

No. 24-5956

IN THE  
SUPREME COURT OF THE UNITED STATES

CHARLES JORDAN

VS.

MISSISSIPPI

ON PETITION FOR REHEARING

SUPREME COURT OF THE UNITED STATES

PETITION FOR REHEARING

POLITICAL PRISONER: Charles Jordan

P.O. Box 1057

Parchman, MS 38738

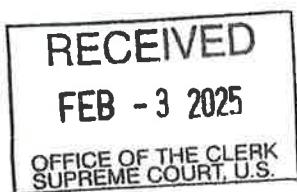
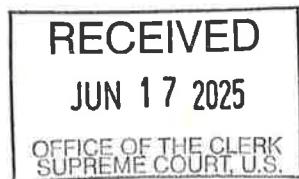


TABLE OF CONTENT

CONSTITUTIONAL AND STATUTORY PROVISIONS

1

GROUND FOR REHEARING

2-8

TABLE OF CITED AUTHORITIES

	Page
Adams v. State, 583 So. 2d 165, 168 (1991)	7
Badger v. State, 290 So. 3d 377 (2020)	4
Barker v. Wingo, 487 U.S. @ 536, 92 S. Ct. 2192	5, 7, 8
Beavers v. State, 498 So. 2d 788 (1986)	5
Blount v. State, 126 So. 3d 927, 931 (2013)	2, 3
Bragg v. Carter, 367 So. 2d 165, 165-66 (1978)	4
Carter v. State, 203 So. 3d 730, 731 (2016)	2, 3, 4
Corley v. State, 584 So. 2d 769 (1991)	4
Duncan v. State, 2020 WL 6043843	4
Flora v. State, 925 So. 2d 797, 815 (2006)	6
Flores v. State, 574 So. 2d 1314, 1323 (1990)	5, 7
Folk v. State, 576 So. 2d 1243 (1991)	5
Grayson v. State, 118 So. 3d 118, 125 (2013)	4
Handley v. State, 574 So. 2d 671, 674 (1990)	5
Holloway v. Arkansas, 435 U.S. 475, @ 490-491, 98 S. Ct. 1173 @ 1182 (1978)	5
Johnson v. State, 296 So. 3d 198 (2020)	7
Jones v. State, 119 So. 3d 323, 325-26 (2013)	4
McBride v. State, 61 So. 3d @ 144	7
Moore v. Arizona, 414 U.S. 25, 26, 94 S. Ct. 188, 189 (1973)	8
Moore v. State, 556 So. 2d 1031 (1990)	5
Morales v. State, 291 So. 3d 363 (2019)	3, 4
Rhymes v. State, 438 So. 2d 1270 (1994)	7
Rowland v. State, 42 So. 3d 503, 507 (2010)	2, 3
Scott v. State, 231 So. 3d 995, 998-99 (2017)	7
Smith v. State, 139 So. 3d 74 (2013)	4
Smith v. State, 149 So. 3d 1027 (2014)	2, 3, 4
Smith v. State, 550 So. 2d @ 409	8
State v. Ferguson, 576 So. 2d 1252, 1255 (1991)	6, 8
Strickland v. Washington, 466 U.S. @ 692, 104 S. Ct. 2052	5, 9
Taylor v. State, 672 So. 2d @ 1259	6, 7
Townsend v. Sain, 372 U.S. 293, 83 S. Ct. 745 (1963)	2, 5, 8
United States v. McDonald, 456 U.S. 1, 8, 102 S. Ct. 1497, 1502 (1982)	8
Vickery v. State, 535 So. 2d 1371 (1988)	

STATUTES

MCA 99-17-1

Fed. R. Civ. P 15(c)

## CONSTITUTIONAL AND STATUTORY PROVISIONS

- 1.) The U.S. and Mississippi Constitution right to not be deprived of life, liberty, or land except by due process.
- 2.) MCA 99-17-1 statute of limitations procedurally bars the state from a right to prosecute.
- 3.) The Fifth Amendment right to not be denied equal protection of the law.

## GROUND~~S~~ FOR REHEARING

- (1) Miss. Supreme Court decision in Rowland v. State, 42 So. 3d 503, 507 (2010); Blount v. State, 126 So. 3d 927, 931 (2013); Smith v. State, 149 So. 3d 1027 (2014); and Carter v. State, 203 So. 3d 730, 731 (2016) represent intervening decisions that afforded petitioner an exception from MCA 99-39-23 (b) procedural bars.
- (2) There has not been the semblance of a full and fair hearing by the state court on claims that were timely filed in an amended pleading, which makes those claims relate back to the original pleading date pursuant to Townsend v. Sain, 372 U.S. 293, 83 S. Ct. 745 (1963) and Fed. R. Civ. P 15(c).
3. The trial court's Barker Analysis is not fairly supported by the record as a whole and Constitutional Speedy Trial violation is allowed to be raised in an IAC claim.

