

23-7642

**ORIGINAL**

IN THE SUPREME COURT OF THE UNITED STATES

John A Beatty,

Petitioner

vs.

JAY FORSHEY, Warden, Noble Correctional Institution,

Respondent

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**PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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Supreme Court, U.S.

FILED

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## **PETITION FOR CERTIORARI**

### **QUESTIONS PRESENTED FOR REVIEW**

1. Is *McCarthy V United States*, 394 U.S. 459(1969); *Ex Parte Milligan*, 71 U.S. 2(1866); *Greenholtz V Nebraska Penal Inmates*, 442 U.S. 1 (1979); *Oregon v Hass*, 420 U.S. 714 (1975); *Vitak v. Jones*, 443 U.S. 480(1980) still good law

## LIST OF PARTIES IN COURT BELOW

The caption set out above contains the names of all the parties.

## LIST OF CASES DIRECTLY RELATED TO THIS CASE

1. United States Court of Appeals for the Sixth Circuit
2. *Beatty v. Forshey*, 2024 U.S. App. Lexis 2297

1. United States District Court
2. 2023 U.S. Dist. Lexis 138541

1. Supreme Court of Ohio
2. *State v. Beatty*, 2022-Ohio-3909, 168 Ohio St. 3d 1447, 197 N.E.3d 587

1. Court of Appeals of Ohio, Fifth Appellate District, Muskingum County
2. *State v. Beatty*, 2022-Ohio-2394 (Ct. App.)

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## APPENDIX

### *Orders and Judgments of Courts Below*

- A. United States Court of Appeals for the Sixth Circuit
- B. United States District Court Southern District of Ohio Eastern Division

## TABLE OF AUTHORITIES CITED

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### Cases

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## JURISDICTIONAL STATEMENT

The United States Supreme Court has jurisdiction over this Petition pursuant to 28 U.S.C. § 1254, which states:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on February 1, 2024. Rehearing was not sought. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

### 1. The Fifth Amendment, United States Constitution, provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### 2. The Fourteenth Amendment, United States Constitution, provides:

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## Statement of the Case

In January 2019, Petitioner was indicted on seven counts, including a count of aggravated burglary and a count of assaulting a peace officer ("Case 1"). State Record, ECF No. 10 at PAGEID # 106-08. While Case 1 was pending, the state court committed Petitioner for a competency evaluation. Id. at PAGEID # 120-21. Petitioner tried to escape the commitment and was indicted for that attempt ("Case 2"). Id. at PAGEID # 126-27.

Later, Plaintiff pleaded guilty to one count of aggravated burglary, one count of assaulting a peace officer, one count of vandalism, one count of possession of criminal tools, and one count of escape. Id. at PAGEID # 149-55. [\*2] The state court imposed an aggregate sentence for all counts of conviction in Cases 1 and 2 of eleven to twelve-and-a-half years' imprisonment. Id. at PAGEID # 150.



Petitioner appealed both cases to the Fifth District Court of Appeals, which affirmed the trial court. Id. at PAGEID # 157,257-79. Petitioner then appealed issues related to only Case 2 to the Supreme Court of Ohio, which accepted his appeal and remanded to the Fifth District for reconsideration in light of an intervening Supreme Court of Ohio ruling. Id. at PAGEID # 281-315. In July 2022, the Fifth District again affirmed Petitioner's convictions and sentences. Id. at PAGEID # 384-90. And Petitioner again sought review by the Supreme Court of Ohio, which accepted his appeal. Nov. 8, 2022 Docket Entry, Supreme Court of Ohio Case No. 2022-1024, available at <https://www.supremecourt.ohio.gov/clerk/ecms/#/caseinfo/2022/1024>.

In the meantime, Petitioner moved to withdraw his guilty plea in both cases and applied to reopen his direct appeal as to Case 1. State Record, ECF No. 10 at PAGEID # 317-19,323-52. In the application to reopen the direct appeal, Petitioner argued ineffective assistance of appellate counsel. Id. at PAGEID # 323-52. Both the motion and the application were denied. Id. at PAGEID # 321,358-362. Petitioner appealed the denial of the application to reopen the appeal to the Supreme Court of Ohio, which declined to accept that appeal. Id. at PAGEID # 364-82.

Petitioner then filed this habeas petition, in which he raises three grounds for relief related to Case 1: (1) ineffective assistance of appellate counsel ("Ground One"); (2) Petitioner's plea of guilty to the aggravated robbery offense was invalid ("Ground Two"); and (3) the state court lacked jurisdiction over his case ("Ground Three"). Pet., ECF No. 6.

Pursuant to the Court's General Orders, Magistrate Judge Merz issued an R&R on Petitioner's Petition. R&R, ECF No. 19. The R&R recommends dismissing Ground One because Petitioner did not show his appellate counsel ignored any arguments stronger than the ones appellate counsel did make and dismissing Grounds Two and Three as procedurally defaulted or, in the alternative, without merit. Id. Petitioner timely objected to various portions of the R&R,

ECF No. 20, and the Court recommitted the matter to the Magistrate Judge for further consideration, ECF No. 21. The Magistrate Judge then issued a Supplemental R&R, which still recommended dismissing all three Grounds. Supp. R&R, ECF No. 22. Petitioner has timely objected to the Supplemental R&R. ECF No. 23.

