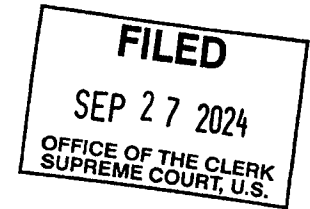


24-5956

ORIGINAL

IN THE SUPREME COURT
OF THE UNITED STATES



Charles Jordan

PETITIONER

vs.

State of Mississippi

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

~~United States~~ Court of Appeals & Supreme Court of Mississippi

Petition for Writ of Certiorari

Charles Jordan #231103 POLITICAL PRISONER
P.O. Box 1057
Parchman, MS 38138

QUESTION(S) PRESENTED

- 1.) Can a defendant be deprived of liberty in violation of due process?
- 2.) Can the state be allowed to circumvent MCA 99-17-1 statute of limitations through a reindictment?
- 3.) Should claims affecting a fundamental constitutional right be time barred or procedurally barred?
- 4.) Should state be permitted to prosecute the accused in violation of a statute of limitations?
- 5.) Should MCA 99-17-1 law conform to principles of justice?
- 6.) Was state legally obligated to provide accused with a speedy trial prior to post trial plea?
- 7.) Is a sentence in violation of MCA 99-17-1 statute of limitations an illegal sentence?
- 8.) Can a claim concerning an accused's right to due process be barred as successive-writ?
- 9.) Is correcting a fundamentally unjust incarceration protected from procedural bars and judicial discretion?
10. Is the court assessing MCA 99-17-1 270 day rule from reindictment affording the reindicted equal protection of the law?
11. Can the State up the ante because petitioner does not desire to plea after jury trial right is already invoked?
12. Once trial right is exercised, haven't speedy trial right been exercised?

LIST OF PARTIES

1. Ashley Lauren ~~Sulser~~ Sulser, Special Asst. Attorney General

RELATED CASES

Charles Jordan v. State, No. 2022-CP-00874, No. 2022-CP-00877-COA, and 2023-TS-00072-COA, The Court of Appeals of the State of Mississippi. Judgment entered 3/19/2024

Charles Jordan v. State, No. 2022-CP-00874-COA. The Court of Appeals of Mississippi. Judgment entered 7/23/2024

Charles Jordan v. State of Miss., No. 2022-CT-00874-SCT. & No. 2023-CT-00072-SCT. Mississippi Supreme Court. Judgment entered 9/16/2024

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STATUTES AND RULES

97-5-29

97-5-33(6)

97-5-33(7)

99-17-1

M.R. Cr. P. 17.2

U.S. Constitution, 14th Amendment

Mississippi Constitution, Article 3, Section 14 & Article 6, Sect. 147

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

☒ For cases from the state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the highest state court to deny rehearing appears at Appendix B to the petition and is unpublished.

The opinion of the highest state court on writ of certiorari appears at Appendix C to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was September 16, 2024. A copy of that decision appears at Appendix C

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (2)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1.) The U.S. and Mississippi Constitution right to not be deprived of life, liberty, or land except by due process.
- 2.) The Due Process and Equal Protection Clauses of the Fourth Amendment that assures due process and equal protection of the law.
- 3.) The Sixth and Fourteenth Amendment right to a speedy trial.
- 4.) The Fifth Amendment Due Process Clause that prohibits apprehension of vindictiveness.
- 5.) The accused right to be prosecuted before 270 days after arraignment, assured by an enacted law MCA 99-17-1.
6. The constitutional

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

On January 5, 2018, petitioner was indicted on one count of MCA 97-5-27 and one count of MCA 97-5-33(6) in Cause # 2018-0041-CRK in the Oktibbeha County Circuit Court. Both charges were aforesaid to have transpired on or about or between the 5th day of February, 2017, and 10th day of March, 2017. Petitioner was set for trial on April 30, 2018, after he was arraigned on February 2, 2018. From April 30, 2018 through January 27, 2020 continuances were sought solely because the state had not disclosed discovery that was in their possession since December 2017, a fact admitted to on record by the state during the February 4, 2020 preliminary hearing, around pages 40-49.

On February ³~~4~~, 2020, after choosing to not plea guilty to MCA 97-5-33(6), the petitioner invoked his jury trial right. The state and defense committed to trial on MCA 97-5-33(6) in Cause # 2018-0041-CRK for February 4, 2020. MCA 97-5-27 was quashed due to state charging petitioner with two felonies stemming from the exact same event. On February 4, 2020 the case would be continued to the April 2020 term due to inculpatory evidence not being produced until on 1/27/2020.

Through email, petitioner and defense counsel Haug discussed the fact that the alleged victim deactivated her facebook page immediately after the trial judge ruled the defense could use evidence, hindering the petitioner from gathering evidence that was ruled admissible. During email communication, counsel disclosed on 2/5/2020 that the state said if I did not plea to MCA 97-5-33(6) by 2/7/2020, the state would add a charge of MCA 97-5-33(7) and trial would be on two counts of Exploitation instead of one count.