1. Petitioner is entitled to a rehearing because the MS COA abused its discretion by ruling "petitioner's motions for PCR were all clearly barred as subsequent PCR motions pursuant to section 99-29-23(b), and Jordan has produced no evidence or argument to support an exception to the bar." The MSC also abused its discretion by denying his Writ of Certiorari. The discretion was abused as they failed to follow MSC intervening decisions that excepts fundamental constitutional right claims from UPCCRA procedural bars. In petitioner's brief, reply brief, and writ of certiorari he presented the argument that "errors affecting fundamental constitutional rights are excepted from the procedural bars" pursuant to Rowland v. State, 42 So. 3d 503, 506 @ 507 (2010)

Petitioner raised fundamental constitutional claims of:

- i. MCA 99-17-1 violation and Circumvention of the Statute
- ii. Violation of Constitutional Speedy Trial
- iii. Prosecutorial Vindictiveness
- iv. Brady Violation
- v. Conflict of Interest
- vi. IAC

Pursuant to the intervening decisions of Rowland v. State, 42 So. 3d 503, 507 (2010); Blount v. State, 126 So. 3d 927, 931 (2013); Smith v. State, 149 So. 3d 1027 (2014); and Carter v. State, 203 So. 3d 730, 731 (2016) the petitioner was entitled to review on the merits of every fundamental constitutional rights claim. It's clearly established that "the right to be free from an illegal sentence" is excepted from procedural bars. (Morales v. State, 291 So. 3d 363 (2019)) But, in the case at bar, the Court did not state any material difference that exists between previous decisions and the circumstances of the case at bar. As MCA 99-17-1 violation, speedy trial violation, prosecutorial vindictiveness, Brady violation, conflict of interest, and IAC are all claims that petitioner's sentence was illegally imposed in violation of due process, they are all excepted from UPCCRA procedural bars. Yet, the courts failed to ~~rule~~ <sup>review</sup> on the merits, although no basis has been given why their own precedent was not followed.

As MSC has held unequivocally that fundamental constitutional right claims are excepted from procedural bars, they have reviewed those errors raised by subsequent and time-barred pleadings on countless occasions:

Rowland v. State, 42 So. 3d 503, 507 (2010); Blount v. State, 126 So. 3d 927, 931 (2013);

Grayson v. State, 118 So. 3d 118, 125 (2013); Smith v. State, 149 So. 3d 1027 (2014); Badger v. State, 290 So. 3d 377 (2020); Carter v. State, 203 So. 3d 731, 731 (2016); Morales v. State, 291 So. 3d 363 (2019); Smith v. State, 139 So. 3d 74 (2013); Duncan v. State, 2020 WL 6043843; Jones v. State, 119 So. 3d 323, 325-26 (2013). In addition, MSC holds common law nor constitutional law applies the doctrine of res judicata to constitutional claims. Bragg v. Carter, 367 So. 2d 165, 165-66 (1978). As petitioner claims are clearly fundamental constitutional claims it is denial of equal protection of the law for the court to deny petitioner review of fundamental constitutional rights claims on the merits without giving any legitimate governmental objective for not following precedent.

2. Petitioner is also entitled to a rehearing as the trial record shows that he has never been afforded a full and fair hearing on his fundamental constitutional claims of (1) constitutional speedy trial violation (2) violation of MCA 99-17-1 statute of limitations, and (3) circumvention of MCA 99-17-1 statute by reindictment of identical charge of MCA 97-5-33(6) an entire 762 days after 2/2/2018 arraignment. Pursuant to Fed. R. Civ. P. 15(e) the claims raised in petitioner's 12/18/2020 amended PCR are to relate back to the date on which the original pleading was filed. Thus, a plaintiff may add claims to pleading without facing a statute of limitations bar, as long as the original pleading was filed timely. (Fed. R. Civ. P. 15(c)) In the case at bar, the record shows that the amended motion from 12/18/2020 was not heard nor the claims in the amended motion were addressed. As the claims were timely filed and have never been decided the claims are not successive nor time barred.

Exhibit #1 shows that on 11/17/2020 the petitioner filed "PCR Motion constitutional rights to a speedy trial violation," which would be counted as original pleading. That same exhibit shows on 12/2/20 the court under its own motion set a hearing on the 11/17/2020 motion for 1/12/2021. In response to the hearing being set, on 12/18/2020 the petitioner filed an amended motion which included exhibits. Pursuant to Fed. R. Civ. P. 15(c) the amended motion was supposed to relate back to the original 11/17/2020 pleading. Yet, Exhibit #2 shows on 1/12/2020 during the hearing the court decided only on 11/17/2020 original pleading on violation of constitutional speedy trial. Yet, 12/18/2020 amended motion included (1) violation of constitutional speedy trial, (2) IAC, (3) violation of MCA 99-17-1, and (4) circumvention of MCA 99-17-1 by reindictment of MCA 97-5-33(6) with exhibits included to prove prejudice and support claims.

But, Exhibit # 2 shows that (1) MCA 99-17-1 violation was not decided, (2) circumvention of MCA 99-17-1 was not decided, (3) IAC was not decided, and (4) a factual determination of constitutional speedy trial violation was not made from the 12/18/2020 amended motion. This is not tangentially the semblance of a full and fair hearing pursuant McAuliffe v. Sain, 372 U.S. 293, 83 S. Ct. 745 (1963). He claimed no proof or evidence of prejudice was offered in Exhibit # 2 because he only held hearing based off 11/17/2020 original pleading that did not consist of any proof or exhibits, but 12/18/2020 amended motion did and it was timely filed. Exhibit # 2 also shows no decision of MCA 99-17-1 violation pursuant to Adams v. State, 583 So. 2d 165 (1991) nor a decision of circumvention of MCA 99-17-1 pursuant to Corley v. State, 584 So. 2d 769 (1991). Exhibit # 3 even shows that the amended motion from 12/18/2020 was not included nor part of the appeal. The record shows the claims have never been decided. Therefore, everytime the court has denied review of those claims it is abuse of discretion and may be claimed no matter how inconvenient society may otherwise deem it. (Moore v. State, 552 So. 2d 1031 (1990); Folk v. State, 576 So. 2d 1243 (1991); <sup>Flores</sup> V. State, 574 So. 2d 1314, 1323 (1990); Vickery v. State, 535 So. 2d 1371 (1988)). Pursuant to Fed. R. Civ. P. 15(c), the claims of 12/18/2020 are procedurally alive.

