

24-6771

NO.

ORIGINAL

Supreme Court, U.S.
FILED

JAN 26 2025

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Marlon Jassie Blachar PETITIONER
(Your Name)

vs.

State of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Florida District Court of Appeal, 2nd district
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Marlon Jassie Blachar
(Your Name)

480 Alta Road
(Address)

San Diego, California "92179"
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1) Is the Petitioner's right to a speedy trial violated where the State delay more than 15 years bringing the Petitioner to trial?
- 2) Does such a delay, without any evidence of the State's efforts to execute the warrants, nor any asserted explanation for said delay, and where communications generated by agents of the State indicate its refusal to place detainers against, or extradite, the Petitioner show bad faith?
- 3) Does an absconding inference on a violation of probation accusation validly factor into the considerations of a Barker analysis on unrelated bank robbery charges?
- 4) Where the State's agents in Pinellas county decline to lodge detainer's against the Petitioner, and the Petitioner invoke IADA to resolve cases in Hillsborough and Pasco counties, from whence detainers are lodged, and where the Hillsborough county authorities accept temporary custody to IADA, having the Petitioner brought to Florida, does non-detainer lodging, non-IADA party, Pinellas county violate IADA in prosecuting the Petitioner?
- 5) Does the State's repeated reference to the passage of time between the offense (in 2004) to the Petitioner's arrest (in 2023), in presence of the jury, create prejudicial error?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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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

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ appeal denied without opinion

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 4/10/2024.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Dec. 5, 2024.
A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked by Article III, § 2, Const. of the United States; 28 U.S.C. §§ 1251, 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Article VI, clause 2, Const. of the United States
- Amend. VI Constitution of the United States
- Amend. XIV § 1 Const. of the United States
- Article III, section 2, Const. of the United States
- Interstate Agreement on Detainers Act

STATEMENT OF THE CASE

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I. OVERVIEW OF THE FACTS

The trial court commit reversible error by denying the Motion to Dismiss, brought on behalf of Marlon Jessie Blackner, hereinafter "Petitioner," based on the state's violation of the Petitioner's Sixth Amendment right to a speedy trial. The Pinalas County State Attorney's Office filed its Informations against the Petitioner in 2004, admittedly knew the Petitioner had been arrested in California in 2007, but then waited until 2023 to execute its warrants against the Petitioner after the Petitioner's transfer from California's Department of Corrections and Rehabilitation ("CDCR") to Hillsborough County Florida, pursuant to Interstate Agreement on Detainers Act (see 18 USC APP 25a, "IADA"), on an unrelated action. As a result, the delay with bringing the Petitioner to trial was presumptively prejudicial and was caused deliberately or negligently by the State. Further, where the Petitioner also timely assert his right to a speedy trial, it is not necessary for the Petitioner to have to prove actual prejudice caused by the delay. Yet, alternatively, the Petitioner does show actual prejudice caused by the approx. 19 year delay where witnesses died, evidence had been

destroyed, and memories faded. Under these circumstances the trial court should have dismissed the action. The Petitioner is not a citizen of State of Florida, thus, the Article III jurisdiction of this Court is invoked for the present cause of action.

II. DISCUSSION

On or about Oct. 16, 2020, the Petitioner is taken to Fla. from CDCR, pursuant to IADA, where Hillsborough County and Pasco County post detainers with CDCR and against the Petitioner based on Informations filed in 2004; in response to the Petitioner's presented IADA documents the Pasco County prosecuting authorities decline to accept temporary custody re the Petitioner, while the Hillsborough County prosecuting authorities document acceptance of such custody then send agents to CDCR to bring the Petitioner back to Hillsborough County. Upon or after the Petitioner's arrival at the County Jail of Hillsborough County, Pasco County, whose prosecuting authorities decline to accept temporary custody re the Petitioner in the IADA process, request hold be placed on the Petitioner based on the matters that such detainer is requested.

The Petitioner move to dismiss the charges based on violation of the Petitioner's constitutional right to a speedy

trial and the court grant such motion. Thereafter, during Feb or Mar. 2021, the Petitioner is taken, *vi et armis*, to the jail of Pasco county and because the prosecuting authorities therein already decline to accept temporary custody re the Petitioner in the IADA process, IADA command that the Informations (s) /action (s) upon which the detainers are based be dismissed, with prejudice. (See 18 USC App. 2 § 2 Art. V (c).) To defiance of such IADA provision the court hold the Petitioner to answer to the charges, and sometime during the first or second quarter of the year 2022, while the Petitioner is awaiting trial at Pasco county, the prosecuting authority of Pinellas county place a hold against the Petitioner based on Informations filed there in 2004.