On August 8, 2023 the Court overruled Petitioner's objections.

This case arises from an involuntary guilty plea to the crime of aggravated burglary to a Walmart store.

Even though there was an obvious deficiency with the convicting and Petitioner's speedy trial rights, as an incarcerated person, was violated appellate council failed to raise these plain, reversible errors in district appeal. Petitioner properly raised these issues through a timely Ohio App. R 26(b) application which was summarily denied by the State courts and exhausted claims though discretionary appeal to the Supreme Court of Ohio.

On timely federal habeas corpus, Petitioner made the claims of (1) ineffective assistance of appellate counsel; (2) guilty plea to aggravated burglary was invalid because it came to less than all the elements of offense; and (3) as State court is without jurisdiction to convict a punish where the demands of a statute of limitations not met. While the magistrate cited the proper standard to review an ineffective-assistance of appellate counsel claim, under *Smith V Robbins*, and *Burger v. Kemp* analysis, he still placed that assessment of strength of the unraised claim of Petitioner when *Hennes v. Bagley* and *Wilson v. Parker* places such duty on the court. This burden switching analysis raised a reasonable debate as to whether the state courts decision collided with precedent out of this court. Notwithstanding this clear error, the summarily decision of the magistrate was recommitted and subsequently adopted Appx. B

Petitioner timely sought a certificate of appealability attempting to demonstrate that reasonable debate lies with whether he presented valid claims of (1) less than knowing and intelligent plea to aggravated burglary where all of the elements were not sufficiently plead in

indictment; and (2) denial of the constitutional right to a speedy trial, as specified by the Ohio Legislature when the state failed to convict within the period prescribed for an incarcerated person, thereby resulting in prejudice from ineffective assistance of appellate counsel. The Sixth circuit constructible adopted the magistrates head toppling burden assignment, by resort to *Moore V. Mitchell* thereby creating a conflict with the above-mentioned precedent that places burden of assessing strength on the court.

This timely request for certiorari follows

## ARGUMENT FOR ALLOWANCE OF WRIT

This petition places before this Court questions of whether prejudice is presumed where; (1) a violation of hailing a person into court on a poorly pleaded charge is complete upon appearance; and (2) a violation of right to a speedy trial is complete upon the State not meeting a specified period for conviction. If so, this Court would then be prompted to discern whether issues that prejudice is presumed are stronger than (1) Substantial compliance to Crim R 11 (c); (2) abuse of discretion, instead of error of law; (3) competency; and (4) merger of dissimilar offenses. None of the Courts below discharged this duty, and the magistrate never cited appellate counsel's issues raised. The one issue the Supreme Court of Ohio accepted for review had nothing to do with the instant case.

This Court should not hesitate to uphold the rationale that a valid guilty plea encompasses admission to all the elements of a formal criminal charge, which lacks voluntariness where a defendant does not possess a full understanding of the law in relation to the facts see *McCarthy v. United States*, 394 U.S. 459, 89 S. Ct. 466 (1969). A charge cannot be formal where the government is allowed to alter the statutory definitions of essential element to a common law tort. The courts below only compounded this travesty by allowing a Walmart "no trespassing order" serves as the basis for a criminal complaint for a felony. This situation akin to the "Kangaroo court" abolished in *Ex parte Milligan*, 71 U.S. 2 (1866). The government was controlled by Walmart and not the legislature, and the judiciary has sat out as if this was a civil settlement agreement.

A thorough review of all the evidence in this case (cameras and statements). The Walmart camera footage proves, that the court's description of the case does not match the facts of the case. At no time did petitioner remove items from the store past the point of sale, the cart never left the electronics section of the store. Also there were no items found on his person.

Ignoring the Ohio legislature's authority to recognize a more extensive liberty interest that that found in the 6<sup>th</sup> U.S.C.A. collides with *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 99 S. Ct. 2100 (1979) and *Vitak v. Jones*, 443 U.S. 480, 488 (1980), *Oregon v. Hass*, 420 U.S. 714, 95 S. Ct. 1215 (1975), but not according to the courts below.

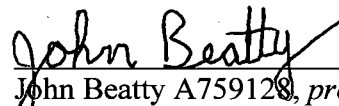
There is a far gap between what is Federal Law and how it applies herin, and this Court ought to step in and bridge this disparity.

### CONCLUSION

The judgment below is a unique departure from decisions of this Court that is repugnant to the Constitution, laws, and/or Treaties, of the United States. This petition for a writ of certiorari should, therefore, be granted. Any other disposition would be allowing State prosecutors to facilitate fraud and let laws be decided by political election instead of the legislator's intent.

Dated: April 22, 2024

Respectfully submitted,

  
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