

No. 24-5418

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

AUG 23 2024

OFFICE OF THE CLERK

DONALD G. BARNES, SR. — PETITIONER
(Your Name) #1129864

VS.

William Danforth, — RESPONDENT(S)
WARDEN

ON PETITION FOR A WRIT OF CERTIORARI TO
(WOC)

ELEVENTH CIRCUIT COURT of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DONALD G. BARNES, SR.
(Your Name) #1129864
COFFEE CORRECTIONAL FACILITY
1153 NORTH LIBERTY STREET
(Address)

Nicholls, Georgia 31554
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

1. IF A DEFENDANT HAS ELECTED TO EXERCISE HIS RIGHT TO PROCEED PRO SE, ALBEIT VOLUNTARY OR INVOLUNTARY, DOES HE STILL MAINTAIN A CONSTITUTIONAL RIGHT TO THE EFFECTIVE ASSISTANCE OF STANDBY COUNSEL?
2. DOES THE DUE PROCESS AND EQUAL PROTECTION CLAUSES PROTECT AGAINST EXORBITANT DELAY IN POST-CONVICTION PROCEEDINGS FOR INDIGENT DEFENDANTS AND SHOULD THE SPEEDY TRIAL CLAUSE ALSO BE IMPLEMENTED?

LIST OF PARTIES

- ☒ 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

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OTHER

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☒ is unpublished.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 2023 U.S. DIST. LEXIS 95003; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**: *ERROR*

The opinion of the highest state court to review the merits 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☒ is unpublished.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 Baldwin County Georgia Superior 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☒ is unpublished.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 FEBRUARY 5, 2024.

☐ 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: JUNE 6, 2024, 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).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ 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

5TH AMENDMENT

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.

6TH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness in his favor, and to have assistance of Counsel for his defense.

14TH AMENDMENT

SECTION 1. 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.

28 USC 1254 (1)

The Supreme Court has jurisdiction to review on certiorari cases in the Federal Court of Appeals.

28 USC 2243

The Court shall dispose of the matter as law and justice requires.

STATEMENT OF THE CASE

(COVERSHEET)

STATEMENT OF THE CASE

ARRESTED in Joliet, Illinois on April 9, 2002 upon a GEORGIA WARRANT, PETITIONER BARNES WAS FLOWN to Houston County, Georgia on August 5, 2002 after denial ^{for} of a requested extradition hearing; ANSWERING to the alleged crimes of aggravated child molestation (attempted) and the enticement of a white male minor. BARNES, a forty-eight (48) year old African-American male, had been on work assignment for AT&T; detailed to the Houston County area during the month of February, 2002 when the alleged encounters transpired. BARNES Joliet ARREST discovered another white male youth, alleged also to be a minor, in the hotel room with BARNES and this coupling was subsequently included in Georgia's indictment against BARNES. The arrest also yield the unconstitutional seizure of BARNES personal laptop computer, which contents were used as evidence and to levy additional charges.

Georgia appointed public defender Robert Gurd to represent BARNES, whom BARNES had spoken with, via cellphone, during his Joliet arrest. BARNES had subscribed to a lawyer referral service which referred Gurd. Gurd had asked for a retainer fee then, which BARNES rejected. In Georgia, BARNES explained the entire circumstances and details of his encounters with the two alleged youths and advised Gurd to interview his witness, an Indiana associate named Matthew Lundstrom, who could

VERIFY BARNES CONTENTIONS. BARNES had asserted that the other white male, now known as Michael LEO, but was known by BARNES as Michael TANNER, a Jacksonville, Florida native, who had claimed he was twenty years old. LEO and Lundstrom were arrested together in Munster, Indiana, Lundstrom's home state, on March 22, 2002. The exact particulars of the arrest are unknown to BARNES, but believed to involve a sexual connotation. BARNES was uncertain as to why for such an offense, LEO was not held in Munster to appear before a local magistrate instead of being transferred into county custody at Crown Point, Indiana. Guard was also advised to obtain BARNES work related documentation for the days alleged in the indictment and also the hotel receipts from BARNES visits to Jacksonville Beach, Florida during the month of February, 2002.

