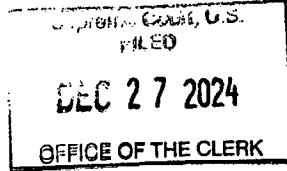


24 - 6381

ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



Gary Graham - Petitioner

vs.

United States of America - Respondent

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

PETITION FOR WRIT OF CERTIORARI

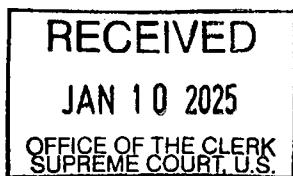
Gary Graham December 26, 2024

Gary Graham, Pro Se, Reg. No. 15716-047

FCI Thomson Low

P.O. Box 1002

Thomson, IL 61285

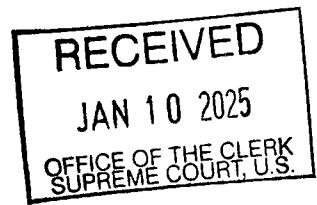


QUESTIONS PRESENTED

1. Is it a violation of a pretrial defendant's Sixth Amendment right to a Speedy Trial along with the Speedy Trial Act, and this Honorable Court's decision in *Zedner v. United*, 547 U.S. 489, 497 (2006), when a district judge refuses to acknowledge any right to a Speedy Trial and delays any action for over 18 months claiming Covid-19 while also failing to make the requisite findings for the need for an ends-of-justice continuance?
2. Is it a violation of a defendant's Fifth and Sixth Amendment right to Due Process and effective assistance of counsel for a lower court to deny another attorney to defend defendant when the current attorney states he cannot represent the defendant due to a conflict of interest?
3. Is it a violation of an individual's Fourth Amendment right to unreasonable search and seizure when law enforcement falsifies affidavits and search warrants to gain entrance to his home, and in doing so overreaches the area of the search warrant resulting in evidence gained by "fruits of the poisonous tree" and the prosecuting attorney is made aware of this and continues to prosecute the individual even though the "alleged" evidence was stolen from law enforcement's own evidence locker and prosecuting attorney lied about its existence to procure a guilty plea?

LIST OF PARTIES

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



FROM: 15716047
TO:
SUBJECT: Table of Contents
DATE: 12/25/2024 06:33:03 PM

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FROM: 15716047
TO:
SUBJECT: Table of Authorities Cited
DATE: 12/25/2024 12:31:41 PM

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was August 23, 2024. A timely petition for rehearing [copy at Appendix D] was denied by the United States Court of Appeals on October 4, 2024, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT IV to the United States Constitution

The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

AMENDMENT V to the United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI to the United States Constitution

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

Pertinent parts of the Speedy Trial Act, 18 U.S.C. 3161 through 3164

18 U.S.C. 3161 Time limits and exclusions

(a) In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short-term calendar at a place within the judicial district, so as to assure a speedy trial.

(b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with

a summons in connection with such charges. If an individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days.

(c) (1) In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate [United States magistrate judge] on a complaint, the trial shall commence within seventy days from the date of such consent.

(c) (2) Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.

18 U.S.C. 3164 Persons detained or designated as being of high risk

(a) The trial or other disposition of cases involving --

- (1) a detained person who is being held in detention solely because he is awaiting trial, and
- (2) a released person who is awaiting trial and has been designated by the attorney for the Government as being of high risk,

shall be accorded priority.

(b) The trial of any person described in subsection (a)(1) or (a)(2) of this section shall commence not later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The periods of delay enumerated in Section 3161(h) are excluded in computing the time limitations specified in this section.