- (11) Contrary to negotiation and the fact that the petitioner had already agreed to trial on MCA 97-5-33(6) in 2018-0041-CRK, an entire 762 days after the 2/2/18 arraignment, the State

returned a superceding indictment that consisted of the identical charge of MCA 97-5-33(6) and four additional charges of MCA 97-5-33(7), (2)(10) MCA 97-5-33(6) in 2018-0041-CRK and MCA 97-5-33(6) in 2020-0071-CRK are identically worded with same alleged victim and same date of event. As MCA 97-5-33(6) had no misnomer, the court had petitioner set for trial on the identical count in two indictments for 7/27/2020, as indicated by 2018-0041-CRK and 2020-0071-CRK general dockets. In violation of due process, petitioner went from facing 5-40 years at trial to 25-200 years all because he invoked jury right and state returned indictment that was contrary to any negotiation.

(12) On July 28, 2020, 938 days after original indictment, and 902 days after 2/2/2018 arraignment, the petitioner had a full trial. On July 31, 2020 petitioner was found guilty on all counts five counts in the Oktibbeha County Circuit Court. Petitioner was immediately imprisoned and sentencing was set for August 18, 2020. Although the state was already in violation of MCA 99-17-1 and in violation of 6th & 14th amendment speedy trial right, the state used its charging and sentencing powers to tender a post-trial plea on August 18, 2020.

II. PCR Petition

On November 17, 2020 a PCR motion of a speedy trial right was filed in Oktibbeha County Circuit Court on docket 2020-0392-CVK. The trial judge entered order dismissing petition on 11/17/2020. On November 23, 2020 petitioner filed a NOA. Yet, on 12/2/2020, the trial judge set a hearing on 1/12/2021 concerning the 11/17/2020 speedy trial petition. On 12/18/20 in response to the order, petitioner amended the 11/17/20 motion. On 1/12/2021 the trial judge erroneously calculated MCA 99-17-1 from reindictment rather than original arraigned and failed to properly assign and assess delay to the State in Barker Analysis.

Upon receiving the record from MS COA, petitioner immediately motioned to have the appellate record supplemented, as the hearing order from the motion and the hearing were not included. Although

docket 2020-0392-CVK clearly shows the 12/2/2020 order setting a hearing for 1/12/21 stemmed from the 11/17/20 speedy trial motion, on 3/25/21 the COA denied motion to include it in appeal.

As a result of being transferred from Oktibbeha County Jail and to Rankin County (CMCF) in solitary confinement, petitioner did not have adequate writing supplies or proper assistance to complete his brief prior to deadline. Access to law library was not at least equal caliber to direct access. (Abdul-Akbar v. Watson, 775 F. Supp. 735, 748 (1991)) Petitioner's appeal was dismissed due to failure to file opening brief.

Upon learning that errors affecting a defendant's fundamental constitutional rights are excepted from the procedural bars on PCR motions, petitioner filed motion raising claims of 1) Violation of MCA 99-17-1, 2) Prosecutorial Vindictiveness, 3) Violation of Const. Speedy Trial, and 4) IAC. Yet, on November 12, 2021 the trial judge erroneously ruled petitioner was not indicted, declined to redo Barker Analysis, disregarded MCA 99-17-1 claim, and claim that there was no merit of prosecutorial vindictiveness.

(1)(3)(8)(9) In disregard of the fact MSC has ruled errors affecting a fundamental right are excepted from PCR procedural bars (Badger v. State, 290 So. 3d 377 (2020); Morales v. State, 291 So. 3d 363 (2019); Smith v. State, 139 So. 3d 74 (2013); Duncan v. State, 2020 WL 6043843; Shelton v. State, 2019 WL 1926839), the trial judge continued to deny motions claiming them barred.

Although an incarceration in violation of MCA 99-17-1 is an illegal sentence and cannot be barred, the trial judge ruled it barred on 11/16/2021, ~~2/3/22~~; 1/31/2022; 2/3/2022; 4/18/2022; 8/4/2022; 11/18/2022; and 5/5/2023. Trial judge ignorance of law resulted in appeals 2022-CP-00874-COA, 2022-CP-00877-COA, and 2023-TS-00072-COA. As MCA 99-17-1, prosecutorial vindictiveness, IAC, and constitutional right to a speedy trial are fundamental constitutional rights, the COA erred on 3/19/2024 stating that

the claims were successive-writ barred. On 7/23/2024 COA denied the motion for rehearing. On 9/16/2024 MSC majority ruled to deny writ of certiorari, while two justices ruled it should be granted.

III. ERRORS AFFECTING FUNDAMENTAL CONSTITUTIONAL RIGHTS ARE EXCEPTED FROM PROCEDURAL BARS

The COA ruling that the fundamental constitutional rights claims were barred as successive writ and MSC denying writ of certiorari is clearly contrary to caselaw and the federal and state constitution.