Guard spoke with BARNES in December, 2002 to advise that he "did not know how to represent" BARNES, offering no further explanation. BARNES took this declaration as a veiled attempt to extract payment. Our prior history leaned toward this conclusion. BARNES assumed Guard had acquired his evidence, but would learn later this was not the case. BARNES wrote to Guard his desire to proceed pro se. This decision was made in part because only six weeks remained before trial and BARNES did not want to relinquish his speedy trial date in lieu of obtaining a new lawyer.

JANUARY 9, 2003, A HEARING WAS HELD TO REMOVE GURD AS COUNSEL AND BARNES WAS ALLOWED TO PROCEED PRO SE. THERE WAS NO COURT REPORTER ASSIGNED FOR THIS HEARING. JANUARY 27, 2003, A MOTION HEARING WAS HELD WITH A COURT REPORTER, BUT WITHOUT GURD IN ATTENDANCE TO ARGUE HIS PRE-TRIAL MOTIONS. A GENERAL DEMURER CHALLENGE WOULD HAVE BEEN ADVANTAGEOUS AS THE INDICTMENT APPEARED FLAWED. A SPECIAL DEMURER, BARNES LATER DETERMINED, COULD HAVE ASSURED A QUASHED INDICTMENT.

FEBRUARY 10, 2003 BEGAN VOIR DIRE WITH GURD APPOINTED AS STANDBY COUNSEL AND INSTRUCTED BY THE COURT TO HANDLE JURY SELECTION, WHICH HE DID. FEBRUARY 12, 2003 TRIAL BEGAN WITH A PRE-TRIAL MOTION HEARING TO ADDRESS THE SUPPRESSION MOTIONS BARNES HASTILY FILED IN RESPONSE TO GURD NOT HAVING DONE SO PREVIOUSLY. GURD HAD FILED A MOTION TO SEVER, AMONG OTHERS PRE-TRIAL, BUT REFUSED TO ACKNOWLEDGE OR ARGUE SAME. IN HINDSIGHT, GURD MUST HAVE BEEN CONVEYING A MESSAGE OR WARNING PERHAPS.

AS STANDBY COUNSEL, GURD DID NOT PROVIDE ANY ASSISTANCE WHATSOEVER. HE REFUSED TO SIT WITH BARNES AT THE DEFENSE TABLE INSTEAD CHOOSING TO SIT IN THE SPECTATOR'S SECTION BEHIND THE DEFENSE TABLE. ON THE START OF THE SECOND DAY OF TRIAL, BARNES ENTERED THE COURTROOM TO FIND GURD SITTING SOLEMNLY ALONE IN HIS USUAL PLACEMENT BEHIND THE DEFENSE TABLE WHILE THE REST OF THE SPECTATORS BUNCHED BEHIND THE PROSECUTOR'S TABLE WITH STANDING

Room only remaining. BARNES, upset by this sight, and at first opportunity, asked the court to remove Guard from the courtroom. He was after all, a useless figure. The court, citing Guard's right to assemble, did not honor BARNES request. Because of this decision, BARNES felt it futile to challenge the spectator's assemblage behind the prosecutor's table for the court could possibly champion their First Amendment rights as well. After the trial, the court apologized to Guard for having him to stay until the end of the trial saying, "The law may require us to protect people from themselves almost."