FROM: 15716047
TO:
SUBJECT: Statement of the Case
DATE: 12/23/2024 08:38:49 AM

STATEMENT OF THE CASE

Gary Graham was dating two women at the same time in Nebraska City, Nebraska. During the day while he was at work unbeknownst to him they were also selling a small amount of drugs. Informant Sherry Evey wore an unauthorized audio recording device in his home and recorded some of her drug transactions with Jamie McGinnis. Based on the fact that she recorded conversations with her seller, Jamie McGinnis, local law enforcement obtained a search warrant for Graham's residence and property (because of a personal grievance against Graham) even though they were aware that he was not involved in the drug transactions or even aware of them. In the affidavit for the search warrant, law enforcement lied and stated that that Jamie McGinnis (the seller), lived at Graham's residence and they suspected Graham of dealing drugs. When law enforcement executed the search warrant, they battered down Graham's door, busted the windows out of his home, killed his pet dog for no apparent reason other than anger at Graham, and over-extended the search to property outside of the search warrant [Police claimed a good-faith exception to the overextension even though the warrant was based on lies]. They found a small amount of drugs (1.16 grams) that Jamie McGinnis was using for her personal use in the front room with her. Waking Graham up, they arrested him. They tore the toilets out of the home and broke the water lines in sub-freezing weather because of their anger towards Graham after he said he wasn't involved with any drugs. Interestingly enough, all the law enforcement on the search warrant turned their body cams off for the search.

Graham was subsequently charged for all the drugs that Informant Sherry Evey said Jamie McGinnis (who was not living with Graham) was involved with. However, Informant Sherry Evey's own audio recording stated that she changed out the "evidence" package and there were no drugs. To further compound the problem, the "alleged" evidence [drugs] were subsequently stolen out of law enforcement's evidence locker by Nebraska State Patrol Lab Technician Ann Indigma [who was later indicted and convicted of stealing \$1,000,000 of drugs out of the evidence locker. 256 cases had to be dismissed because of the lack of evidence, but Graham's was not]. The Assistant United States Attorney lied to Graham and his attorney stating they had all these drugs in evidence. Graham challenged the drugs and the search warrant and the seizure of property outside the search warrant's parameters along with the totally unnecessary killing of his pet dog. The district judge refused to listen to Graham's arguments about the violation of his constitutional rights and denied all motions.

Graham exercised his constitutional rights twice asking for a Speedy Trial. However, the judge refused to entertain his motions, and after being repeated asked by Graham about it, simply denied Graham's requests for a Speedy Trial stating that the ends-of-justice outweighed Graham's request due to Covid-19, even though neither the Eighth Circuit Court of Appeals or the District of Nebraska had any guidelines dealing with Covid-19 and denial of Speedy Trial rights.

After 18+ months in jail, Graham eventually pleaded guilty simply to get out of jail and because he was devastated from the police criminal misconduct being used against him. He was told he would only be facing about 27-33 months for the 1.16 grams of methamphetamine which Jamie McGinnis was found with. At sentencing, much to Graham's surprise, he was held accountable for 500+ grams of drugs. Graham received a sentence of 11 years for that larger amount of drugs.

Defendant Graham tried to fire his attorney before he appealed his case because he did not address the illegal indictment and search issues and counsel failed to even provide necessary caselaw to the district judge as requested for the evidence suppression hearing. So, Graham wanted to address them at the appellate court level. The attorney sent him a letter stating that they had a "conflict of interest" in appealing his case and would not oppose being terminated from representing him. However, the Eighth Circuit Court of Appeals refused to let Graham get another attorney. As a result, the issues which Graham requested be reviewed on appeal were not (violation of the Speedy Trial, illegality of the search and the warrant, the illegal killing of his pet dog, the fact that there were NO drugs at all and the AUSA had lied because the convicted lab technician Ann Indigma was given 22 years and freely admitted that there were NO drugs from the search of Graham's residence and property) submitted on appeal at all. Graham attempted to bring these issues up to the Eighth Circuit Court of Appeals, but they would not hear the issues.

Graham then tried to bring these issues up at a Request for Rehearing/Suggestion for Rehearing En Banc, but they fell on deaf ears as it appeared to be too late in the process even though these were significant constitutional violations of the Fourth, Fifth, and Sixth Amendments against Graham.