Then, in about April 2023, the charges in Pasco county were dismissed because the Pasco county sheriff's office had destroyed evidence in the intervening years between 2004 and 2023, and on or about May 2, 2023, the Petitioner is taken (*vi et armis*) to the jail of Pinellas county. The charges in the aforesaid 3 different counties are unrelated.

During the aforesaid IADA process there were no detainers (s) placed against the Petitioner from Pinellas county, notwithstanding, that the

prosecuting authorities there know the Petitioner's location. Nevertheless, subsequent to the Petitioner being brought to Florida, pursuant to IADA and Hillsborough County's prosecuting authorities acceptance of temporary custody, Pinellas County prosecutors take undue advantage of the situation violating IADA, by more than one consideration, in the process.

The Petitioner being brought to the non-detainer posting Pinellas County and tried violate IADA Article V (a), (b), (c), where such delay result in prejudice to the Petitioner's ability to defend at trial, and the circumstances of the Petitioner's incarceration. During the time while the Petitioner was held by Pasco County, awaiting trial there, the Petitioner's brother, who was prosecuted in Pinellas County for robbery and the prosecutors there list as a witness regarding the criminal actions at issue here, pass away, which prejudice the Petitioner's defense at trial in that he had exculpatory knowledge regarding the note and item argued as a firearm by the prosecutors, and had he been available to testify regarding those matters a trial outcome more favorable to the Petitioner is likely to have occurred.

Also, while held in the county jails of Florida the Petitioner was deprived of participation in the writer's group

the Petitioner was a member of, and the video production group the Petitioner was on the waiting list for, where both groups ceased prior to the Petitioner's return to CDCR eliminating availability of these rehabilitative activities to the Petitioner. Further, while the Petitioner's held at the Pinellas county jail awaiting trial there the Petitioner contend with its overcrowding problem which include violence (detainee-detainee, and a couple instances of deputy-detainee), frequent location moves and "random" searches where legal research notes and other items are lost in the process; instances where holding of the Petitioner execute by means of what is known as a "box" on the floor of the dayroom leaving the Petitioner exposed all day and much of the night to the hustle and bustle of all the detainees held in the pod, and without access to a toilet and sink during lockdown hours; also, the Petitioner is frequently without soap and toothpaste due to the limited rendering of such supplies; cumulatively, adversely affecting the mental capacity and focus of the Petitioner, placing substantial burden of the Petitioner's ability to assist with preparation of the defense -

Notations on the cases generated by the Pinellas County prosecutor's office indicate that as early as July 29, 2007, the where abouts

of the Petitioner become known to them (R 90) giving them ability to execute their warrants, and the record is devoid of evidence of any effort on the part of the State to execute its warrants against the Petitioner, nor any justification for the lack of such efforts, but what is present on the record is a note of the prosecutor's office dated 02/26/2009 that read: "SUBJ SENTENCED IN CONTRA CA, CA TO 25 YRS TO LIFE, PER SAG, WE WILL NOT PLACE A DETAINER AT THIS TIME, EXTRADITION TO BE REVIEWED AGAIN IN 20 YEARS OR IF SUBJECT IS READY FOR RELEASE" (Id.); which illustrate deliberate intention of the state regarding the delays. The foregoing matters evince violation of IAD (see e.g. Conway vs Fullcomer, 886 F.2d 41.), and that issuance of a writ of habeas corpus is warranted.

The criminal actions at issue here concern two separate bank robberies where Informations were filed August & Oct. 2024, yet, as previously detailed the criminal actions are not brought to trial for said actions until 2023. Such unreasonable delay violate the Petitioner's right to a speedy trial, thus, the judgment entered re said actions exceed jurisdiction.

To remedy such violation the attorney appointed to provide assistance to the Petitioner file a Motion to Dismiss. (R 27, 28) The Motion detail

The charging history regarding the two bank robberies where the first is said to have occurred on July 22, 2004, after which on August 30, 2004, the Information and arrest warrant are filed; and the second, said to have occurred August 25, 2004, after which on October 4, 2004, the Information and an arrest warrant is filed. The Petitioner live in Pinellas and Pasco counties from 2004 to 2007 and the record is without evidence of any efforts made by the state to execute their warrants against the Petitioner during this time. Subsequently, in 2007, the Petitioner moved to California and shortly thereafter was arrested where then the aforesaid warrants are initially made known to the Petitioner, and during this incarceration time the office of the Pinellas county Clerk of Court is contacted regarding the Petitioner and the matters upon which said warrants stem, where such letter is docketed on Dec. 7, 2007, and a response generated on March 14, 2008 (R38), and by this it is evident that the Petitioner's whereabouts are made known to the Pinellas county prosecution.