BARNES was convicted on February 13, 2003 on four of the six indicted charges against him. Two charges were nolle prosequi during trial without BARNES consent, which by federal and state law should have voided the indictment, conviction and sentence. This claim was ignored in BARNES state habeas corpus. It was attempted in a motion in arrest of judgment, but rejected because BARNES filed it pro se after the appointment of appellate counsel William Peterson. Requesting Mr. Peterson to re-file the motion as soon as possible was to no avail. Peterson never responded to any of BARNES letters. As time expired for the filing of the arrest motion, and months passed without word from Peterson, out of frustration, BARNES filed a grievance with the Georgia Bar Association against William Peterson, which resulted in Peterson's withdrawal as appellate counsel in November, 2003.

The State failed to furnish BARNES with a trial transcript until forty-three months (3 years, 8 months) post-conviction. Seven months, and with much wrangling, produced the court appointment of BARNES second appellate counsel, Mr. Jeffrey Gaube, a Houston County Magistrate Judge, in June, 2004. Gaube is credited with obtaining release of the trial transcript by September, 2006. However, Mr. Gaube had conflicted interest, as he would attest to at BARNES motion for new trial hearing and did not even schedule the new trial hearing until fifty-three months (4 years, 5 months) after receipt of the trial transcript and then only after BARNES threaten to proceed pro se. The new trial motion was denied and the direct appeal initiated with supporting grounds provided mostly by BARNES. Intriguing legal arguments and theories were lacking but much needed. Gaube, as an attorney, should have discerned more favorable grounds, as there were many to choose from, or at the very least, argue more convincingly those grounds he submitted. Peculiarly, the one ground Gaube was most enthused about, improper sentence, was the only ground found meritorious on appeal.

BARNES direct appeal was denied in January, 2012, approximately nine years post-conviction. BARNES re-sentencing hearing was held in May, 2012 and his state habeas corpus filed June, 2012 in Chattooga County, Georgia where it sat idle until moved to Baldwin County, Georgia in 2016. Without legal representation, BARNES did not know where to channel his inquiries.

After transferring to Baldwin State Prison in 2015, BARNES waited a year in hopes his move may trigger some activity in his habeas suit. When nothing happened, BARNES wrote to the Chattooga Superior Court, informed them of his transfer and was then scheduled for a habeas hearing in Baldwin County. At that July, 2016 hearing, BARNES was advised to amend his petition, which he eventually did nine times; after each amendment, hoping to be re-called into court. Finally BARNES wrote to the Georgia Supreme Court in November, 2019 complaining of the delays and that prompt Baldwin County to schedule a court appearance in December. However, the Clerk misappointed the day to December 15, 2019, a Sunday. Warning the clerk of this error, a new date was returned for December 11, 2019, allowing BARNES fewer days to prepare. At the twenty minute hearing, BARNES was handcuffed and shackled throughout. Returning to prison afterward, BARNES was then assaulted, robbed of his property and placed in segregation where he completed his court ordered final order / brief before being transferred to Hancock State Prison in April, 2020.

BARNES state habeas corpus was denied while at Hancock in July, 2020 and his certificate of probable cause to the Georgia Supreme Court was also denied without comment in February, 2021. BARNES now had one year in which to file a writ of habeas corpus in the federal court, which was accomplished in January, 2022. However, the previous October, BARNES was again placed in segregation while still at Hancock

under dubious circumstances, and had been in preparation to file his federal habeas corpus, when he was again assaulted, requiring hospitalization in December, 2021, and once again, had his possessions stolen.

The U.S. District Court from the Middle District of Georgia denied Barnes federal habeas corpus in May, 2023 and the Eleventh Circuit Court of Appeals affirmed the district court on rehearing in June, 2024 and Barnes is now before the U.S. Supreme Court seeking certiorari.

REASONS FOR GRANTING THE PETITION

(COVER SHEET)

REASON FOR GRANTING THE PETITION

The matter of BARNES federal habeas corpus is simply based on the premise of guilt or innocence and the availability of his evidence to prove it. BARNES alleges ineffective assistance of counsel, Brady v. Maryland violations, and post-conviction delay in depriving him of his liberty. A fundamental miscarriage of justice prevail with the combination of these errors. The U.S. Constitution guarantees a fair trial and a competent attorney. BARNES can show he received neither. His efforts to bring this deprivation to light has only wrought pain and suffering in the form of delays and retaliation.

