

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

REGINALD HOPKINS – PETITIONER

vs.

UNITED STATES OF AMERICA – RESPONDENT,

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD
CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Court of Appeals for the Third Circuit erred as a matter of statutory interpretation in rejecting a “Ruse Exception” to the Speedy Trial Act as applied to state arrests later resulting in federal prosecution.

Suggested answer: In the Affirmative.

LIST OF PARTIES

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

LIST OF PRIOR PROCEEDINGS

1. *United States v. Hopkins*, 1:21-CR-00177-001 (Middle District of Pennsylvania); judgment entered on April 25, 2023;
2. *United States v. Hopkins*, No. 23-1836 (3d Cir); amended precedential opinion reversing district court opinion entered on August 2, 2024;
3. *United States v. Hopkins*, No. 23-1836 (3d Cir.); order denying Petitioner's petition for re-hearing entered August 2, 2024.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below from the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The amended precedential opinion and judgment of the United States Court of Appeals for the Third Circuit of August 2, 2024 appears in Appendix A to this petition.

The memorandum opinion and judgment entered by the United States District Court for the Middle District of Pennsylvania appears in Appendix B to this petition.

JURISDICTION

The date on which the United States Court of Appeals for the Third Circuit issued the opinion in this case was July 9, 2024, with an Amended Opinion issued August 2, 2024. The date on which the United States Court of Appeals for the Third Circuit denied Petitioner's petition for rehearing in this case was August 2, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3161-3174 Speedy Trial Act

18 U.S.C. § 3161(b)

“Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges.”

18 U.S.C. § 3161(c)(1)

“In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.”

18 U.S.C. § 3162(a)(1)

“If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) as extended by section 3161(h) of this chapter, such charge against that individual contained in such complaint shall be dismissed or otherwise dropped.”

STATEMENT OF THE CASE

A. Procedural Background

On February 19, 2021, agents of the Dauphin County Drug Task Force executed a search warrant on the home of Petitioner, resulting in Petitioner's arrest and detention on state charges.

On June 23, 2021, an Indictment was returned, charging Petitioner federally with Distribution of a Controlled Substance (21 U.S.C. § 841(a)(1)) and Felon in Possession of a Firearm (18 U.S.C. § 922(g)(1)). The federal charges caused a detainer to be lodged at Dauphin County Prison, where Petitioner was being detained on state charges from the same search warrant which was executed on February 11, 2021. Initial Appearance was held on July 8, 2021, whereupon the federal magistrate ordered Petitioner detained. State charges were withdrawn by the state prosecutor on July 26, 2021.

Petitioner filed a Motion to Dismiss pursuant to the Speedy Trial Act ("STA") on October 6, 2022. At hearing on February 3, 2023, Task Force Officer ("TFO") Bates, a Harrisburg City police officer who is cross-designated as an ATF Agent, testified he spoke to the federal prosecutor about the case, and was told to file state charges first¹. TFO Bates further testified at that time federal indictment was uncertain and would depend on sufficient evidence being determined. The district

¹ While the district court ultimately rejected as incredible TFO Bates' testimony explaining the inconsistency between testimony at the first and second hearings and the written bail recommendation, the court did credit this testimony as consistent.

court issued an order and memorandum opinion March 6, 2023, denying the Motion to Dismiss but characterizing the decision as a close call.

Petitioner sought reconsideration on March 15, 2023, based upon newly disclosed discovery. Namely, the Government disclosed the February 19, 2021 written bail recommendation made by TFO Bates to the state magistrate following state arrest, in which it was stated that Petitioner was being federally indicted. The bail recommendation was not mentioned during the first hearing on Motion to Dismiss and unknown to defense counsel previously. The written request was located February 23, 2023 and disclosed to defense March 6, 2023, the same day the district court issued its first memorandum opinion denying relief. Due to this additional evidence, the district court reopened the record and a supplemental hearing was convened on March 24, 2023. TFO Bates was recalled as a witness and testified again. This time, TFO Bates testified he was in communication with the federal prosecutor and based on those communications, represented to the state magistrate that Petitioner was being federally indicted. TFO Bates testified unambiguously that he only made the bail recommendation after consultation with an Assistant United States Attorney. The district court confronted TFO Bates with inconsistencies between his prior and current testimony, namely the certainty of the bail recommendation versus the testimony that federal indictment was uncertain and to be determined.