3. Last ground of reconsideration is the fact that Exhibit # 2 shows the Barker Analysis is not fairly supported by the record and it was not decided on factual determination of 12/18/2020 amended pleading. IAC affected the petitioner's assertion of right. Exhibit # 2 also shows that length of delay was assessed from 2/2/2018 arraignment instead of 1/5/2018 indictment. Speedy trial violation may be raised under IAC. (Barker, 407 U.S. @ 536, 92 S. Ct. 2192) Counsel failing to inform of such right, failing to oppose reindictment on identical charge from original indictment, and a post-trial plea centered on false information are unjustified actions. (Strickland, 466 U.S. @ 692, 104 S. Ct. 2052) The court can't assess the impact of a conflict of interests in a plea that took place post-trial after a full jury trial. (Holloway, 435 U.S. 475, @ 490-491, 98 S. Ct. 1173, @ 1182 (1978))

#### i. Length of Delay (Exhibits 4& 7)

Factual findings is not supported by the record as a whole. The indictment was on 1/5/2018 not 2/2/2018 as claimed by court in Exhibit # 2. The reindictment of MCA 97-5-33 (e) in 2020-0071-CRK, the exact same charge in 2018-0041-CRK did not afford the state a new clock. The right to a speedy trial clearly attaches when you become accused. (Beavers v. State, 498 So. 2d 783 (1986)) (Handley v. State, 498 So. 2d 788 (1986))

From January 5, 2018 original indictment to the July 28, 2020 trial was 938 days, which is clearly presumptively prejudicial. (State v. Ferguson, 576 So. 2d 1252, 1254 (1991))

## 2. Reason for the Delay

The delay was clearly presumptively prejudicial, but the State did not show cause as to reason for the delay. Caselaw makes it clear that continuances sought by the defendant due to not having discovery are not attributable to the accused. (Taylor v. State, 672 So. 2d @ 1259; Flora v. State, 925 So. 2d 797, 815 (2006)) The February 21, 2020 preliminary makes it clear that discovery was not disclosed to defense until 1/27/2020, over 24 months after the 1/5/2018 arraignment. The delays are attributed to two reasons

### i. January 5, 2018 to January 27, 2018 (Exhibit #10)

Petitioner did not receive discovery until 752 days after original indictment. The burden of producing discovery and bringing the accused to trial without unnecessary delay belongs to the State.

### ii. March 6, 2020 - July 28, 2020 (Exhibit #7)

The State reindicted petitioner after he refused to plea to MCA 97-5-33(b) in 2018-0041-CRK by 2/7/2020 and invoked his jury trial right on 2/3/2020. Yet, trial judge did not assess delay to State.

Even with the trial judge pointing to the 8 continuances requested by the petitioner, the State was still responsible for over 350 days of delay without good cause, which surpasses the 8 month/ 240 day threshold:

- 1/5/2018 - 4/30/2018 (State) 115 days assigned to state who is responsible for start of prosecution and producing discovery seasonably. (Exhibit #10)
- 4/30/2018 - 7/23/2018 (Petitioner) not attributable due to "to complete discovery pursuant to Taylor v. State, 672 So. 2d @ 1259
- 7/23/2018 - 10/29/2018 (Petitioner) "to complete discovery" Taylor, 672 So. 2d @ 1259
- 10/29/2018 - 2/4/2019 (Petitioner) "to complete discovery" Taylor, 672 So. 2d @ 1259
- 2/4/2019 - 2/6/2019 (State) record is silent (2 days) (Exhibit #10)
- 2/6/2019 - 3/29/2019 (Petitioner) "to complete discovery" Taylor, 672 So. 2d @ 1259
- 3/29/2019 - 4/29/2019 (Petitioner) "to complete discovery" Taylor, 672 So. 2d @ 1259
- 4/29/2019 - 7/29/2019 (State) 91 days "A defendant cannot be punished for his

acquiescence in a delay caused by the state's negligence of disclosing discovery in a timely manner. ( McBride, 61 So. 3d @ 144; Rhymes v. State, 638 So. 2d 1270 (1994); Johnson v. State, 296 So. 3d 198 (2020); Scott v. State, 231 So. 3d 995, 998-99 (2017) ( Exhibit 4 and 10)

- 7/29/2019 - 10/28/2019 (Petitioner) still no discovery ( Taylor, 672 So. 2d @ 1259)
- 10/28/2019 - 1/27/2019 (Petitioner) still no discovery produced ( Taylor, 672 So. 2d @ 1259)
- 1/27/2020 - 2/3/2020 (State) record is silent and discovery was not produced until on 1/27/2020 ( Exhibit # 4)
- 2/4/2020 - March 5, 2020 (State) on 2/4/2020 the case was continued for trial to be set on 5/5/2020 due to the state failing to disclose discovery seasonably pursuant to M. R. Cr. P 17.2 1/2 17.9. when continuance is the result of failure to accord discovery in a timely manner it is attributed to the state. ( Flores v. State, 574 So. 2d 1314 (1990) ( Exhibit # 10)
- March 6, 2020 - July 28, 2020 (State) the 143 day delay was caused by the state tactically and deliberately engaging in oppressive conduct because the petitioner would not plea, and should weigh heavily. ( Barker, 407 U.S. @ 531, 92 S. Ct. @ 2192) Even if the reindictment is defined as negligence caselaw is clear that it is to be assessed to the state. ( Adams v. State, 583 So. 2d 165, 168 (1991); ( Barker, 407 U.S. @ 531) ( Exhibit # 7)

A delay by the State without "good cause" causes the reason to weigh against the State. ( Murray v. State, 967 So. 2d 1222 (2007); Noe v. State, So. 2d @ 300 (1993) Thus, the fault of the delay is attributed to the State.