The District Court abused its discretion by (1) not granting BARNES habeas corpus; (2) denying an evidentiary hearing to determine the facts; (3) denying discovery of evidence to support his claim; (4) denying a certificate of appealability to appeal their decision. And although their decisions are erroneous, they may also have been life saving. Had the district court granted a hearing, no one could predict the detrimental impact such a hearing could impose on BARNES or witnesses. The violence against BARNES for merely challenging his conviction through state and federal habeas corpus could escalate to involve others. The Eleventh Circuit Court of Appeals' decision to deny a certificate of appealability to a obviously meritorious habeas corpus alleging miscarriage of justice conveys the seriousness for the potentiality

of further violence, and the consideration they took to alley concerns that a local possibility exist to challenge their authority. By BARNES removing his habeas corpus out of state into the U.S. Supreme Court, should the Court grant certiorari, deflect any further animus which may be generated by continuing to address BARNES habeas corpus petition in Georgia. The sixteen year delay in post-conviction relief only goes to show no desire to expose the truth or for finality. But it is well known through scripture that "The truth shall set you free."

The U.S. Constitution guarantees the right to a fair trial and to a competent attorney per the Sixth Amendment. See *Murray v. Carrier*, 477 U.S. 478 (1986). The right to self-representation is also encumbered therein as decided by the U.S. Supreme Court in *Faretta v. California*, 422 U.S. 806 (1975). BARNES was forced to choose between an incompetent, conniving attorney or representing himself.

Advised by court-appointed, pre-trial attorney, Robert Guad, that he did not know how to represent BARNES, and sensing this declaration as an effort to extract payment for his services, indigent defendant BARNES chose to proceed pro se. Very little time remained before the start of his speedy trial previously assigned and BARNES did not want to waive that right by requesting new counsel. BARNES was also reasonably confident that his case was winnable with his testimony and evidence. In *U.S. v. Williamson*,

859 F. 3d 843 (10TH Cir. 2017) it was decided:

"A defendant's waiver is involuntary if he is forced to choose between incompetent counsel or appearing pro se."

See also *Evitts v. Lucey*, 469 U.S. 387 (1985) holding:

"A party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all."

BARNES later learned that Guard had not interviewed his witness, obtained any of his evidence, or filed any suppression motions. With only four weeks until his trial, Barnes hastily submitted two motions to suppress, but was unsure how to proceed in obtaining his other evidence. Guard did file several standard pre-trial motions including a general demurrer to challenge the indictment, but after being removed as counsel, he did not want to argue any motions in court. Guard appeared to be inclined not to provide any assistance whatsoever even after being re-appointed as standby counsel. After appearing with Barnes during jury selection, Guard must have considered his services complete. He provided no further assistance throughout the trial. *Strickland v. Washington*, 466 U.S. 668 (1984) held:

"Because the right to counsel is so fundamental

to a fair trial, the Constitution cannot tolerate trials in which counsel, though present in name, is unable to assist the defendant to obtain a fair decision on the merits."

But does Strickland's "right to counsel" also include standby counsel? Strickland was concerned with the fundamentality of a fair trial, but was not standby counsel appointed for just that purpose?

As pre-trial counsel, Gurd was responsible for gathering Barnes evidence. Although Barnes has no indication that he had actually done so, the implications appear to agree that perhaps he had. Gurd was, however, expected to turnover that evidence once he was relieved of his responsibilities as counsel. This evidence: victim/witness Michael Leo's arrest record from Indiana and the FBI interview done with him, provides the presumptive proof that Leo could not have been a fifteen year old runaway on the National Center for Missing and Exploited Children's watch list as claimed at trial. Otherwise, why would the authorities release such a person on his own recognizance? Gurd is now presumed to have had possession of this evidence at the pre-trial stage and because Barnes did not succumb to his innuendo for payment, remained silent, allowed himself to be removed as counsel, and simply provided no further assistance.

