

No. _____

In the Supreme Court of the United States

LAUREN IRENE GANNON

Petitioner

vs.

THE STATE OF TEXAS

Respondent

On Petition for a Writ of Certiorari to the
Sixth Court of Appeals at Texarkana, Texas

PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

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Question Presented for Review

Did the Sixth Court of Appeals of Texas misapply the *Barker v. Wingo* factors for determining whether a violation of a defendant's right to speedy trial occurred which resulted in petitioner's conviction and 20 years sentence?

List of Parties

The names of the parties are listed in the caption of this case. The judgment of conviction and twenty years sentence was imposed by the Hon. Heather H. Wright, 456th District Court Judge of Texas. The three judge panel of the Sixth Court of Appeals at Texarkana, Texas, which considered petitioner's appeal and issued an unpublished opinion, consisted of the opinion's author, Justice Jeff Rambin, as well as Chief Justice Scott E. Stevens, and Justice Charles Van Cleef.

Table of Contents

Question Presented for Review.....	i
List of Parties	ii
Table of Contents	iii
Table of Authorities	v
Opinion Below	1
Statement of Jurisdiction.....	1
Relevant Constitutional Provision	2
Statement of the Case.....	2
Statement of Procedural History.....	3
Question Presented for Review (Restated)	4
Did the Sixth Court of Appeals of Texas misapply the <i>Barker v. Wingo</i> factors for determining whether a violation of a defendant's right to speedy trial occurred which resulted in petitioner's conviction and 20 years sentence?	4
Argument Amplifying Reasons for Granting the Writ	4
Discussion of Facts Related to this Ground.....	4
Why Certiorari Should be Granted.....	6
Conclusion and Prayer for Relief.....	11

(List of Appendix Documents on Next Page)

<u>Appendix</u>	<u>Tab</u>
Opinion of the Sixth Court of Appeals of Texas	A
Judgment of the Sixth Court of Appeals of Texas	B
Order Denying Petition for Discretionary Review in the Court of Criminal Appeals of Texas	C

Table of Authorities

Case

Barker v. Wingo, 407 U.S. 514 (1972)[i](#), [2](#), [4-7](#), [10](#)

Federal Constitutional Provision and Supreme Court Rules

Sup. Ct. Rule 10	7
Sup. Ct. Rule 10(c).....	7
Sup. Ct. Rule 13.1	2
U.S. Const. Amend. VI	2

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Appellee-Respondent

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Opinion Below

The opinion and judgment sought to be reviewed were issued on March 1, 2024 by the Sixth Court of Appeals of Texas sitting in Texarkana, and are included in the Appendix at Tabs A and B.

Statement of Jurisdiction

This is an appeal of petitioner Lauren Irene Gannon's twenty (20) years sentence arising from her judgment of conviction, after the 456th District Court of Guadalupe County, Texas, verbally denied her motion to dismiss based on a violation

of her constitutional right to speedy trial. Appendix Tab A, pp. 2 and 12. The Sixth Court of Appeals of Texas affirmed the trial court's denial of petitioner's motion to dismiss for violation of her right to speedy trial in its March 1, 2024 judgment and unpublished opinion. The Court of Criminal Appeals of Texas denied discretionary review on July 31, 2024, with that order included as Appendix Tab C.

This certiorari petition will be due within 90 days after July 31, 2024, the date the Court of Criminal Appeals of Texas denied discretionary review, or by October 29, 2024. Sup. Ct. Rule 13.1.

Relevant Constitutional Provision

The constitutional right to a speedy trial is contained in the first clause of the Sixth Amendment of the U.S. Constitution: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial"

Statement of the Case

Petitioner Lauren Irene Gannon seeks review of the unpublished opinion and judgment of the Sixth Court of Appeals, attached as Appendix Tabs A and B, which affirmed the trial court's verbal denial of her motion to dismiss for violation of her constitutional right to a speedy trial. Appendix Tab A, pp. 2 and 12. The Sixth Court of Appeals balanced all four of the speedy trial factors enunciated by this Court in *Barker v. Wingo*, 407 U.S. 514, 530 (1972), found two factors in favor of a speedy trial violation and two factors against such a violation, and then held that those factors

balanced together, weighed against finding a violation of Ms. Gannon's constitutional right to speedy trial. Appendix Tab A, pp. 3-12.