### 3. Assertion

Due to IAC, there was no assertion of a right counsel failed to inform petitioner of. Defense counsel also did not object to petitioner being set for trial and indicted in two active indictments for the same exact charge of MCA 97-5-33(6), which cannot be justified nor claimed to be strategy. ( Barker, 407 U.S. @ 536, 92 S. Ct. 2192; Strickland, 466 U.S. @ 692, 104 S. Ct. 2052)

### 4. Prejudice

Circumvention of MCA 99-17-1 an entire 762 days after 2/2/2018 original arraignment on MCA 97-5-33(6) in 2018-0041-CRK. Petitioner went from facing 5-40 years at trial to 25-200 years solely because he would not plea to

the one court of MCA 97-5-33(b) in 2018-0041-CRK. (Smith v. State, 550 So. 2d, @ 409) the State according discovery over 24 months after 2/2/2018 hindered the defense from mounting a defense against State's evidence of how they would attempt to prove their case. (Barker v. Wingo, 407 U.S. @ 531, 92 S. Ct. @ 2192) Petitioner was an accused man out on bond from 2/2/2018 through July 28, 2020, which interfered with preaching engagements, book signings, employment, and it subjected him to public obloquy. All of which he disclosed in his 12/18/2020 Amended PCR motion, that was timely filed. (U.S. v. MacDonald, 456 U.S. 1, 8, 102 S. Ct. 1497, 1502 (1982))

The state did not tangentially show any lack of prejudice in order to prevail in this factor, even though their delay without "good cause" was over 240 days/8 month threshold, and 143 days of the delay was a direct result of deliberate oppressive conduct, which must weigh heavily against the State according to MSC and SCOTUS precedent. (State v. Ferguson, 576 So. 2d 1252, 1255 (1991); Moore v. Arizona, 414 U.S. 25, 26, 94 S. Ct. 188, 189 (1973) The record as a whole clearly shows that the trial judge's determinations were erroneous and are not fairly supported by the record. (Townsend v. Sain, 372 U.S. 293, 83 S. Ct. 745 (1963) In addition, Exhibit #2 makes it clear that the court failed to address petitioner's claims presented in the 12/18/2020 Amended PCR Motion, although Exhibit #1 shows that it was timely filed, a couple weeks after the 12/2/2020 order setting a hearing for 1/12/2021. He only decided during 1/12/2021 hearing on the original PCR motion that was filed on 11/17/2020. A claim is only successive when the court has actually decided on the facts presented by petitioner.

The court disregarded and continues to ignore Federal Rules of Civil Procedures 15(c), as the claims of (1) violation of MCA 99-17-1, (2) speedy trial, (3) circumvention of MCA 99-17-1 by reindictment of identical charge of MCA 97-5-33(b) are to relate back to the 11/17/2020 original pleading, and statute of limitations bar does not apply to these claims that were raised in the 12/18/2020 amended motion, as the original pleading was timely filed. (Fed. R. Civ. P 15(c)) As such, the claims are not barred and must be fairly heard and decided, as they never been decided on factual claims.

Premises considered, the petition for a rehearing should be granted.

1/7/2025

Charles Jordan

CHARLES JORDAN  
VS.Counsel for Plaintiff  
Charles Jordan  
Counsel for DefendantSTATE OF MISSISSIPPI  
POST CONVICTION RELIEF

JUDGE James Thomas Kitchens,

DATE

ORDERS, JUDGMENTS, ETC.

10/02/20 Motion for PCR with exhibits of transcript and other exhibit 227 619  
 10/20/20 ORDER Setting Hearing Nov. 6, 2020 at 9. Copy to all parties 227 619  
 11/06/20 Motion to Vacate Judgment/ Guilty Plea that was filed Oct. 1  
     2020. Motion should have been sent as only a Motion for PCR. 228 156  
 11/06/20 ORDER Appointing Counsel for Limited Purpose Jay Hurdle. 228 156  
 11/12/20 Order Dismissing Post Conviction Relief with prejudice. Copy 228 203  
     to attorney of record.  
 11/17/20 ORDER that a guilty plea waives the right to a speedy trial. 228 234  
     Copy to all parties.  
 11/17/20 Constitutional rights to a speedy trial being violated. Copy  
     to all parties.  
 11/23/20 Notice of Appeal and Application, proceed In Forma Pauperis  
 11/23/20 Letter to SC with Notice of Appeal, certified copy of docket  
     and certified order from which the appeal is taken.  
 12/02/20 ORDER Setting Hearing for January 12, 2021 at 11. Copy to 228 327  
     Plaintiff.  
 12/07/20 SC case information, copy of SC fee for Appeal.  
 12/18/20 Petitioner files an Amended Motion to Dismiss Indictments  
     for Criminal cause #2020-0071-CRK w/exhibits.  
 1/12/21 Clerk's Notes- Motion to Dismiss-Not well taken- Motion  
     denied (Not a speedy trial violation).  
 1/12/21 Invoice for Appeal case for \$200.00 dated 12-3-2020. Was  
     waiting for IFP to present to county for payment.  
 1/12/21 Letter to Plaintiff that Appeal package is ready to review.  
     Copy to all parties.  
 1/12/21 ORDER of In Forma Pauperis allowed in this case. Copy sent 228 509  
     to MSC and to Plaintiff.  
 1/20/21 Motion from Plaintiff, Charles Jordan.  
 1/22/21 Supreme Court Order that Writ of Cetiorari and Petition of 228 596  
     Habeas Corpus are hereby dismissed without prejudice.  
 2/03/21 ORDER transcript request is an insufficient original action 229 153  
     for records and petition is hereby dismissed. Copy to all  
     parties.  
 2/09/21 Transcript mailed to MS Supreme Court.  
 2/24/21 ORDER that motion to deny a speedy trial was violated is 229 355  
     hereby dismissed. Copy to all parties.  
 3/25/21 SC Order that Jordan's Motion to Supplement the Appellate 229 526  
     record should be and hereby is denied.  
 6/07/21 Order from SC stating the appellant's pro se letter motion  
     is granted. The appellant shall not face monetary sanctions  
     for failing to file an opening brief in this appeal. Copy 230 560  
     sent to defendant.