"It is well established that impeachment evidence can constitute exculpatory evidence and that evidence of a government witness' prior criminal history is evidence which must be provided to the defense."

Hollman v. Wilson, 158 F.3d 177 (3d Cir. 1998)
See also U.S. v. Bagley, 473 U.S. 667

The trial court rejected Barnes' accusations of entrapment when presented with the Leo scenario possibly because of the entrapment predisposition element to be used as plausible deniability and considered it no further. The state rejected Barnes' Brady v. Maryland, 373 U.S. 83 (1963) claim for the Leo evidence on the pretext of prior knowledge and an erroneous Georgia Appellate Court decision. Both decisions were to mislead Barnes, as a prosecutor, into believing the evidence was not crucial. However, it is the only logical explanation as to why Barnes was assaulted and robbed, twice, while living in the state and federal habeas corpus complaints in his only prose attempts to eradicate his conviction.

Implications are also prevalent to suggest that Barnes former employer, AT+T, had a pecuniary interest in the outcome of his case. Barnes currently has pending in the federal district court in Chicago, Illinois, an Equal Employment Opportunity Commission (EEOC) employment discrimination

complaint against AT&T's baby bell, Ameritech, filed in 2000, pro se. This suit has the potential of being meritorious. Before Barnes could fully litigate, he was employed by AT&T on a two year temporary employment contract, which was due to expire in April, 2002. Barnes was also a member of the International Brotherhood of Electrical Workers Union, and of all the temporary employees hired from his region during this AT&T jobs promotion, Barnes ranked first in seniority. This meant that should AT&T decide to retain anyone of their temporary hires, Barnes should be given priority. AT&T's interest in Barnes was obviously two-fold: (1) Should Barnes be convicted and sentenced a long confinement, retention would not be a concern; and (2) his Illinois EEOC suit may become mute as well. With that as a backdrop, it is entirely understandable to discern the exorbitant delays, the sealing of the court records, the denial of every legitimate claim presented and especially, the personal attacks.

As standby counsel, Guard's contribution to the defense was minuscule. For the trial court to re-appoint him after being removed as court-appointed attorney was discordant, but comprehensible. He was aware of the conspiracy. For Guard to allow the trial court to permit the spectators to choose sides and influence the jury was as flagrant a constitutional violation imaginable. When Barnes asked the court to remove Guard

from the courtroom for his lack of support, the court refused, but Guard did remove himself from behind the defense table to stand with the dissenters behind the prosecutor's table. The trial court at the end of the trial apologized to Guard saying, "The law may require us to protect people from themselves almost." That bit of philosophical thinking could very well have inspired the State's habeas corpus decisions, however,

"The federal court postpones jurisdiction, it does not relinquish it. Federal jurisdiction attaches by reason of the alleged unconstitutional detention and cannot be defeated by what the State court may decide."

Ballard v. Maggio, 544 F. 2d 1247 (11th Cir. 1977)

The trial court's decision to allow a statement taken from Barnes by the FBI to be used to impeach should Barnes testify was erroneous, but Guard made no objections. The FBI was listed as a State witness, but was not present in court unexplicably. The FBI's involvement in Barnes case is concernable. They too, had interviewed LEO, yet the government passed on bringing any charges against Barnes. This presumptively demonstrates LEO could not have been underage nor on any watch list and the FBI's absence from the Georgia courtroom shows the government desire not to become entwined in the case.