The MSC has held unequivocally that “errors affecting fundamental constitutional rights are excepted from the procedural bars of the UPCCRA.” (Rowland v. State, 42 So. 3d 503, 507 (2010); Smith v. State, 149 So. 3d 1027 (2014)). The Uniform Post-Conviction Collateral Relief Act does not contain a substantive res judicata bar to a second PCR. The Court even held that successive-pleadings bar is a procedural bar in Rowland v. State, 98 So. 3d 1032, 1035 (2012), and MSC has consistently recognized an exception to the successive-pleadings bar for errors affecting fundamental rights. (Rowland, 42 So. 3d @ 507-08)

Constitutional rights in serious criminal cases rise above mere rules of procedure. (Brown v. State, 297 U.S. 278, 56 S. Ct. 461, 80 L. Ed. 682) Under U.S. Constitution 14th Amendment and Section 14, Article 3 of Mississippi Constitution, “no person shall be deprived of his liberty except by due process of law.” Denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice. No charge shall be affirmed where due process is lacking. Denying relief for a fundamental-rights violated brought to the court’s attention in a successive-PCR would ignore the serious due-process concerns underlying the fundamental-rights exception. (Brooks v. State, 209 Miss. 150, 46 So. 2d 94 (1950))

Most vitally, MSC held that neither the common law nor our own constitutional law applies the doctrine of res judicata to any constitutional claim. (Bragg v. Carter, 367 So. 2d 165, 165-66 (Miss. 1978)) The doctrine of res judicata MUST yield to the constitution. (C.I.T. Corporation v. Turner, 248 Miss. 517, 157 So. 2d 648 (1963)) In Bragg, MSC removed claims based in constitutional principle from the bounds of common law res judicata. According to the controlling principles of Ex parte Pattison, 56 Miss. 161 (1878), procedural mechanism is not limited by common-law res judicata. Also in Bragg v. Carter, 367 So. 2d 165 controlling principles established that claims of constitutional dimensions are also excepted from common-law res judicata.

No judicial discretion is permitted when it comes to excepting fundamental constitutional rights from the procedural bars of the UPCCRA. (Rowland v. State, 42 So. 3d 503, 507 (2010)). As such, the COA, trial court, and MSC acted arbitrarily and abused discretion by not addressing the merits of fundamental constitutional rights claims. According to the courts own controlling principles (1) the right against double jeopardy; (2) the right to be free from an illegal sentence; (3) the right to due process at sentencing; (4) and the right to not be subject to ex post facto laws are excepted from UPCCRA procedural bars. (Morales v. State, 291 So. 3d 383 (2019); Smith v. State, 149 So. 3d 1027 (2014))

IV. VIOLATION OF MCA 99-17-1 STATUTE OF LIMITATIONS

Someone deprived of liberty without due process is clearly contrary to established Federal and State law as determined by the U.S. Constitution 14th Amendment and Mississippi Constitution Article 3, Section 14. Yet, petitioner is deprived of liberty in violation of MCA 99-17-1. (1) Can an accused be allowed to be deprived of liberty in violation of due process? (5) Should MCA 99-17-1 statute of limitations conform to fundamental

principles of justice?⁽⁷⁾ Is a conviction in violation of MCA 99-17-1 an illegal sentence?

In the case at bar, the state has prosecuted the petitioner in clear violation of MCA 99-17-1 statute. On 1/12/2021 the Oktibbeha County Circuit Court erred in calculating the 270 day rule from the March 6, 2020 reindictment instead of the February 2, 2018 arraignment.

(2) Can the state be allowed to circumvent MCA 99-17-1 statute of limitations by a reindictment? (10) Is assessing the MCA 99-17-1 rule from reindictment affording the reindicted equal opportunity of the law? (5) Does MCA 99-17-1 conform to principles of justice? To make claim clear by a preponderance of evidence, the petitioner disclosed the following to the MS COA and MSC:

- i. 2018-0041-CRK general docket
- ii. 2018-0041-CRK indictment - Exhibit B
- iii. 2020-0071-CRK general docket - Exhibit A
- iv. 2020-0071-CRK indictment
- v. February 5, 2020 email concerning State disclosing adding a charge of MCA 97-5-33(1) if petitioner would not plea. (Exhibit F)
- vi. record from 2/4/2020 preliminary motion where state admits on record that the same evidence presented to grand jury for 1/5/2018 indictment was in their system since 12/2017, but was not produced to defense until 1/27/2020. (Exhibit E)
- vii. August 5, 2020 order retiring 2018-0041-CRK to the files.

In Barker v. Wingo, this Court, straightforwardly found that the constitutional right to a speedy trial cannot be waived by inaction. And the states were free to provide more protections than the Constitution, but not less. (Barker v. Wingo, 407 U.S. @ 528, 92 S. Ct. 2182. This Court also established a well-settled rule that criminal statutes must be construed in favor of the defendant. (United States v. Brown, 333 U.S. 18, 25, 68 S. Ct. 376, 380 (1948) Since being enacted on July 1, 1976 none of the language of the statute has tangentially changed and no assertion of a statute of limitations is needed, as it is a law (rule). (Vickery v. State, 535 So. 2d 1371 (1988);