\*\* CONTINUED ON NEXT PAGE \*\*

Exhibit  
1

5

## IN THE CIRCUIT COURT OF OKTIBBEHA COUNTY, MISSISSIPPI

CHARLES JORDAN

PETITIONER

VS.

CAUSE NO. 2020-0392-CVK

STATE OF MISSISSIPPI

RESPONDENT

## ORDER

Came on to be considered this day the above styled and numbered post-conviction matter. The Court, after having reviewed the record of proceedings in the trial court, the petition to enter guilty plea, the guilty plea colloquy, and the pleadings herein; having held oral arguments on a previous day of court; and being otherwise fully advised in the premises, is of the opinion that Petitioner's Motion for Post-Conviction Collateral Relief is without merit and not well taken.

The Petitioner's motion alleges that his right to a speedy trial was violated and that for this reason his indictments should be dismissed. The same was argued during the hearing held on January 12, 2021. Under the Sixth Amendment to the United States Constitution and Article 3, Section 26 of the Mississippi Constitution of 1890, an individual has a constitutional right to a speedy trial. Specifically in Mississippi, an accused must be brought to trial within 270 days of arraignment unless good cause is shown. Miss. Code Ann. § 99-17-1. The Supreme Court of the United States in *Barker v. Wingo* has held that a four-part test must be applied on a case-by-case basis whenever a defendant's right to a speedy trial is questioned. 407 U.S. 514, 530 (1972). The four-part *Barker v. Wingo* test that courts must consider consists of "(1) the length of delay, (2) the reason for the delay, (3) whether the defendant has asserted his right to a speedy trial, and (4) whether the defendant was prejudiced by the delay." *Harris v. State*, 174 So.3d 314, 318 (Miss. App. 2015) (quoting *Noe v. State*, 616 So.2d 298, 300 (Miss. 1993)).

The Petitioner waived his right to appeal when he knowingly, intelligently, freely and voluntarily pled guilty to one count of exploitation of a child after a jury found the Petitioner guilty of counts of exploitation of a child. When he pled guilty, the Petitioner knowingly and intelligently gave up his right to a speedy and public trial by jury and the right to appeal his conviction and sentence to the Supreme Court of Mississippi and the Court could find this Petition to be not well taken on these grounds alone.

However, even if Petitioner had not given up the right to a speedy trial, his case would not show a violation of his speedy trial rights under the *Barker* test.

#### *1. Length of Delay*

According to the Court of Appeals of Mississippi, if the length of delay between arraignment and trial is "eight (8) months or more" it is presumptively prejudicial." *Harris v. State*, 174 So.3d 314, 318 (Miss. App. 2015). Here, the Petitioner was first indicted on February 2, 2018. Petitioner was then re-indicted March 6, 2020. The Petitioner's trial on the charges from the March 6, 2020 indictments started less than five months later on July 28, 2020. Petitioner pled guilty on August 18, 2020.

#### *2. Reason for Delay*

If the length of the delay is presumptively prejudicial, the State must show cause as to the reason for the delay, which requires the court to decide whether the delay was the fault of the State or the Defendant. Here, there were nine (9) continuances granted, eight (8) of which were requested by the Petitioner. All continuances were agreed to by the State. Thus, the fault of the delay can be attributed to the Petitioner.

#### *3. Whether the Defendant Asserted Right to a Speedy Trial*

A defendant has a duty to assert his or her right to a speedy trial, to seek a ruling on a motion demanding a speedy trial, and to follow up the motion by requesting a hearing upon it. *Harris*, 174 So.3d at 319-320. The Petitioner did not file a motion for speedy trial at any point while awaiting his trial.

#### *4. Whether the Defendant was Prejudiced by the Delay*

The last part of the *Barker v. Wingo* test, whether the defendant was prejudiced by the delay, has three related subsections: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Barker*, 407 U.S. at 532. The Court is aware that being incarcerated does not solely establish prejudice and that any allegations of anxiety and concern require support in order to be in the defendant's favor. *Harris*, 174 So.3d at 320. Further, in order to prove that a defense was impaired, there must be proof such as "loss of evidence, death of witnesses, or staleness of the investigation." *Id.* No evidence was offered to show that the pretrial incarceration was oppressive and that the delay caused the Petitioner great anxiety and concern or even that his defense was impaired by the delay. There is no proof that evidence was lost, a witness died, or the investigation grew stale.

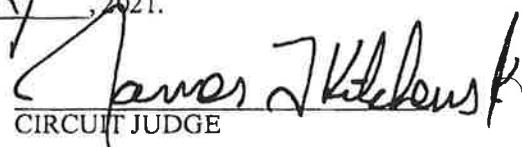
357

Thus, there is no evidence that the delay caused by agreed continuances prejudiced the Petitioner in any way.

Having considered this information and weighed the factors enumerated by the United States Supreme Court in *Barker v. Wingo*, the Court finds that the Petitioner was not denied his right to a speedy trial.

IT IS THEREFORE ORDERED, that this petition be, and the same is hereby dismissed. The Circuit Clerk is directed to send a copy of this Order to all parties.

SO ORDERED, this the 9<sup>th</sup> day of February, 2021.