Georgia's premeditated effort to prevent Barnes from testifying by declaring early the State's intention to use the FBI interview, a hearsay statement at that point, placed Barnes on notice that more fabrications were forthcoming. Guard must have been fully aware of this masquerade. The FBI had no intention of testifying for the same reason the district court denied Barnes discovery. The federal government need not be implicated. The 11th Circuit's 1998 decision in *Snowden v. Singleton*, 135 F.3d 732 held:

"When reviewing a state court evidentiary ruling, generally federal courts are not empowered to correct erroneous evidence rulings of state trial courts. Nonetheless, when a state trial court's evidence ruling deny a habeas petitioner's fundamental constitutional protections, the court's duty requires it to enforce the United States Constitution's guarantee's by granting the petition for writ of habeas corpus. Before relief can be granted the error must rise to the level of a denial of fundamental fairness. Such fundamental unfairness violates the Due Process Clause of the U.S. Constitution."

See also *U.S. v. Teague*, 953 F.2d 1525 (11th Cir. 1992):

"The right to testify is one of the rights that's essential to due process of law in a fair adversary process, and that it is even more fundamental to a personal defense than the right of self-representation."

The trial court forced Barnes to choose between two constitutional rights: the right to confront witnesses against him and the right to testify on his own behalf. Barnes chose the former. It is more important for Barnes to be able to address the FBI on the record.

"When a state rule of evidence conflicts with the right to present witnesses, the rule may not be applied mechanistically to defeat the ends of justice, but must meet fundamental standards of due process."

Rock v. Arkansas, 483 U.S. 44 (1987)

Robert Guard, as stand by counsel, should have challenged the State on the use of hearsay evidence when it was first proposed. In U.S. v. Chronic, 466 U.S. 648 (1984) it was held:

"Only when surrounding circumstances justify a presumption of ineffectiveness can a claim under the Sixth Amendment be sufficient without inquiry into counsel's actual performance at trial."
"There are, however, circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified."

Barnes believes Guard may have followed the dictates in Faretha, where there, the concerns were on providing the pro se defendant with assurances of autonomy and the reassurance that as pro se,

he can control his case and that stand by counsel will not interfere. BARNES, on the other hand, could have welcomed some guidance and direction, as BARNES is sure most prose litigants would. Guard realizing the potentiality of BARNES case simply wanted compensation and when that was denied him, he demurred.

The delays experienced since BARNES was convicted amount to approximately 180 months or fifteen years. This is a ridiculous amount of time to wait to adjudicate a post-conviction verdict. *Geisler v. Walters*, 510 F. 2d 887 (3rd Cir. 1975) held:

"An inordinate delay is an adequate basis for federal habeas corpus relief even though state remedies have not been exhausted."

Forty-three months elapsed before BARNES received his trial transcript. Another sixty-four months before his first appeal of right was decided. Unless there was some cataclysmic event, no other excuse should be acceptable to explain such a delay. Another ninety months ensued before BARNES received a state habeas evidentiary hearing and then only after waiting to the Georgia Supreme Court.

These delays demonstrate that the State has no interest in comity nor finality and for the State to argue as such is hypocritical. The State contend that OCGA 9-14-42 (a)

prevents habeas relief when it was the State who hired the court reporter who's predilection foreordained the outcome of the delayed trial transcript. The State knew or should have known the court reporter's alcohol dependency could become a problem and for the State to now rely on deference:

"Must yield to the imperative of correcting a fundamentally unjust incarceration."

Engles v. Isaac, 456 U.S. 107 (1982)

Miscarriage of justice directly manifest itself into this post-conviction delay plot. Barnes ability as a pro se litigant to coordinate his defense is dependant upon the availability of his evidence. Even in this post-conviction phase, concerns of evidence being accessible is paramount. These concerns are the same experienced by a defendant in his pre-trial and trial phases. The Speedy Trial Clause of the Sixth Amendment considers the accused shielded by the presumption of innocence and the U.S. Supreme Court believes the Speedy Trial Clause capable of attaching and detaching at certain intervals of the criminal process.