Nations v. State, 481 So. 2d 760, 761 (1985) As MCA ~~99-17-1~~ 99-17-1 is a plain and straightforward enacted law, no assertion is needed nor can the rule be waived. The MSC also holds that criminal statutes must be construed in favor of the defendant. (State v. Burnham, 546 So. 2d 690, 692 (1989); State v. Martin, 495 So. 2d 501, 502 (1986)) The statute must through reading it give a fair notice of that which is required or forbidden. (Roberson v. State, 501 So. 2d 398, 400 (1987); Cassibry v. State, 404 So. 2d 1360, 1368 (1981)) Limits must be found within the right and 99-17-1 rule creating it, (In re Brown, 478 So. 2d 1033 (1985)) ~~is~~ is plain and straightforward (Payne v. State, 363 So. 2d 278 (1978)) The "RULE" places a time limit on the states "RIGHT" to try a defendant within 270 days from arraignment. The court unequivocally established MCA 99-17-1 statute of limitation as a rule, and the very rules confers a right upon the accused which may be claimed no matter how inconvenient society may otherwise deem it. (Folk v. State, 576 So. 2d 1243 (1991); Moore v. State, 556 So. 2d 1031 (1990)) By definition "rights" give the petitioner zones of unchecked discretionary action that others, whether private citizens or governmental authorities may not invade. (Pearson v. State, 428 So. 2d 1361, 1364 (1983); Read v. State, 430 So. 2d @ 840 (1983)) No constitutional nor statutory law exists that says an accused may be forced to forego his right to proper indictment and production of discovery on pain of forfeiting his right to a speedy trial and right to be protected by MCA 99-17-1 statute of limitations.

In addition, the state circumventing MCA 99-17-1 through a reindictment is contrary to fundamental principles of justice. Reindictment within itself is defined as negligence and does not meet threshold of "good cause." (Barker, 407 U.S. @ 531, 92 S. Ct. @ 2192; Adams v. State, 583 So. 2d 165 (1991)) How can the state's negligence be defined as the starting point of prosecution? The state being permitted a new 270 days to prosecute by reindictment and additional charges is denial of equal protection of MCA 99-17-1. The reindicted are treated differently than those not reindicted, when reindictment is a cause of state's negligence or oppressive conduct.

The state being permitted 270 days anew in the case at bar illegally

washes out 762 days of delay from 2/2/2018 arraignment on MCA 97-5-33(6) and March 6, 2020 reindictment on MCA 97-5-33(6).

This clearly causes the state law to fail to conform to fundamental principle of justice. (Cooper v. Oklahoma, 517 U.S. 348, 363-365, 116 S. Ct. 1373) Reindictment nor adding charges resets the speedy trial clock. (U.S. v. Handa, 892 F. 3d 95, 106-107; U.S. v. Young, 528 F. 3d 1294, 1296 (2008) Also, in the case at bar, MCA 97-5-33(6) in 2018-0041-CRK was never dismissed, so the clock was not tolled. (U.S. v. MacDonald, 456 U.S. 1, 8, 102 S. Ct. 1497)

Moreover, on January 12, 2021 the trial court was responsible for using the original arraignment as the starting point of MCA 99-17-1 in the case at bar as it is identical to Adams v. State, 583 So. 2d 165 (1991). Like in Adams, on 2/4/2020 ~~2018~~-0041-CRK general docket shows that MCA 97-5-27 was quashed due to the state charging two felonies stemming from the exact same event. On March 6, 2020 in 2020-0071-CRK the state reindicted on MCA 97-5-33(6) and added four counts of MCA 97-5-33(7) solely because petitioner would not plea to MCA 97-5-33(6). As case does not differ from Adams v. State, 583 So. 2d 165 (1991) and MCA 99-17-1 language has not changed, the court denied equal protection of the law by using 4/20/2020 as starting point of MCA 99-17-1. (Exhibits D & G)

The court also fails to understand it has no judicial discretion in applying an enacted statute of limitations, which MSC recognizes as procedural. (William v. Taylor Mach, Inc. 529 So. 2d 606, 609 (1988)) "The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice of that which is required or forbidden. (United States v. Harriss, 347 U.S. 612, 617, 74 S. Ct. 808, 812 (1954); U.S. v. Brown, 333 U.S. 18, 25, 68 S. Ct. 376, 380 (1948); State v. Burnham, 546 So. 2d 690, 692 (1989) MCA 99-17-1 is also so indefinite that it has encouraged arbitrary and erratic convictions. (Coulatti v. Franklin, 439 U.S. 379, 390, 99 S. Ct. 675, 683 (1979)

Using reindictment as the starting point is done without any

Concern for the MCA 99-17-1 rule being fair to the reindicted. The court rulings are also erratic based upon its history when it comes to MCA 99-17-1 claim rulings. The court has lacked consistency in applying MCA 99-17-1, although none of the statute's language has changed since it was enacted on July 1, 1976. The court has a well-settled principle that court interpretation of statute followed by legislature's reenactment or retention of statute effectively incorporates court's construction into statute. Yet, Mississippi Legislature has over the last 48 years retained the statute without alteration in the face of the court's changed interpretations.