This Petition for Writ of Certiorari follows to try to address the violations of the constitutional issues.

FROM: 15716047
TO:
SUBJECT: Reasons for Granting the Petition
DATE: 12/26/2024 07:00:50 AM

REASONS FOR GRANTING THE PETITION

1. It is a violation of Graham's Sixth Amendment right as a citizen when a district court judge ignores the Speedy Trial Act and delays action for over 18 months in bringing a pre-trial detainee to trial. Regardless of Covid-19, the district court judge has an obligation to provide proper requisite findings when denying a defendant's repeated requests for a Speedy Trial.

Graham was arrested on June 22, 2022. Over the next 18 months while sitting in multiple county jails, Graham filed two separate requests with the district court judge for a Speedy Trial with no continuances (The first one within 60 days of his pre-trial confinement in county jail, the second one a few months later. See, district court docket entries 32, 33, 34, 38, 49, 62, 82, 89 and 98.) The judge ignored the first request. After the second written request and numerous inquiries to the court, the district judge ruled that she could violate Graham's Sixth Amendment and Speedy Trial rights because of Covid-19 because it met the ends-of-justice without any requisite findings in Graham's case.

This violated Graham's constitutional rights to a Speedy Trial and his Sixth Amendment rights, along with this Honorable Court's decisions in both Barker v. Wingo, 407 U.S. 514 (1972), and United States v. Taylor, 487 U.S. 326 (1988). In addition, this Honorable Court has addressed similar issues to Covid-19 in Zedner v. United States, 547 U.S. 489, 497 (2006), stating that the ends-of-justice provision "counteracts substantive open-endedness with procedural strictness." ..."demanding on the record findings in a particular case." Zedner goes on to say "When a trial is not commenced within the prescribed period of time, 'the information or indictment shall be dismissed on motion of the defendant.'" 547 U.S. at 508. The remedy provision of the Act leaves no room for a prejudice or harmless error analysis. *Id.* at 508-09.

Within the Eighth Circuit, in *United States v. Johnson*, 2023 U.S. Dist. LEXIS 91091 (Dist. N.D. May 24, 2023), the indictment was dismissed because of *Zedner v. United States*, "if a judge fails to make the requisite findings regarding the need for an ends-of-justice continuance, the delay resulting from the continuance must be counted, and if as a result the trial does not begin on time, the indictment must be dismissed." *Zedner*, 126 S.Ct. 1976, 1989-90. However, Graham's district court judge failed to follow this Court's decisions or precedent within the Eighth Circuit in dismissing his indictment.

In addition, Graham should be entitled to dismissal of his indictment because of Barker. Graham meets all the 4 requirements laid out by this Honorable Court:

- 1) The delay was 18 months.
- 2) The continuances were not due to him.
- 3) Graham asserted his right to a Speedy Trial in writing twice to his district court.
- 4) There was prejudice to Graham by being in pre-trial detention and being shuttled from county jail to county jail.

The district court's blatant denial of Graham's constitutional right to a Speedy Trial should be overturned by this Honorable Court and his indictment dismissed for the unnecessary delay in the proceedings and for failure to give the required particularized factual basis (other than just Covid-19) in the denial. It should be noted that neither this Honorable Court nor the Eighth Circuit Court of Appeals nor the District of Nebraska had issued a General Order about Covid-19 during this time period.

2. It is a violation of a defendant's Fifth and Sixth Amendment rights to Due Process and effective assistance of counsel to deny a change in attorney when current counsel says he cannot represent the defendant due to a "conflict of interest".

Graham attempted to fire his attorney towards the end of his district court proceedings, because he did not file the requested caselaw the district court requested in the evidence suppression hearing for the illegal search and affidavits (See, Appendix F, Analysis) or challenge his indictment. The district court would not allow him to do so. Graham requested this same attorney file a number of issues on appeal (violation of Speedy Trial right, illegality of search and warrant, illegality of indictment, the illegal killing of his pet dog, and the fact that there were NO drugs at all in his case where the AUSA had lied about there being any drugs). The attorney sent him a letter stating they had a "conflict of interest" and could not represent him on appeal (See, Appendix G - Letter from Attorney).