The right of self-representation applies, when requested, continuing until the defendant or a court decides otherwise. And when discontinued, the right to the assistance of counsel

automatically returns depending on the stage of the proceedings. The right to the protection from illegal search and seizure of person and property is a continuous right which applies in all situations and is omnipresent. The same can be said of the Due Process and Equal Protection Clauses, Freedom of Speech, Expression and Assembly, all omnipresent and omnipotent.

The point and question Barnes present here is why must the Speedy Trial Clause concern itself solely with the court trial? The contemporaneous holdings at the time was indeed on court trials. There were no appeals. Men of those times took their judgments as assigned by a court of law and either accepted the judgment or nailed against it causing hankle. It is the latter that may be the prelude to the appellate process. Once an appeal is taken, the judicial clock should reset. The presumption of innocence returns. The matter is not settled. In all fairness, the presumption of innocence should remain until all address is concluded.

The U.S. Constitution provides for a fair trial and also for habeas corpus. The states provide for the appellate process. All should accord a speedy process. After all, :

"The Speedy Trial Act is designed to protect the public's interest in the speedy administration of justice."

U.S. v. Lloyd, 125 F. 3d 1263 (9th Cir. 1997)

Should a direct appeal be allowed to linger for eight years?
Should a habeas corpus stretch for over seven? In the absence of extenuating circumstances, such as illness, no one should be so deprived of due process. *U.S. v. Marion*, 404 U.S. 307 (1971) held:

"The Speedy Trial Clause implements by minimizing the likelihood of lengthy incarceration before trial, lessening the anxiety and concern associated with a public accusation, and limiting the effects of long delay on the accused's ability to mount a defense."

Are not these three factors applicable to one who is in the appellate process or in habeas corpus? Are not the petitioner's in appeal or habeas corpus still fighting for liberty, justice and to clear their names?

In *Betheman v. Montana*, 136 S. Ct. 1609 (2016) the U.S. Supreme Court decided:

"For inordinate delay..., a defendant may have other recourse (than the speedy trial guarantee), including, in appropriate circumstances, tailored relief under the Due Process Clauses of the 5th and 14th Amendments."

BUT HAVING THOSE RECOURSES DOES NOTHING FOR THE DELAYS ALREADY EXPERIENCED; THE LOST TIME, INFLICTED DEPRIVATION. AND THE ONLY REMEDY, AT THE LEAST, SHOULD BE THE DISMISSAL OF THE CHARGES. THIS WILL AWAKEN THE STATES TO THE NEED FOR FINALITY AND THEN THEIR REQUEST AND DEMAND FOR COMITY CAN THEREFORE BE TAKEN MORE SERIOUSLY. TIME IS A VALUED COMMODITY AND CANNOT BE RESTORED.

BARNES IS PREJUDICED BY THE EARLY POST-CONVICTION DELAY BECAUSE IT THWARTS HIS ABILITY TO CONTEST HIS CONVICTION AT THE ONSET. BARNES WAS NOT AWARE OF THE FULL EXTENT OF THE PERJURY AT THE EARLY STAGE, BUT HIS INDICTMENT WAS FLAWED AND WAS IN RANGE FOR AN EARLY POST-CONVICTION ATTACK, HOWEVER, TRIAL TRANSCRIPT DELAY PREVENTED THE OFFENSIVE. BARNES SECOND APPELLATE COUNSEL, THE FIRST APPELLATE COUNSEL HAVING WITHDRAWN UNDER FIRE, FURTHER EXACERBATED THE DELAY BY EXTENDING IT AND WHEN HE WAS REQUIRED TO EXCEL, DID NOT, DUE TO CONFLICTED INTEREST, DENYING BARNES ANOTHER OPPORTUNITY FOR FREEDOM.

