noted that Petitioner knew about the search warrant executed with respect to his phone at the time of trial. *Castellon II*, ¶ 39. It also noted that Petitioner knew that body-camera footage was lost at the time of trial because “his trial counsel cross-examined state witnesses about the circumstances of the state’s deletion of the body-camera recording at trial.” *Castellon II*, ¶ 37. Simply put, Petitioner did not present new evidence that would have justified consideration of his untimely petition. Petitioner appealed the decision further but the Supreme Court of Ohio declined to exercise jurisdiction over his appeal. *State v. Castellon*, 229 N.E.3d 121 (2024).

### **REASONS FOR DENYING THE WRIT**

Petitioner presents issues in a post-conviction posture, the procedure of which is governed exclusively by state law. This fact itself illustrates why this Court should not accept this appeal. The petition fails to present a federal issue.

Ohio law permits criminal defendants to challenge their convictions on constitutional grounds by filing a petition for post-conviction relief. See Ohio Rev.Code §2953.21. However, such petitions must be filed timely. Where a criminal defendant seeks a direct appeal, the petition “shall be filed no later than three hundred sixty-five days after the date on which the trial transcript is filed in the court of appeals in the direct appeal.” Ohio Rev.Code §2953.21(A)(2).

Here, there is no dispute that Petitioner’s petition was untimely. The transcript was filed in his direct appeal on March 26, 2018 and he did not file the underlying petition until February 10, 2023. *Castellon II*, ¶ 19. “The timeliness requirement of Ohio Rev.Code §2953.21 is jurisdictional.” *State v. Kleyman*, No. 93896, 2010 Ohio App. LEXIS 3077, ¶ 35 (Ohio Ct. App. Aug. 5, 2010).

The only exception to the timeliness requirement identified by Petitioner in this case is where the “petitioner was unavoidably prevented from discovery” of facts which establish a “constitutional error at trial.” Ohio Rev.Code §2953.23(A)(1)(a-b). The state intermediate appellate court correctly held that Petitioner failed to show that he was unavoidably prevented from discovery of any new facts that would establish a constitutional error at trial. *Castellon II*, ¶ 23. Moreover, Petitioner’s claims were barred by the doctrine of res judicata.

At trial, a detective testified that he obtained a search warrant to search Petitioner’s phone. *Castellon I*, ¶ 17. Petitioner was not unavoidably prevented from reading the search warrant at the time of trial. Moreover, Petitioner’s claim regarding the search warrant is meritless. Ohio law normally requires that a search

warrant be executed within three days. *See* Ohio Crim.R. 41(C). But Ohio law also permits enlargement of the three-day time period when circumstances justify it. *See* Ohio Crim.R. 45(B). Enlargement of time to search electronic devices is common because devices are often passcode protected and a complete extraction of data often takes significant time.

Petitioner also complained that police body-camera video was inadvertently destroyed before trial. Testimony at trial established that the body-camera system was new at the time of the crimes and the police department inadvertently failed to preserve the videos in this case before the videos were destroyed. This issue could have been raised on direct appeal. Moreover, Petitioner failed to demonstrate that any favorable evidence was lost.

Finally, Petitioner fails to establish a meritorious claim of a violation of his constitutional right to speedy trial. This Court has recognized that a delay in scheduling a trial is only presumptively prejudicial as it “approaches one year.” *Doggett v. United States*, 505 U.S. 647, fn. 1 (1992). Petitioner was indicted in the underlying case on November 1, 2016 and arrested on December 5, 2016. He signed a written speedy trial waiver on August 17, 2017, waiving speedy trial from “08/17/2017 to 12/31/2017.” His trial began on December 4, 2017, after numerous pretrials were continued at Petitioner’s request.

### CONCLUSION

For all of the foregoing reasons, this Court should deny the petition for writ of certiorari.

Respectfully submitted,

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**PROOF OF SERVICE**

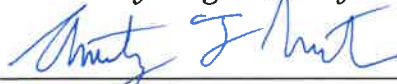
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Pursuant to Rules 29.3 and 29.5(b) of the Rules of the Supreme Court of the United States, Anthony T. Miranda, counsel of record for Respondent and a member of the Bar of this Court, hereby certifies that on 7/1/24, he served Estephen Castellon, by placing in the United States Mail, postage pre-paid, properly addressed to PO Box 532, Gaithersburg, MD 20884 (phone 718-407-4808), a copy of the Brief in Opposition to Petition for Writ of Certiorari. All parties required to be served have been served.

Respectfully submitted,

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