Statement of Procedural History

The Sixth Court of Appeals affirmed the trial court's verbal denial of petitioner's motion to dismiss for violation of her right to speedy trial in its March 1, 2024 judgment and unpublished opinion. Appendix Tabs A and B. Petitioner's motion for rehearing was timely filed in the Sixth Court on March 15, 2024, and the Sixth Court overruled that motion on March 19, 2024. These dates are stated at: <https://search.txcourts.gov/Case.aspx?cn=06-23-00135-CR&coa=coa06>, which is the Sixth Court's online docket sheet for petitioner's appeal.

Petitioner Gannon then filed her Motion for Extension of Time to Retain Counsel of File *Pro Se* Petition for Discretionary Review in the Court of Criminal Appeals on April 1, 2024, which was granted on April 2, 2024, ordering that the petition for discretionary review be filed by Monday, June 17, 2024. That petition was timely filed on June 14, 2024, the State of Texas filed a response to the petition on June 28, 2024, and the Court of Criminal Appeals denied discretionary review on July 31, 2024, with that order attached as Appendix Tab C. These dates are stated at: <https://search.txcourts.gov/Case.aspx?cn=PD-0245-24&coa=coscca>, which is the online docket sheet for the Court of Criminal Appeals for petitioner's case.

Question Presented for Review (Restated)

Did the Sixth Court of Appeals of Texas misapply the *Barker v. Wingo* factors for determining whether a violation of a defendant's right to speedy trial occurred which resulted in petitioner's conviction and 20 years sentence?

Argument Amplifying Reasons for Granting the Writ

Certiorari should be granted because the federal constitutional speedy trial issue presented in this case is likely to recur in future criminal prosecutions, and because the Sixth Court of Appeals of Texas misapplied the *Barker v. Wingo* factors in affirming the trial court's denial of Ms. Gannon's motion to dismiss based on a violation of her constitutional right to speedy trial, and should have instead found that her speedy trial right was violated.

Discussion of Facts Related to this Ground: The underlying facts concerning the procedural history of petitioner Gannon's prosecution were stated by the Sixth Court of Appeals of Texas as follows:

Gannon was arrested on September 5, 2019, and charged with the manufacture or delivery of a controlled substance in penalty group 1 in an amount of four grams or more but less than 200 grams. About thirteen months later, a Guadalupe County [footnote omitted] grand jury indicted Gannon for that offense. One week after Gannon was indicted, the Guadalupe County Sheriff's Office (GCSO) sent evidence collected from Gannon to the Texas Department of Public Safety (TDPS) Crime Laboratory in Austin for analysis. After analysis, that evidence and the results of the analysis were returned to the GCSO on April 28, 2022.

Gannon filed her motion to dismiss for violation of her speedy trial right under the United States and Texas Constitutions on July 28, 2021. Apparently, this case was first set for trial on December 5, 2022, about seven months after the State received the results of the TDPS

laboratory analysis. The trial was continued on the State's motion and reset for January 17, 2023. Although the State filed a second motion for continuance, the trial court denied the motion. Nevertheless, another case went to trial the week of January 17, and this case was reset for February.

On January 31, 2023, the trial court heard Gannon's motion to dismiss. Gannon and her mother were the only witnesses. [Footnote omitted]. After hearing their testimony and the parties' argument, the trial court denied the motion. Gannon then entered an open plea of guilty on February 7, 2023, and after a punishment hearing on April 25, 2023, the trial court found her guilty of the offense and sentenced her to twenty years' imprisonment.

Appendix Tab A, at pp. 2-3. Bracketing added. Petitioner's appeal was then transferred from the Fourth Court of Appeals of Texas at San Antonio, which hears appeals from Guadalupe County, to the Sixth Court of Appeals of Texas at Texarkana, pursuant to docket equalization efforts for the Texas intermediate appellate courts. Appendix Tab A, p. 2, fn. 2.