Failure to assert does not bar application of MCA 99-17-1 statute of limitations. (Nations v. State, 481 So. 2d 760 (1985); Vickery v. State, 535 So. 2d 1371 (1988); Jaco v. State, So. 2d 625 (1990). Yet, in Roach v. State, 938 So. 2d 863, 867 (2006) the court attempts to claim a defendant waives statutory speedy right if he does not raise claim within 270 days from arraignment. No such requirement for the rule is defined nor shaped by the contours of MCA 99-17-1. (In re Brown, 478 So. 2d 1033 (1985) As such, no assertion is needed and the right prevails against mere interests, public or private, no matter how compelling. (State v. Harrison, 648 So. 2d 66 (1994))

Again, as MCA 99-17-1 language has not tangentially changed since being enacted in July 1, 1976, the state requiring a showing of prejudice in Winder v. State, 640 So. 2d 893, 899, 905-06 (1994); State v. Harrison, 648 So. 2d 66, 71 (1994) in order for dismissal with prejudice is abuse of discretion and blatant disregard of enacted law. The only possible remedy for the violation is a dismissal with prejudice. (Payne v. State, 363 So. 2d 278, 279 (1978); Vickery v. State, 535 So. 2d 1371 (1988); Moore v. State, 556 So. 2d 1031, 1033 (1990)

Also, in Adams v. State, 583 So. 2d 165 (1991), the court clearly stated that since Adams had a charge quashed or dismissed, the starting point was original arraignment. In the case at bar, the petitioner clearly had MCA 97-5-27

quashed, yet on 1/12/2020 the trial judge assessed MCA 99-17-1 from reindictment instead of original arraignment. This again is erratic and arbitrary. As Justice Morae stated in State v. Anthony Shumpert (1998), "This defeats the purpose of what is our speedy trial doctrine. If indeed we were to apply Barker in fashion, what utility would the statutory rule maintain? Reindictment is a ploy to circumvent the statute. Such an interpretation, all the prosecution needs to do is nolle prosequi and it may extend time to its benefit. Such blatant prosecutorial abuse of the system must cease."

In the case at bar, there was not even a nolle prosequi. On February 4, 2020 MCA 97-5-27 was quashed in 2018-0041-CRK and trial was set on MCA 97-5-33(6). On February 5, 2020 the state informed defense that they would ask the grand jury to return an indictment of MCA 97-5-33(7) if petitioner would not plea by 2/7/2020. On March 6, 2020 in 2020-0071-CRK the state reindicted on MCA 97-5-33(6) and added four counts of MCA 97-5-33(7). Petitioner was set for identical charge of MCA 97-5-33(6) in 2018-0041-CRK and 2020-0071-CRK for 7/28/2020, proven by dockets. As such, no new 270 days was afforded.

A. February 2, 2018 - April 30, 2018 (87 days)

As a charge was quashed, this is starting point of prosecution and MCA 99-17-1. Record shows that evidence in state's possession was not turned over until 1/27/2020 although they had it since 12/2017. (Box v. State, 437 So. 2d 19 (1983); Adams v. State, 583 So. 2d 165 (1991); Collins v. State, 817 So. 2d 644 (2002); Nations v. State, 481 So. 2d 760, 761 (1985); Vickery v. State, 535 So. 2d 1371 (1988))

B. February 4, 2019 - February 6, 2019 (2 days) (Exhibit E)

Record silent and still no discovery. (Vickery, 535 So. 2d 1371 (1988))

C. April 29, 2019 - July 29, 2019 (91 days) (Exhibit E)

State requested the continuance, over 17 months from 2/2/2018 arraignment and defendant does not have discovery. This again proves the state was not attempting to try case within 270 days from 2/2/2018 arraignment. (Vickery v. State, 535 So. 2d 1371 (1988))

The state does not get to draw comfort from the defendant's acquiescence in a delay caused by the state's negligence of failing to disclose discovery. (Rhymes v. State, 638 So. 2d 1276 (1994)) The court also cannot punish the defendant for the state's oversight. The discovery presented by the state on 1/5/2018 to the grand jury was available to the state and known to them, as the sheriff's office had it in their possession. (Johnson v. State, 296 So. 3d 198 (2020); Box v. State, 437 So. 2d 19 (1983)) No DNA, lab reports, injuries, or medical records were involved and it was the exact same evidence presented on 1/5/2018.

D. January 27, 2020 - February 3, 2020 (7 days)

Over 24 months after the state returned 2018-0041-CEK indictment, the state finally disclosed discovery on January 27, 2020 which was a trial date. Negligence of over 24 months on the state's behalf. (Barker, 407 U.S. @ 530-31, 92 S. Ct. @ 2192; Doggett v. U.S., 505 U.S. 647, 112 S. Ct. 2686 (1992)) The record is also silent. (Vickery v. State, 535 So. 2d 1371 (1988)) (Exhibit E)

E. February 4, 2020 - March 30, 2020 (28 days) (Exhibit D, E, and G)

On February 4, 2020 defense filed motion to quash MCA 97-5-27 & MCA 97-5-33(6), as both felonies stemmed from the same event. MCA 97-5-27 was quashed by the trial judge according to 2/4/20 preliminary record on pages 1-4. A continuance was also entered as defense had only had discovery since 1/27/20. (Flores v. State, 574 So. 2d 1314 (1990)) The state returning an improper indictment and failing to produce discovery in a timely manner are their responsibilities. The trial judge also granted 8 continuances "to complete discovery" in a case where there was no new evidence since 1/5/2018 indictment and No medical reports or lab records, failing to show affirmative action in discovery dispute. (U.S. v. Graham, 128 F. 3d 372 (1997)) (Exhibit E) (Exhibit G)