  
CIRCUIT JUDGE

MB: 229  
Pop: 355-357



Exhibit #3

520

Serial: 236030

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

No. 2020-CP-01327-COA

2020-0392-CVK

**CHARLES JORDAN**

v.

**STATE OF MISSISSIPPI**

**FILED**

*Appellant*

MAR 09 2021

*Appellee*

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

**ORDER**

This matter comes before the panel of Carlton, P.J., Lawrence and Smith, JJ., on Charles Jordan's pro se motion to supplement the appellate record in this post-conviction relief appeal. Jordan states that the record does not contain any material from his original indictment in Cause No. 2018-0041-CRK, which he says occurred in January 2018. Rather, the record begins with his re-indictment on March 6, 2020. He seeks to supplement the record with material from the original indicted cause. He also seeks to supplement the record with an amended "PCR Motion constitutional rights to a speedy trial being violated" filed on December 18, 2020, and an order setting a hearing "that Hon. Kitchens sent to me on December 1, 2020 after he realized I sent a notice of appeal."

As to any items filed in the alleged originally indicted cause, it is unclear how those items are relevant or necessary for review of this matter. The circuit court's entire judgment states, in substance, "A valid guilty plea waives the right to allege a violation of the right to a speedy trial. Petitioner validly pled guilty, and so waived this right." There is no indication that the circuit court reviewed any items from Cause No. 2018-0041-CRK in making its

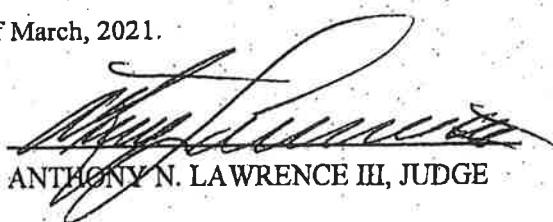
527

decision. Therefore, we do not find it necessary to supplement the record with those items at this time. If, in reviewing this appeal, the Court finds it necessary to review any further documents, the Court will order those supplemented at that time.

As to the amended motion that Jordan states was filed on December 18, 2020, and the order setting hearing that Jordan states was sent to him on December 1, 2020, we note that the circuit court's final judgment in this matter was entered on November 11, 2020, and Jordan's notice of appeal was filed on November 23, 2020. Unless filed in the context of this appeal, any items filed after the notice of appeal are not included in the record reviewed by this Court. Therefore, the panel finds that this request is also not well taken and should be denied.

IT IS THEREFORE ORDERED that Jordan's motion to supplement the appellate record should be and hereby is denied.

SO ORDERED, this the 26 day of March, 2021.

  
ANTHONY N. LAWRENCE III, JUDGE

M.B: 229  
Pgs: 526-527



IN THE CIRCUIT COURT OF OKTIBBEHA COUNTY, MISSISSIPPI

SIXTEENTH CIRCUIT COURT DISTRICT

CHARLES JORDAN

APPELLANT

VS

SC #2020-TS-01327  
CAUSE #: 2020-0392-CVK

STATE OF MISSISSIPPI

APPELLEE

LIST OF CLERK'S PAPERS

<u>PAPER FILED</u>	<u>PAGE # ON APPEAL</u>
List of Clerk's Papers	1-1A
Certified Copy of the Criminal Docket Sheet	2-3
Criminal Indictment	4-6
Criminal Sentencing Order	7-10
Waiver of Arraignment and Guilty Plea	11
Certified Copy of the Civil Docket Sheet	12
Order that is beingAppealed	13
Notice of Appcal	14
Affidavit of Poverty	15-16
Motion for PCR with exhibits or transcript and other exhibits	17-136
Order Setting Hearing Nov. 6, 2020	137
Motion to Vacate Judgment/ Guilty Plea that was filed Oct. 1, 2020	138-139
Order Appointing Counsel for Limited Purpose, Jay Hurdle	140
Order Dismissing Post Conviction Relief	141

PCR Motion constitutional rights to a speedy trial being violated	142-152
Statement of Cost	153
Certificate of Circuit Clerk	154
Clerk's Papers	(1) Volume

**Mississippi Electronic Courts**  
**Sixteenth Circuit Court District (Oktibbeha Circuit Court)**  
**CRIMINAL DOCKET FOR CASE #: 53CI1:18-cr-00041-K**  
**Internal Use Only**

Case title: THE STATE OF MISSISSIPPI JORDAN,  
CHARLES

Date Filed: 01/05/2018

Assigned to: James T. Kitchens, Jr

Date Terminated: 08/05/2020

---

**Defendant (1)**

**CHARLES JORDAN**

**TERMINATED: 08/05/2020**

represented by **Charles Martin Haug**

Law Offices of C. Marty Haug, PLLC  
212 N. Jackson Street  
STARKVILLE, MS 39759  
662-324-9492  
Fax: 662-498-0378  
Email: [martyhauglaw@gmail.com](mailto:martyhauglaw@gmail.com)  
**ATTORNEY TO BE NOTICED**

[View Bond Info](#)

**Upcoming Settings:**

None Found

**Count Action**

(1) - 97-5-33(6).F - Offenses Affecting  
Children: Child Exploitation; Knowingly  
enticing, inducing, etc. child to engage in  
sexual conduct

Offense Date: 2/5/2017

(2) - 97-5-27(3).F - Offenses Affecting  
Children: Computer luring of person  
under 18 yrs of age

Offense Date: 2/5/2017

---

**Plaintiff**

**State of Mississippi**

represented by **Scott Winston Colom**

Sixteenth District Circuit Court  
Post Office Box 1044  
COLUMBUS, MS  
662-329-5911  
Fax: 662-327-1854  
Email: [scolom@msdal16.org](mailto:scolom@msdal16.org)  
**ATTORNEY TO BE NOTICED**