EVENTS FORETOLD THAT BARNES MUST TAKE MATTERS INTO HIS OWN HANDS IF HE TRULY DESIRED LIBERTY. THIS WAS APPARENT FROM THE BEGINNING. HIS COURT-APPOINTED PRE-TRIAL ATTORNEY TOLD HIM THAT HE DID NOT KNOW HOW TO DEFEND, MEANING BARNES SHOULD FIND ANOTHER LAWYER OR DEFEND HIMSELF. BARNES CHOSE THE LATTER. HIS FIRST COURT-APPOINTED APPELLATE COUNSEL DISREGARDED HIM. BARNES SECOND COURT-APPOINTED APPELLATE COUNSEL, CONFLICTED AS HE WAS, DID

MINIMAL work. BARNES only reliance was through his own diligence and his constitutional right to habeas corpus. And there, in habeas corpus, the State attempted to dissuade BARNES through assault, robbery and abstinence. Nonetheless, BARNES persevered and now presents his case to the United States Supreme Court.

(COVER SHEET)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

~~_____~~
Date: ~~_____~~

CONCLUSION

BARNES CASE IS AS MUCH ABOUT CIVIL RIGHTS AS CRIMINAL, FOR HE SAW NO CRIMINALITY IN HIS CHARGES. BARNES IS CONVICTED FOR THE SEXUAL ASSAULT OF A MINOR, BUT NO MINOR WAS ASSAULTED. CONVICTED FOR THE ATTEMPTED SEXUAL ASSAULT OF A SECOND MINOR WHERE THE ATTEMPT WAS THE RESULT OF MERELY ASKING PERMISSION, A PREPARATORY ACT, WHICH IS NOT CRIMINAL AND BEING DENIED OPPORTUNITY TO TESTIFY AGAINST THE CHARGE IN COURT. INDICTED AND CONVICTED FOR ENFORCEMENT WHERE THE RECORD SHOWS ANYONE ENTICED; AND CONVICTED ON OBSCENITY WHERE THE MATERIAL WAS NEVER DESIGNATED AS SUCH.

IN THE DOMAIN OF CIVIL RIGHTS, BARNES WAS ABDUCTED, TRANSPORTED ACROSS STATE LINES, CHARGED AND CONVICTED FOR FACTITIOUS CRIMES, IMPRISONED AND DENIED CONSTITUTIONAL PROTECTIONS. HE WAS WITHHELD FROM TIMELY CHALLENGING HIS CONFINEMENT BY DELAY THROUGH IMPEDIMENT AND ANNOYANCE. SINCE 2016, BARNES HAD THE ABILITY TO COMMUNICATE WITH HIS FAMILY AT WILL. THE GEORGIA DEPARTMENT OF CORRECTIONS PROVIDED FOR EVERY PRISONER AN ELECTRONIC TABLET PROGRAMMED WITH E-MAIL CAPABILITIES. THAT ABILITY HAS ABATED. DEPENDENCE NOW RETURNS TO THE U.S. POSTAL SERVICE WHERE POSTAL DELAYS HAVE INCREASED DUE TO THE ADVANCED SCRUTINY OF PRISON OFFICIALS WITH DISCRETIONARY POWER TO DETERMINE WHETHER TO WHOM, WHEN AND WHERE MAIL IS SENT OR RECEIVED.

BARNES IS INNOCENT OF HIS CONVICTED CRIMES AND
humbly implore and pray the UNITED STATES SUPREME COURT will
grant CERTIORARI, and by so doing, utilize 28 USC 2243,
provide for the appointment of counsel and to the release on
personal recognizance as provided for in the U.S. SUPREME
COURT Rules 16, 36.3 and 39.7.

Respectfully submitted this
15TH Day of August, 2024

Donald G. Barnes Sr.
DONALD G. BARNES, SR.

PRO SE

GEORGIA DEPARTMENT OF CORRECTIONS
#1129864

COFFEE CORRECTIONAL FACILITY
1153 NORTH LIBERTY STREET
NICHOLLS, GEORGIA 31554

SWORN AND SIGNED BEFORE ME
this 15 Day of August, 2024


James Wood esq 8/27/24
NOTARY