F. March 6, 2020 - July 28, 2020 (143 days) (Exhibit F)

The 2/5/20 email confirms that the March 6, 2020 reindictment of MCA 97-5-33(6) and additional four charges of MCA 97-5-33(7) were tactical and not mere negligence. (Barker, 407 U.S. @ 531)

The 2020-0071-CRK indictment was not any result of mere negligence, nor even "societal interest." Literally 762 days after petitioner's 2/2/2018 arraignment on 2018-0041-CRK, the state chose to reindict in 2020-0071-CRK on MCA 97-5-33(6) and up the ante by adding four counts of MCA 97-5-33(7). The increase was not expected nor negotiated. Being apprehended by vindictiveness, petitioner went from 5-~~40~~ years at trial to 25-200 years at trial after invoking jury right. (Blackledge, 417 U.S. 27, 94 S. Ct. @ 2102(11)) Was upping the ante prosecutorial vindictiveness? Especially considering the state would use the additional charges post-trial to ~~induce~~ ^{induce} petitioner to tender a post trial plea. (Exhibit F)

More importantly none of the 908 day delay is attributable to the petitioner. As the state was in possession of the evidence since before the 1/5/2018 indictment and admittedly was not disclosed to defense until 1/27/2020, none of the petitioner's request for a continuance due to not having discovery is attributable to the petitioner. (Taylor v. State, 672 So. 2d @ 1259; Flora v. State, 925 So. 2d 797, 815 (2006)) Reason for the delay in the case falls on the State. The state was well over 270 days from the 2/2/18 arraignment on MCA 97-5-33(6) in the original indictment. As such MCA 99-17-1 statute of limitations barred the state from prosecution. As no person shall be deprived of liberty without due process, the petitioner has an illegal sentence.

V. SPEEDY TRIAL RIGHT. (Exhibit A)

The state also violated the 6th & 14th Amendment by denying a speedy trial. The speedy trial right was violated prior to any claim that a post-trial plea waived it. On July 31, 2020 docket 2020-0071-CRK clearly shows that petitioner was found guilty. The state was legally obligated to provide speedy trial over 18 days before posttrial plea. Again, the delay was 938 days. Delay was solely due to the state returning an flawed indictment, disclosing discovery on 1/27/2020 over two years after 1/5/2018 indictment, and tactically harassing

the petitioner by reindicting and adding charges. (Barker, 407 U.S. @ 531, 92 S. Ct. 2192) No law exists that forces the petitioner to forego his right to discovery and a proper indictment on pain of forfeiting his right to a speedy trial. A defendant also cannot be attributed for delays caused by state failing to provide discovery. (Taylor v. State, 672 So. 2d @ 1259; Flora v. State, 925 So. 2d 797, 815 (2006) (Exhibit E & F))

According to Corley v. State, 584 So. 2d 769 (1991) and State v. Anthony Shumbert (1998) the MSC claims "a claim of state circumventing the 270 day rule by reindicting should be reached under the balancing test of Barker, but this has not been tangentially addressed nor considered by trial court, COA, or MSC. Exhibit F is clear evidence that the reindictment was deliberate engagement in oppressive conduct. (Barker, 407 U.S. @ 531, 92 S. Ct. 2192) Petitioner going from facing 5-40 years at trial to 25-200 years at trial over 26 months after original indictment is prejudice. (Smith v. State, 550 So. 2d @ 409)

The state according discovery 24 months after indictment is clearly prejudice, as the defendant was not able to mount a defense without discovery. (Barker, 407 U.S. @ 531, 92 S. Ct. @ 2192) Defense attorney failed to challenge reindictment, he did not disclose to petitioner his right of protection under MCA 99-17-1, nor did he challenge vindictiveness or speedy trial. (Barker, 407 U.S. @ 536; Nelson, 989 F. 2d 847 (CA 5 1993) Counsel even confirmed in writing that the state's key witness committed perjury which cause petitioner's evidence to be inadmissible, yet he did not disclose it nor challenge. (Pavish, 203 So. 3d 718 (2016) Counsel's representation was well below Strickland and Chronic standards, as he was clearly permitting petitioner to be prosecuted in violation of due process. (b)(12) Was the state legally obligated to fulfill speedy trial obligation prior to any claim of waiver? (8) Can such a fundamental constitutional right claim be barred? Especially considering the claim was denied erroneously on 1/12/2021 by trial judge in original PCR. (Rowland, 42 So. 3d 503 (2010))

VI. PROSECUTORIAL VINDICTIVENESS.

Docket 2018-0041-CRK and the February 5, 2020 email makes it clear that petitioner was victim of prosecutorial vindictiveness. The state resorted to deliberate engagement in oppressive conduct. On 2/4/2020 the state agreed to the quashing of MCA 97-5-27 which carried up to 1 year in jail. On 2/4/2020 the record also shows that the state agreed to trial in 2018-0041-CRK on MCA 97-5-33(7). On 2/5/2020 petitioner was informed state wants him to plead to MCA 97-5-33(6) which was the only charge in 2018-0041-CRK or they would return indictment on one charge of MCA 97-5-33(7) and trial would be on two counts of MCA 97-5-33. Nevertheless, on March 6, 2020 the state reindicted on MCA 97-5-33(6) and added four counts of MCA 97-5-33(7). (Exhibit D & F)