**Ben D. Lang**  
16th Circuit District Attorney  
39759  
127 E. Main Street  
Starkville, MS  
STARKVILLE, MS 39759  
662-323-3456  
Email: [blang@msdal16.org](mailto:blang@msdal16.org)  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
01/01/1900		Count 1: 97-5-33(6) - EXPLOITATION OF A CHILD Sentencing: Statute: - EXPLOITATION OF A CHILD Imposed: RETIRED - Count 2: 97-5-27 - COMPUTER LURING Sentencing: Statute: - COMPUTER LURING Imposed: RETIRED - EXPLOITATION OF CHILD; COMPUTER LURING

		(Entered: 01/01/2017)
01/05/2018	<u>1</u>	Indictment Filed, Capias Issued (Entered: 01/01/2017)
02/02/2018	<u>2</u>	Indictment Served, Capias Executed (Entered: 01/01/2017)
02/02/2018	<u>3</u>	Waiver of Arraignment, Entry of Plea, Filed (Entered: 01/01/2017)
02/02/2018	<u>4</u>	Scheduling Order-(Waives arraignment; enters a plea of not guilty; sets bond at \$20000; motion date of 03/27/2018; plea date of 04/16/2018; trial date of 04/30/2018 cont for term) Copy sent to attorney of record Book: 212, Page: 564. (Entered: 01/01/2017)
02/02/2018	<u>5</u>	Appearance Bond, \$20,000; Hunt Bonding, surety (Entered: 01/01/2017)
02/08/2018	<u>6</u>	Court Administrator's Notice of Trial Setting, Filed (Entered: 01/01/2017)
04/30/2018	<u>7</u>	7/23/2018-Agreed Order of Continuance, Order Filed Copy sent to attorney of record Book: 213, Page: 803. (Entered: 01/01/2017)
05/08/2018	<u>8</u>	Court Administrator's Notice of Trial Setting, Filed (Entered: 01/01/2017)
07/23/2018	<u>9</u>	10/29/2018-Agreed Order of Continuance, Order Filed Copy sent to attorney of record Book: 215, Page: 45. (Entered: 01/01/2017)
08/07/2018	<u>10</u>	Court Administrator's Notice of Trial Setting, Filed (Entered: 01/01/2017)
10/29/2018	<u>11</u>	2/04/2019-Agreed Order of Continuance, Order Filed Copy sent to attorney of record Book: 216, Page: 752. (Entered: 01/01/2017)
11/05/2018	<u>12</u>	Court Administrator's Notice of Trial Setting, Filed (Entered: 01/01/2017)
02/06/2019	<u>13</u>	3/29/2019-Agreed Order of Continuance, Order Filed Copy sent to attorney of record Book: 218, Page: 790. (Entered: 01/01/2017)
02/11/2019	<u>14</u>	Court Administrator's Notice of Trial Setting, Filed (Entered: 01/01/2017)
03/29/2019	<u>15</u>	04/29/2019, Agreed Order of Continuance, Order Filed Book: 219, Page: 427. (Entered: 01/01/2017)
04/01/2019	<u>16</u>	Court Administrator's Notice of Trial Setting, Filed (Entered: 01/01/2017)
04/29/2019	<u>17</u>	7/29/2019-Agreed Order of Continuance, Order Filed Copy sent to attorney of record Book: 220, Page: 353. (Entered: 01/01/2017)
05/06/2019	<u>18</u>	Court Administrator's Notice of Trial Setting, Filed (Entered: 01/01/2017)
07/29/2019	<u>19</u>	10/28/2019-Agreed Order of Continuance, Order Filed Copy sent to attorney of record Book: 222, Page: 52. (Entered: 01/01/2017)
08/05/2019	<u>20</u>	Court Administrator's Notice of Trial Setting, Filed (Entered: 01/01/2017)
10/28/2019	<u>21</u>	1/27/2020-Agreed Order of Continuance, Order Filed Copy sent to attorney of record Book: 223, Page: 228. (Entered: 01/01/2017)
11/12/2019	<u>22</u>	Court Administrator's Notice of Trial Setting, Filed (Entered: 01/01/2017)
01/28/2020	<u>23</u>	Victim Summary (Entered: 01/01/2017)
02/03/2020	<u>24</u>	Camera Coverage Notice (Entered: 01/01/2017)
02/03/2020	<u>25</u>	Petition To Enter Guilty Plea, Filed (Entered: 01/01/2017)
02/03/2020	<u>26</u>	Presentence Investigation, Filed (Entered: 01/01/2017)
02/03/2020	<u>27</u>	Camera Coverage Notice from WCBI (Entered: 01/01/2017)
02/04/2020	<u>28</u>	Motion in Limine (Entered: 01/01/2017)
02/04/2020	<u>29</u>	Motion in Limine (Entered: 01/01/2017)
02/04/2020	<u>30</u>	Camera Coverage Notice from WTVA (Entered: 01/01/2017)