B. Factual Background

In early 2021, the Bureau of Alcohol, Tobacco, and Firearms (“ATF”) regional office came to believe that Petitioner was potentially selling controlled substances in the Harrisburg, Pennsylvania area and may be in possession of a firearm. Because of this, TFO Bates opened an investigation into Petitioner. The investigation started out as a federal investigation. In furtherance, police utilized a confidential informant to allegedly conduct a controlled buy from Petitioner; one buy from 101 Evergreen Street, Apartment B1 was successful while two other attempts were not. TFO Bates applied for, and was granted, a federal search warrant by a federal magistrate on February 11, 2021. The application for search warrant was prepared by an Assistant United States Attorney. Upon execution of the warrant on February 19, 2021, firearms were located. After the search was completed, TFO Bates and the Assistant United States Attorney working on the matter spoke. Despite the investigation and search warrant being federal matters, charges were filed in state court the same day and Petitioner was arrested. *Id.* In advance of Petitioner’s preliminary arraignment on the state charges, TFO Bates sent an email to the presiding state magistrate judge, in which he told the magistrate

Affiant requests high bail on defendant due to the nature of the charges and the defendant is being federally indicted. If convicted would be looking at 15-year mandatory sentence². The defendant does have knowledge of this and does put him at flight risk.

TFO Bates testified he would not have made this written bail recommendation and would not have told the state judge Petitioner was being indicted without some

² Per TFO Bates’ later testimony, a fifteen-year mandatory would not apply and he was mistaken to tell this to the state magistrate.

communication with federal authorities empowered to cause an indictment to be sought.

Petitioner was arraigned on state charges the same day, with bail set at \$250,000.00 by a state magistrate judge, which Petitioner was unable to post. Charges were filed in state court, per TFO Bates, in part because additional time was needed to investigate. All reports prepared were submitted through the ATF's reporting system and not to Harrisburg City Police. Preliminary hearing on state charges was continued repeatedly, and ultimately, never occurred as the state charges were dropped after federal indictment.

C. District Court Judgment (Appendix B)

In written opinion, the district court found the Ruse Exception to the Speedy Trial Act and require a showing of two elements to be proven by a moving defendant. First, it must be proven that state charges (and related arrest) were filed for the sole or primary purpose of preparing a federal criminal prosecution; and second, that there was collusion between state and federal authorities. The district court found the testimony of TFO Bates to be unreconcilable due to inconsistent testimony between the separate hearings and not credible, crediting only the bail recommendation. Based on this factual finding, the district court granted the Motion to Dismiss, finding as a factual matter the state charges were filed for the primary or sole purpose of preparing a federal criminal prosecution against Petitioner based on the bail recommendation. The district court then concluded

that collusion had occurred. As a result of these findings, the Ruse Exception was applied and Speedy Trial Act time began running not upon federal indictment on June 23, 2021, but rather upon arrest on February 19, 2021. Based on this determination, the district court dismissed the charge of Felon in Possession of a Firearm with prejudice. The drug distribution count was not dismissed but was later withdrawn.

D. The Third Circuit Opinion (Appendix A)

In a precedential decision issued July 9, 2024 and amended August 2, 2024, the United States Court of Appeals for the Third Circuit declined to interpret the Speedy Trial Act to contain a Ruse Exception regarding arrest by state authorities for the sole or primary purpose of preparing federal prosecution, becoming the first court of appeals to do so. The Court of Appeal reinstated the dismissed count. The Court of Appeals drew a distinction between arrest by state authorities as a prelude to federal indictment and civil arrest by federal authorities (most commonly in the immigration context), expressing no opinion on the latter. Appendix A at n.8.

REASONS FOR GRANTING THE PETITION

- I. The Third Circuit's decision creates a circuit split on the question of Ruse Exception as applied to state arrests. No other Circuit has precedentially refused to recognize application of the exception to a state arrest. Breaking from the uniform precedent of other circuits warrants consideration by this Court to resolve the split.

The Third Circuit's decision of July 9, 2024 as amended August 2, 2024 considered and rejected a Ruse Exception to the STA as applied to state arrests, becoming first and only Court of Appeals to precedentially reject the exception as it relates to state arrests made for the sole or primary purpose of preparing federal prosecution. The Third Circuit Court's creation of a circuit split warrants consideration by this Court.

The Second, Fourth, Fifth, and Ninth Circuits have recognized the exception as applicable to state arrests. United States v. Jones, 129 F.3d 718 (2d Cir. 1997); United States v. Woolfolk, 399 F.3d 590, 595 (4th Cir. 2005); United States v. Kelley, 40 F.4th 276 (5th Cir. 2022); United States v. Mearis, 36 F.4th 649, 653 (5th Cir. 2022); United States v. Benitez, 34 F.3d 1489, 1494 (9th Cir. 1994) (“Speedy Trial Act time periods may be triggered by state detentions that are merely a ruse to detain the defendant solely for the purpose of bypassing the requirements of the Act.”)³.