No objective evidence in the record exists to justify the superseding indictment that caused petitioner to go from facing 5-40 years at trial to 25-200 years, all after trial on MCA 97-5-33(6) in 2018-0041-CRK was agreed upon. (Blackledge, 417 U.S. 21, 30 (1974); Pearce, 395 U.S. @ 726, 89 S. Ct. @ 2081) Counsel was ineffective in being ignorant to the vindictiveness and improper reindictment. (Barber, 407 U.S. @ 532-536, 92 S. Ct. 2182 (1972) This is clearly not reasonable nor sound trial strategy according to Strickland.

The state prosecuted on illegal charges in addition to the state violation of MCA 99-17-1 statute of limitation. The state would then use its changing and sentencing powers post-trial, as the petitioner was given the only option of being sentenced up to 200 years on a guilty verdict in violation of due process of plea guilty post-trial to a count of MCA 99-5-33(6) ~~99-17-1~~ that was actually procedurally barred from the state being allowed to prosecute.

VII. IAC

An inquiry into the prejudice experienced by the egregious and inert action of counsel concerning perjury, MCA 99-17-1 violation, speedy trial right, and failure to protect due process

right during critical stage of proceedings is unjustified. (Strickland, 46 U.S. @ 692, 104 S. Ct. 2052) The court also cannot speculate on the impact that the defense counsel's error had on petitioner pleading post-trial. (Holloway v. Arkansas, 435 U.S. 475, @ 490-491, 98 S. Ct. 1173 (1978) Counsel confirming in writing nearly two years after trial about known perjury to him yet not disclosing it, even though it hindered defendant's evidence from feedback to be admissible and defendant's interests was clearly disclosing the due process violation, in divergence of petitioner's interest is an actual conflict. (Cuyler v. Sullivan, 446 U.S. @ 356 n.3, 100 S. Ct. @ 1722)

The petitioner disclosed letter from Haug to MS Bar Association, where he 1) admits that the witness committed perjury, 2) he discussed referring case to Ag office, 3) and that he, trial judge nor ADA violated my rights. The claims raised show that it is ignorance of law of rights for counsel to 1) admit to perjury happening during a trial, which is a due process violation, but then 2) turning around and falsely claiming my rights were protected at all times by him and the state. The fact that petitioner is incarcerated in violation of due process and serving a illegal sentence is complete proof that counsel gave IAC. He even admitted that he chose not to disclose the perjury or refer the case to the Ag office. The court was provided with an email from Haug on 9/17/2020 and a sworn statement from Allishia Jordan that confirms that Haug promised to challenge the perjury. (Shelton v. United States, 246 F. 2d 571, 571 n.2 (CA 5 1957)

The state was ~~clearly~~ time barred from having any authority to have petitioner in court, as over 270 days from arraignment passed and not for "good cause" or reasons that can be attributed to the petitioner. The state bringing the petitioner to trial on 7/28/2020 resulted in fruit of the poisonous tree for a verdict and post-trial plea. No person can be deprived of liberty without due process. Any conviction in violation of that fundamental principle is an illegal sentence.

REASONS FOR GRANTING THE PETITION

The state convicting a person illegally is contrary to clearly established federal and statutory law. MCA 99-17-1 statute is procedural and each accused in Mississippi deserves to be protected by it equally. The unreasonable application of the statute of limitation offends the fundamental principles of justice and unjust incarceration is not the goal of the system. For decades in Miss., the accused have been subject to the unlawful practice of MCA 99-17-1 by justices.

The state's arbitrary and capricious actions concerning the courts' abuse of discretion affects every accused in Mississippi. For decades the MS COA and MSC have ignored the plain and straightforward language of MCA 99-17-1 and the right to a speedy trial. So that the accused in Mississippi may not suffer under the abuse of authority by the MSC, it is pivotal for the SCOTUS to readress the fact that state law must conform to the principles of justice and the defendant's rights must be protected.

The petitioner was clearly halted into court for charges that the state had been procedurally barred from prosecuting. To disbar the accused right to be protected the court has arbitrarily permitted the state to circumvent a statute of limitations by reindicting. Such actions make the enacted law of none affect to the reindicted, which is denial of equal protection of the law. The court has permitted the petitioner, Wilson v. State, 574 So. 2d 1324, 1332 (1990) and many others right to be protected by MCA 99-17-1 through permitting the state to circumvent 270 day rule by reindictment and additional charges. Such actions are clearly contrary to clearly established federal law and the Barker fundamental principles of justice.

The court has also arbitrarily denied applying an enacted law, claiming the defendant must assert his right. A statute of limitations cannot be waived by the accused, as it is clearly established law that the state has a legal obligation to abide by.