Then in Feb. 2009 the Petitioner is sentenced to imprisonment by means of CDCR where detainers out of Florida are periodically made known to the Petitioner but despite

the Petitioner's several inquiries to classification staff, the specific for resolving the detainers are not made known to the Petitioner. Around April or May 2022 the Petitioner inquired at the prison law library and a prisoner worker there is knowledgeable about the IADA, its established process at the prison, and the specific forms to use, and there the Petitioner initially obtain instruction on how to invoke IADA, which result with the previously detailed taking of the Petitioner from CDCR to Hillsborough County Florida.

The detainer from Hillsborough County, for which the IADA transfer of the Petitioner from CDCR to Hillsborough County execute, concern a bank robbery with pretty much the same procedural history as what was pending in Pinellas County; and in Hillsborough County Motion to Dismiss is made on a materially indistinguishable const. speedy trial violation claim as brought before the Pinellas County Court. The difference is that the Hillsborough County Court ask the prosecution to evidence the efforts taken to execute the warrant over the more than 10 years delay in bringing the action to its present point and where the prosecution concede inability to produce such evidence said court ultimately grant the Motion

to Dismiss, but the Court of Pinellas county fail to inquire regarding the State's efforts to execute the warrants and deny such Motions.

By the time of the filing of the Motion to Dismiss at issue on the present Petition it had become known that four of the State's witnesses and two defense witnesses are deceased (R 39-40), and such defense witnesses having knowledge of exculpatory information that could potentially result in an affirmative defense; records of an interrogation (including audio recordings) of the Petitioner's brother had been destroyed (R 40); the investigating officers have no independent recollection of their investigation, could only testify based on their written reports, and there were no recordings of any witness contact on either case. (R 40) These are major components of the prejudice shown regarding the Petitioner's position of being denied the constitutional right to a speedy trial.

The prosecution file objection to said Motion to Dismiss and argue that the Petitioner absconded from the State knowing that there were outstanding warrants for the Petitioner's arrest for violation of probation, which occur prior to either of the bank robberies,

and the defense counter that such absconding regarding violation of probation does not forfeit the right to a speedy trial on unrelated bank robbery charges. The prosecution also argue that the Petitioner fail to establish a constitutional speedy trial violation where the Petitioner cause the delay by absconding, where there was no evidence of bad faith on the part of the State in the delay, where the Petitioner chose to wait until 2020 to assert the Petitioner's speedy trial rights, and where the Petitioner, according to the prosecution, suffer no prejudice. (¶ 83-88)

The prosecution's asserted conclusion that the Petitioner suffer no prejudice is baseless, where the Motion to Dismiss detail the adverse impact absence of the aforesaid deceased witnesses have regarding defense preparation, and burdens the defense suffer from the other of the aforesaid components of prejudice. Considering the State's assertion that there's no evidence of bad faith on the part of the State in the delay, the record reflect evidence of such bad faith, entered by the State, where notes generated in its office on the case make known its deliberate choice to not lodge a detainer against the Petitioner and not to

reconsider the matter for 20 years.

(R 90) The issue of deliberate inaction by the State has previously been considered and decided by the courts:

"The State has a duty to act with due diligence to secure the speedy return of prisoners held in other States. Edmiston v. Neil, 452 F.2d 494, 498 (4th Cir. 1971); Haskins v. Wainwright, 440 F.2d 69, 71-72 (5th Cir. 1971). The first step the State must take to secure such a speedy return is to lodge a detainer against the defendant in the State in which the defendant is incarcerated."

(Crockett v. State, 206 So. 3d 742, 745.)

The record pertinent to the present Petition plainly evince failure on the part of the State to satisfy its duty to secure the speedy return of the Petitioner.

Further, the State's argument that the Petitioner's invoking ~~ADA~~ ADA in 2020 establish that the Petitioner's constitutional right to a speedy trial is not violated fail in consequence of the aforesaid failure to discharge its duty.