However, the Eighth Circuit Court of Appeals would not let Graham fire his attorney and change counsel to address his constitutional violations and the illegalities of law enforcement and AUSA's actions. As a result, the majority of the issues Graham wanted addressed on appeal were ignored. Graham attempted to bring up the issues himself to the Eighth Circuit Court of Appeals. but they were ignored because he had appointed counsel.

One of the key issues dealt with the drugs that Graham was indicted and arrested on. In the audio recordings of Government Informant Sherry Evey, she stated that she "changed out the drug package" and they have nothing. Furthermore, the Nebraska State Patrol Lab Technician Ann Indigma had stolen over \$1,000,000 in drugs from the evidence locker and she also stated that there were NO drugs in Graham's case. The AUSA was aware that there were no drugs in Graham's case and lied to the Grand Jury, Graham and his attorney in

procuring his indictment, and convincing Graham to take the plea agreement. Since the drugs were the key issue for Graham, the lack of addressing this issue at both the district court and appellate court level was extremely prejudicial to Graham.

3. Graham's Fourth Amendment right to be free from illegal search and seizure was violated when law enforcement searched his home, and his vehicles on an adjacent lot based on an affidavit which was filled with knowing lies and erroneous information.

Law enforcement knew and admitted later that Jamie McGinnis did not live with Graham and that Graham was unaware of any drug transactions between her and Government Informant Sherry Evey. Deputy Brian Briley in law enforcement had a personal grievance against Graham and used this as an opportunity to get back at Graham, which is police misconduct and an abuse of police authority. The search warrant was based on the information that Jamie McGinnis lived with Graham at his home, which was a blatant lie (See, Appendix H - Affidavit of Jamie McGinnis). The search warrant should have been invalidated on that alone, but the district court judge ruled that it was OK given a "good faith" exception ignoring this Honorable Court's decision in *Wong Sun v. United States*, 371 U.S. 471 (1963). However, as this Honorable Court is well aware, if the original affidavit is based on lies, then all the "fruits of the poisonous tree" have to be dismissed and are not admissible in court.

In addition, when law enforcement searched his home, busting out all his windows and illegally killing his pet dog, they overextended the search to an adjacent lot where Graham had his pickup truck parked. The search warrant again was specific to Graham's residence, and the pickup truck should have been excluded from the search. Once again, the district court ruled that it was OK given a "good faith" exception, in violation of this Honorable Court's decision in *Payton v. New York*, 445 U.S. 573 (1980). And once again, Graham contends anything in this search is a "fruit of the poisonous tree", and the non-operable rifle found in his truck should have not been admissible as evidence in his case.

Interestingly enough, all the law enforcement turned off their body cams when executing the warrant to search Graham's residence and his subsequent arrest. All the video at the scene was erased to cover-up the blatant police misconduct showing the unnecessary property damage including the killing of his pet dog. When questioned in court, the AUSA contended that it was unnecessary for the body cams to be turned on and was not required by law, which is also a blatant lie.

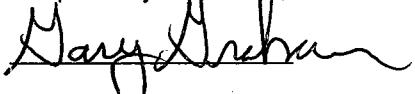
The very little bit of evidence against Graham was the small amount of drugs found with Jamie McGinnis.

When this Honorable Court looks at the lies to create the affidavit for the search warrant (that Jamie McGinnis lived with Graham and he was aware drugs were being sold in his home--See, Appendix I - Sentencing Transcript), it will quickly conclude that there cannot be any "good faith" exception to blatant lies and any evidence has to be suppressed because it is the "fruit of the poisonous tree". Graham should never have been arrested and all subsequent charges against him should be dismissed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Gary Graham

Date: December 26, 2024