Failure to assert does not cause a constitutional right to be waived. (Barker, 407 U.S. @ 528) In any case, this very court has unequivocally said that a right may not be waived by inaction. Since MCA 99-17-1 was enacted on July 1, 1976, none of the language of the statute has changed. The courts are violating the constitutional requirement of definiteness as the statute does not give fair notice of what is required or forbidden for statute to be applicable. (U.S. v. Harris, 347 U.S. 612, 613, 74 S. Ct. 808, 812 (1954)) The statute has also encouraged arbitrary and erratic convictions due to ~~vast~~ ~~to~~ vagueness. (Colautti v. Franklin, 439 U.S. 379, 390, 99 S. Ct. 675, 683 (1979)) In the MSC MCA 99-17-1 has been done without concern for what is right or fair to the accused, especially those reindicted. The rulings of the court have also been characterized by a lack of consistency.

In cases from July 1, 1976 - 2002, failure to assert has not barred application of the statute of limitations. (Nations v. State, 481 So. 2d 760 (1985); Vickery v. State, 535 So. 2d 1371 (1988); Jasso v. State, 655 So. 2d 30 (1995); Payne v. State, 363 So. 2d 278 (1978); Adams v. State, 583 So. 2d 165 (1991); State v. Harrison, 648 So. 2d 66 (1994); Kolberg v. State, 704 So. 2d 1307 (1997); Fisher v. State, 532 So. 2d 992 (1988)) None of the language of MCA 99-17-1 has changed since July 1, 1976 enactment, yet in Malone v. State, 829 So. 2d 1253, 1257 (2002), the court acted arbitrarily claiming MCA 99-17-1 is waived if defendant fails to raise it within 270 days of his arraignment, which is not seen in the statute. (U.S. v. Brown, 333 U.S. 18, 25, 68 S. Ct. 376, 380 (1948); State v. Burnham, 546 So. 2d 690 (1989))

As if the court already was not encouraged to act arbitrary and erratic is applying a statutory law, in 2006, the Court abused its authority by claiming that a defendant must prove he has been prejudiced by the state violating the MCA 99-17-1 270 day delay. (Guice v. State, 952 So. 2d @ 139-140 (2007)) Although a dismissal with prejudice is logically the only possible remedy for 270 day rule violation. (Ford v. State, 589 So. 2d 1261, 1263 (1991); Maxne v. State, 556 So. 2d 1031, 1033 (1990); Payne v. State,

363 So. 2d 278, 279 (1978) A majority of justices on MSC made up the defendant having to assert the statute of limitations and show prejudice. MCA 99-17-1 like all other statute of limitations applies irrespective of any consideration of assertion or prejudice.

On 1/12/2021 when trial judge erred in assessing MCA 99-17-1 and speedy trial violation, the claims were not successive-writ. More importantly, pursuant to MSC own caselaw, the claims of MCA 99-17-1 violation and speedy trial violation are not barred, as the claims concern an illegal sentence. (Smith v. State, 149 So. 3d 1048 (2013); Morales v. State, 291 So. 3d 363 (2019); Rowland v. State, 42 So. 3d 503, 506 (2010))

As petitioner's case clearly does not differ from Adams v. State, 583 So. 2d 165 (1991), the MCA 99-17-1 270 rule must be assessed from the original arraignment, not from reindictment. The court assessing MCA 99-17-1 from reindictment is clearly violation of the U.S. Constitution 14th Amendment, as the court has no legitimate governmental reason for treating the reindicted differently. Especially considering the fact that reindictment is considered negligence and is attributed to the state. (Adams, 583 So. 2d 165 (1991)) The Court must hold true to its legal obligation of protecting and upholding the constitutional rights of every accused

Besides, no person can be deprived of liberty except by due process of law according to U.S. Constitution 14th Amendment and Mississippi Constitution Section 14, Article 3. It can never be forgotten that constitutional rights in criminal case rise above mere rules of procedure. (Brown v. State, 297 U.S. 278, 56 S. Ct. 461) Every accused has a right to assistance of counsel at every "critical stage." (Mempa v. Rhay, 389 U.S. 128, 134, 88 S. Ct. 254, 257 (1967)) The petitioner clearly exercised his speedy trial right as trial was July 28 - July 31, 2020, yet the state failed its legal obligation to provide a speedy trial. The state also haled petitioner to

court on charges that violated his 5th Amendment right, as the State vindictively upped the ante from 5-40 years at trial to 25-200 years after he invoked jury trial right. Moreover, Exhibit F shows that the additional charges were not negotiated. Instead of going to trial on two counts of Exploitation as disclosed, petitioner was on trial for five counts. The charges added vindictively were then used as fruit of the poisonous tree, as the state used charging and sentencing powers post-trial to induce petitioner to tender a plea of guilty 18 days after July 31, 2020 guilty verdict.

Petitioner respectfully prays that this Honorable court will issue a writ of certiorari and enter an order to discharge petitioner, as his conviction is in violation of federal and state law.

CONCLUSION

The petition for a writ of certiorari should be granted.

I declare under penalty of perjury that the claims are true and correct, this ~~23rd~~ 23rd day of October, 2024

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Charles Jordan".