Crockett also dispose of the State's contention regarding the Petitioner having obligation to assert speedy trial while held imprisoned by another State. (See Id. at 744.) Where a defendant

assert prejudice manifested by witnesses no longer being available, and the trial court conclude the State's lack of due diligence does not prejudice the defendant (Id.), as are similar circumstances in the present Petition, the reviewing court reverse the trial court's conclusion and find that the defendant's right to a speedy trial had been violated. (Id. at 745.) The doctrine of stare decisis demand that the trial court grant the Petitioner's Motion to Dismiss (See Knick v. Twp. of Scott, 588 U.S. 180-), therefore, issuance of the hereby sought writ of *habeas corpus* is warranted.

At the hearing, the trial court deny the Petitioner's Motion to Dismiss. The trial court initially discussed its finding that the Petitioner absconded on the violation of probation and therefore the Petitioner could not assert his right to a speedy trial. The trial court also engage in a Barker analysis, finding that even though the State could have sought to prosecute the Petitioner and knew where the Petitioner was from 2010 (at the latest), the Petitioner was also "probably told" that he could assert his rights in Florida at that time (regarding this "probably told" conclusion the trial court also specifically state that he can not point to anything

in the record which substantiate it as true). The trial court then found the delay was lengthy, but it was born by both sides and the Petitioner was not prejudiced by the delay. (R 274-282)

Thereafter, a Renewed Motion to Dismiss is filed. The Renewed Motion bring before the trial court the fact that Pasco county authorities lodge a detainer against the Petitioner in October 2010 but Pinellas county authorities intentionally decline to lodge a detainer, despite having knowledge of the Petitioner's specific location since Dec. 2007. Then, it is only upon the Petitioner's IADA transfer from CDCR to Hillsborough county that the Pinellas county warrants are reaffirmed (Oct. 19, 2020), and made known to the Petitioner on or about Jan. 4, 2023, at Pasco county's jail, violating IADA, the Petitioner's Due Process rights, and creating jurisdiction issues with the trial court. Further, the Petitioner is also prejudiced by the State's repeated and improper reference, in presence of the jury, to the passage of time between the offense in 2004 and the Petitioner's arrest in 2023. (R 156-161). As with the Motion to Dismiss, the trial court deny the Renewed Motion to Dismiss.

There is a constitutional requirement that the State press for trial of a defendant

imprisoned by another jurisdiction (See Smith v. Hooy, 393 U.S. 374 (1969).) but, as is shown here, where the State deliberately choose to decline to even lodge a detainer against the Petitioner, along with indicating intent not to reconsider such choice till expiration of a subsequent 20 years, the State fail to meet such constitutional requirement. Further, it is held that incarceration does not make the accused unavailable since there have long been means by which one jurisdiction, for the purpose of a criminal trial, can obtain custody of a prisoner held by another. (See Dickey v. Florida, 398 U.S. 30, 33 (1970), citing Dickey v. Circuit Court, 200 So. 2d 521 (1967).)

Where the record in the criminal action shows that the Petitioner "was available to the State at all times during the seven-year period before his trial" (Dickey, at 36.) and in "the interval two witnesses died and another potential witness is alleged to have become unavailable" (Id.), "there is present in [the] record abundant evidence of actual prejudice to petitioner in the death of two witnesses, unavailability of of another, and the loss of police records" (Id. at 38), and no valid reason for the delay existed; it was exclusively for the convenience of the State and the delay with its consequent prejudice is intolerable as a matter of fact and impermissible as

"a matter of law" (Id.), the court held that the Petitioner was denied his right to a speedy trial and reversed the conviction. (See Id. at 30.) The record at issue here show that the Petitioner is available to the State since 2009 and during the interval between 2009 and 2023 seven witnesses died two of which had exculpatory information that could have potentially led to an affirmative defence; police records, including audio recordings, were destroyed, and no valid reason for the delay exist it was exclusively for the convenience of the State; therefore, in accordance with the doctrine of stare decisis the delay must, with the various matters of prejudice, be "intolerable as a matter of fact and impermissible as a matter of law." (Id.) Issuance of the hereby sought writ of certiorari is warranted.

REASONS FOR GRANTING THE WRIT

1) It involve settlement of the Amendment VI right to a speedy trial which is amongst those fundamental rights that by its nature go beyond importance to parties, extending to the people.

2) Two different trial courts have decided a constitutional question, based on materially indistinguishable facts, to opposite conclusions and the State reviewing courts, including its court of last resort, decline to resolve such conflict.

3) The State Court decision at issue here is contrary to the decision of this Court rendered when considering *Dickey v. Florida*, 398 U.S. 30.