02/04/2020	<u>31</u>	Defendant's Instructions, Filed (D-1 through D-10) (Entered: 01/01/2017)
02/04/2020	<u>32</u>	Motion to Quash Counts 1 and 2 of Indictment, with certificate of service (Entered: 01/01/2017)
02/04/2020	<u>33</u>	First Motion in Limine, with certificate of service (Entered: 01/01/2017)
02/04/2020	<u>34</u>	Second Motion in Limine, with certificate of service (Entered: 01/01/2017)
02/04/2020	<u>35</u>	Camera Coverage Notice from Starkville Daily News (Entered: 01/01/2017)
02/05/2020	<u>36</u>	5/05/2020-Agreed Order of Continuance, Order Filed Copy sent to attorney of record Book: 224, Page: 685. (Entered: 01/01/2017)
02/06/2020	<u>37</u>	Motion to Produce, with certificate of service (Entered: 01/01/2017)
02/07/2020	<u>38</u>	Motion to Produce (Entered: 01/01/2017)
05/04/2020	<u>39</u>	07/27/2020, Agreed Order of Continuance, Order Filed Book: 225, Page: 818. (Entered: 01/01/2017)
08/05/2020	<u>40</u>	CT 1 EXPLOITATION OF CHILD - RETIRED BASED ON DEFENDANT'S CONVICTION IN 2020-0071-CRK Book: 227, Page: 48. (Entered: 01/01/2017)
08/05/2020	41	CT 2 COMPUTER LURING - RETIRED BASED ON DEFENDANT'S CONVICTION IN 2020-0071-CRK Book: 227, Page: 48. (Entered: 01/01/2017)
08/14/2020	<u>42</u>	Packet sent to AOC, MDOC, Jail (Entered: 01/01/2017)

1 General Docket, Criminal Cases, Circuit Court, OKTIBBEHA COUNTY CRIMINAL  
 =====  
 No. 2020-0071-CRK CFN 9198

THE STATE OF MISSISSIPPI  
 VS.

JORDAN, CHARLES  
 EXPLOITATION OF A CHILD X5  
 EXPLOITATION OF A CHILD  
 EXPLOITATION OF A CHILD  
 EXPLOITATION OF A CHILD  
 EXPLOITATION OF A CHILD  
 EXPLOITATION OF A CHILD

Counsel for Plaintiff  
 P. Trina Davidson-Brooks  
 Counsel for Defendant  
 Stephanie L. Mallette

JUDGE James Thomas Kitchens,

=====  
 DATE ORDERS, JUDGMENTS, ETC.

3/06/20 Indictment Filed, Capias Issued  
 4/20/20 Indictment Served, Capias Executed  
 4/20/20 Scheduling Order-(Waives arraignment; enters a plea of not guilty; sets bond at \$20000; motion date of 07/01/2020; plea date of 07/27/2020; trial date of 07/29/2020 cont for term)  
 Copy sent to attorney of record  
 4/20/20 Waiver of Arraignment, Entry of Plea, Filed  
 6/19/20 Subpoena Request-State  
 7/07/20 Supplemental Subpoena Request-State  
 7/15/20 Subpoena Request-State  
 7/22/20 Witness List  
 7/23/20 Order Granting State's Motion in Limine to Exclude Evidence of Extortion, copy to both parties 226 464  
 7/23/20 Order Granting State's Motion in Limine to Exclude FaceBook Photographs of Victim, copy to both parties 226 465  
 7/28/20 State's Instructions, Filed  
 (s-1 through s-10)  
 7/28/20 Camera Coverage Notice from WCBI  
 7/29/20 Camera Coverage Notice from Starkville Daily News  
 7/30/20 Clerk's notes on jury instructions  
 7/30/20 Court's Instructions, Filed  
 7/30/20 Defendant's Instructions, Filed  
 (d-1 through d-12)  
 7/30/20 State's Instructions, Filed  
 (Sla-S5a)  
 7/30/20 Withdrawn instructions  
 S1-S5, S7, D2, D6  
 7/30/20 Denied/Refused Instructions  
 D1, D3, D4, D5, D8, D9, D10, D11, D12  
 7/30/20 Given Instructions  
 C.01, C.11, C.12(a), C.14, C.17, S1-a, S2-a, S3-a, S4-a,  
 S5-a, S6, S7-a, S8, S9, S10, D7  
 7/31/20 Defendant Information Sheet, filed.  
 7/31/20 Exhibit List, Filed  
 7/31/20 Jurors, list of seated  
 7/31/20 Handwritten jury verdicts, counts 1 through count 5

\*\* CONTINUED ON NEXT PAGE \*\*



1 messages, once we actually had the phone dump,  
 2 the data extracted, we received it and looked at  
 3 it last week. As soon as we received it, we  
 4 provided him with a copy of it.

5 \* BY THE COURT: So, in almost two years, it  
 6 took two years to get the phone dump?

7 BY MRS. DAVIDSON BROOKS: Your Honor, we had  
 8 it on our system. We could not, for whatever  
 9 reason the program that's on our system, we  
 10 couldn't download it. So, we had --

11 BY THE COURT: When did you have it on your  
 12 system?

13 BY THE DA'S INVESTIGATOR, STEVEN WOODRUFF:  
 14 Whenever it was turned in.

15 BY THE COURT: Give me a hint. Kind of  
 16 narrow it down to a month, and a date, and a  
 17 year.

18 BY THE DA'S INVESTIGATOR, STEVEN WOODRUFF:  
 19 For grand jury.

20 (BRIEF PAUSE)

21 BY MRS. DAVIDSON BROOKS: That was in --  
 22 this case was indicted in January of 2018, Your  
 23 Honor. We would have that information more than  
 24



likely in December of 2017.

BY THE COURT: Okay.

BY MRS. DAVIDSON BROOKS: And what was presented to the grand jury would have been the investigator's report and his testimony before the grand jurors.

BY THE COURT: Okay. So, would that have been copies of text messages and pictures and such?

BY MRS. DAVIDSON BROOKS: Yes. The detective -- the investigator at that time would have had that information.

BY THE COURT: Mr. Haug said he just got this stuff last week.

BY MRS. DAVIDSON BROOKS: Your Honor, I agree. Mr. Haug did receive that last week. In fact, when I looked at my file to review this case, there is a program that has -- you have to download to your computer to access the actual cell phone data. It wouldn't work on our computer, either.

So, we requested the assistance of Captain Watson who actually downloaded it from his system at the office. And then once he handed us a copy of the entire extraction report, we immediately