The Sixth Court's opinion noted that this Court announced the test for determining constitutional speedy trial violations in *Barker v. Wingo*, 407 U.S. 514, 530-532 (1972), Appendix Tab A, p. 2, and held that: (1) the length of the delay weighed heavily in favor of finding a speedy trial violation (Appendix Tab A, p. 5); (2) the reason for the delay weighed in favor of finding a speedy trial violation, but not heavily (Appendix Tab A, p. 6); (3) petitioner's assertion of the right to a speedy trial weighed strongly against a finding of a speedy trial violation (Appendix Tab A, p. 8); and (4) the prejudice to petitioner Gannon was not sufficiently proven, weighing against finding a speedy trial violation (Appendix Tab A, 11). The Sixth Court's

opinion concluded that these four factors, balanced together, weighed against finding a violation of Ms. Gannon’s constitutional right to a speedy trial, and affirmed the trial court’s judgment and sentence. Appendix Tab A, pp. 11-12.

The hearing record concerning Gannon’s motion to dismiss the prosecution on speedy trial grounds is available as the January 31, 2023 Reporter’s Record Supplemental Vols. 1 and 2 in the state court appellate record. The trial court’s verbal order denying the speedy trial dismissal motion is at p. 41, lines 19-20 of Reporter’s Record Supplemental Vol. 1. There is no written order memorializing this ruling. Petitioner Gannon then entered a guilty plea which reserved her right to appeal the trial court’s ruling denying her motion to dismiss for violation of her constitutional right to speedy trial. See Feb. 7, 2023 guilty plea hearing record at pp. 7-8, and Feb. 7, 2023 Trial Court’s Certification of Defendant’s Right of Appeal at Clerk’s Record, p. 151 (pdf 155 of 156), both contained in the state court’s appellate record.

Why Certiorari Should be Granted: Certiorari should be granted because while the Sixth Court’s opinion correctly states the four *Barker v. Wingo* factors for determining whether a defendant’s constitutional right to speedy trial was violated, the opinion misapplied those factors in finding that petitioner Gannon’s constitutional right to a speedy trial was not violated, and in affirming the trial court’s judgment of conviction and Ms. Gannon’s 20 years sentence. If these factors had been properly applied by the Sixth Court of Appeals of Texas, then three of the four factors would have favored finding a violation of Gannon’s constitutional right to a speedy trial, and

a judgment of acquittal would have been rendered. Ms. Gannon asked the Court of Criminal Appeals of Texas to correct this ruling, but it denied review on July 31, 2024. Appendix Tab C. Petitioner understands that Sup. Ct. Rule 10 states in its last sentence that, “A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” However, she contends that review of the Sixth Court’s opinion is authorized under Sup. Ct. Rule 10(c) because, “a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court[.]”

As stated earlier, the Sixth Court’s opinion found that two of the four *Barker v. Wingo* factors weighed in favor of finding a violation of petitioner’s constitutional right to a speedy trial. The Sixth Court found that the first factor, the length of the delay between Ms. Gannon’s arrest and the guilty plea hearing, which was three years and five months, “weighed heavily in favor of finding a violation of the speedy trial right.” Appendix Tab A, p. 5.

The Sixth Court also found that the second factor, the reason for the delay, weighed against the State, “but not heavily,” in at least two instances that petitioner contends were misapplications of the *Barker v. Wingo* factors. First, the Sixth Court stated that the thirteen months delay between petitioner’s arrest and her indictment was found to weigh against the State, “but not heavily,” Appendix Tab A, p. 6, because the State did not provide any evidence on how the Texas Supreme Court’s

COVID-19 emergency orders would have impacted the State’s ability to indict Gannon. Appendix Tab A, pp. 5-6. The Sixth Court cited no authority for why this delay would be weighed against the State with the mitigating phrase, “but not heavily.” Appendix Tab A, pp. at 5-6. The Sixth Court noted that, “The State offered no evidence or explanation for the delay between April 28, 2022, when the evidence and the results of the analysis were returned to the State, and December 5, 2022, the first trial setting[,]” and then held that this delay weighed against the State, “but not heavily,” again citing no authority for using that mitigating language. Appendix Tab A, p. 6.