³ The 11th Circuit has rejected application of the Ruse Exception to arrests under state authority, in a non-precedential opinion. United States v. Alvarado-Linares, 698 F. App'x 969 (11th Cir. 2017). The 10th Circuit assumed without deciding that the exception could *only* apply to state arrests. United States v. Asfour, 717 F. App'x 822 (10th Cir. 2017) (unpublished). The Eighth Circuit has assumed without deciding that the Ruse Exception exists and applies to state arrests. United States v. Saucedo, 956 F.3d 549, 553 (8th Cir. 2020) (“Under the ruse exception, a civil

The D.C. Circuit has rejected the Ruse Exception to the STA as applied to arrests made under the District of Columbia Code. United States v. Knight, 824 F.3d 1105, 1109-10 (D.C. Cir. 2016); United States v. Mills, 964 F.2d 1186, 1188 (D.C. Cir. 1992)(en banc). This is distinguishable from the current question presented because the D.C. Code, while similar in function to the statutes of a state, is itself a law enacted under federal authority. The District of Columbia, while functioning like a state for many purposes, has no inherent sovereignty and possesses only the authority delegated to it by Congress, unless overruled by Congress. Under The District of Columbia Self-Government and Governmental Reorganization Act (PL 93-198), the Council of the District of Columbia has quasi-legislative authority to enact statutes similar to a state legislature, but Congress retains authority to overrule the Council. This makes the question of the effect of a state arrest on federal speedy trial rights a separate question from that decided in Knight and Mills, where both authorities involved were federal.

Accordingly, the Third Circuit is the first and only Court of Appeals to reject application of the Ruse Exception to a state arrest in a precedential decision. The Circuit Court's opinion, breaking away from the entirety of precedential appellate decisions, created a circuit split on the question of the effect of collusion between state and federal authorities which would not otherwise exist. Breaking from the unanimous of precedents of other circuits and creating a circuit split warrants

arrest or detention may trigger the Speedy Trial Act when law enforcement authorities collude with state or civil officials to detain a defendant as a mere ruse for later prosecution.”).

review by this Court in order to resolve the split.

II. The Third Circuit's policy and separation of powers rationale for rejecting a Ruse Exception to the STA misconstrued the nature of the exception. The exception is consistent with Congress's purpose in enacting the STA.

In rejecting a Ruse Exception applicable to state arrests, the Court of Appeals reasoned that such an exception should properly come from Congress. Appendix A at 24. This reasoning conflicts with that of four circuit courts which have accepted the exception as applied to state arrests. Such courts viewed the exception as consistent with, and in furtherance, of Congressional intent in enacting the STA. Congress codified the constitutional speedy trial right through the Speedy Trial Act, which establishes specific time limits pertaining to various stages of a criminal prosecution. See 18 U.S.C. § 3161 *et seq.* “Congress enacted the Speedy Trial Act because of its concern that this Court's previous interpretations of the Sixth Amendment right to a speedy trial had drained the constitutional right of any real meaning.” United States v. Taylor, 487 U.S. 326, 352, 108 S. Ct. 2413, 2427, 101 L. Ed. 2d 297 (1988)(internal quotation omitted). “Congress designed the Speedy Trial Act in part to protect the public's interest in the speedy administration of justice, and it imposed the sanction of dismissal under section 3162 to compel courts and prosecutors to work in furtherance of that goal.” United States v. Ramirez-Cortez, 213 F.3d 1149, 1157 (9th Cir. 2000). “The Speedy Trial Act would lose all force if federal criminal authorities could arrange with state authorities to have the state authorities detain a defendant until federal authorities are ready to file criminal charges.” Benitez, 34 F.3d at 1494, *see also*, United States v. Cepeda-Luna, 989

F.2d 353, 357 (9th Cir. 1993).

Rather than infringe on the power of Congress to enact policy, the Ruse Exception serves Congressional intent by giving effect to the STA. Without it, state and federal authorities are permitted to circumvent the purposes of the STA of protecting the rights of defendants and timely but deliberative administration of justice by engaging in a coordinated shell game of keeping a defendant in custody for federal purposes without triggering the deadlines contained in the STA. Like the Sixth Amendment right to a speedy trial before it, the Speedy Trial Act is at risk of being drained of any real meaning by virtue of judicial interpretation.

CONCLUSION

For the foregoing reasons, this petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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