Both of these delays should have been held against the State without the mitigating phrase, “but not heavily,” because the prosecutor’s office failed to present any reasons for its failure to indict petitioner Gannon sooner than thirteen months after arrest, or for the seven-plus months of delay in setting the case for trial after the prosecutor’s office received test results from the Texas Department of Public Safety Crime Laboratory in Austin. The prosecutor’s office could have indicted Ms. Gannon sooner than it did, but it failed to state why it did not do so. That office could have also set the case for trial after receiving testing results sooner, but again, it did not explain why that did not occur. Both of those delayed acts were solely within the prosecutor’s office’s purview, both of these acts were delayed, and the prosecutor’s office provided no explanation for those delays. The reason for the delay factor should have weighed against the State without the mitigating phrase “but not heavily.”

The Sixth Court also found that the “prejudice” factor weighed against petitioner Gannon because she could not show prejudice. Appendix Tab A, pp. 8-11. Three factors are used to determine prejudice: (1) preventing oppressive pretrial incarceration, (2) minimizing the anxiety and concern of the accused, and (3) limiting the possibility that the defense will be impaired. Appendix Tab A, p. 8. Petitioner conceded that there was no evidence on the first and third prejudice factors. Appendix Tab A, p. 9. The Sixth Court found that the “minimizing the anxiety and concern of the accused” factor was not sufficiently proven by Ms. Gannon in part because, “the degree that this case caused that hardship was lessened somewhat because, for almost all of the pendency of this case, she also faced criminal charges in Bexar County.” Appendix Tab A, p. 10.

Whether there were also pending criminal charges in another county would have no bearing on whether the delay in bringing this Guadalupe County prosecution to trial caused anxiety and concern to petitioner Gannon. This is because bringing Gannon’s case to trial in Guadalupe County would not have been affected by whether or not there were pending criminal charges against her in Bexar County. The pendency of any charges in another county was irrelevant to whether Gannon’s constitutional speedy trial rights were violated in the case at bar, and the Sixth Court of Appeals of Texas should not have considered any pending Bexar County charges in deciding whether the length of the delay between petitioner’s arrest and the guilty plea hearing in this Guadalupe County prosecution caused prejudice to petitioner.

In affirming petitioner's judgment of conviction and 20 years sentence, the Sixth Court of Appeals of Texas held that the State of Texas violated the first two *Barker v. Wingo* factors in determining whether a speedy trial right were violated, describing the length of delay as a violation to be weighed "heavily," against the State, and the reason for delay to be weighed "slightly" against the State. But the appeals court then found that the last two factors, assertion of the speedy trial right and prejudice to the defendant, were not violated. Petitioner Gannon contends that the Sixth Court's misapplication of the *Barker v. Wingo* factors just discussed, would have altered the balancing of these factors from the opinion's holding that there were two factors favoring a speedy trial right violation, and two factors weighing against a speedy trial right violation, when a correct application of those factors would have resulted in a finding that three of the *Barker v. Wingo* factors weighed in favor of a speedy trial right violation, with only one factor (assertion of the speedy trial right) weighing against such a violation. Had that occurred, then the Sixth Court would have held that Ms. Gannon's constitutional right to a speedy trial was violated, which would have resulted in a rendition of judgment of acquittal on her underlying conviction and 20 years sentence.

For these reasons, petitioner Lauren Irene Gannon asks this Court to grant this petition for a writ certiorari to decide this important federal constitutional issue which is likely to recur in future criminal prosecutions, request briefs on the merits to determining the merits of the case at bar, and hold that the opinion of the Sixth Court

of Appeals should be reversed, and that a judgment of acquittal should be rendered because petitioner's constitutional right to a speedy trial was violated.

Conclusion and Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, petitioner LAUREN IRENE GANNON respectfully prays that this Court grant this petition for a writ of certiorari, set this cause for oral argument and for briefing on the merits, reverse the March 1, 2024 opinion of the Sixth Court of Appeals affirming the trial court's denial of petitioner's motion to dismiss for violation of her right to speedy trial, and order rendition of a judgment of acquittal.

Respectfully submitted,

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