

No. _____

ORIGINAL

24-7358

FILED

APR 01 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

HARRY LEE GOLDSBORO II — PETITIONER
(Your Name)

VS.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE FLORIDA SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

HARRY LEE GOLDSBORO II #4838407
(Your Name)

BREVARD COUNTY JAIL ATTN: LEGAL MAIL
(Address)

860 CAMP ROAD COCOA, FL 32927
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Did the 5th DCA depart from the essential requirements of law, pursuant to Fla. R. App. P. 9.030(b)(3) and 9.100, and Article V, Section 4(b)(3) of the Florida Constitution, when it declined to invoke its jurisdiction to review the petitioner's writ of prohibition in violation of his due process rights under the 5th and 14th Amendments of the U.S. Constitution?
2. Did the 5th DCA depart from the essential requirements of law by denying certiorari review of the trial court's judgment by permitting the court to prosecute and convict the Petitioner in excess of its jurisdiction, which resulted in a miscarriage of justice in violation of the Petitioner's 5th and 14th Amendment rights to due process.
3. Did the 5th DCA depart from the essential requirements of law by denying certiorari review and declining to address statutory and Constitutional speedy trial violations that present issues of great public importance, and are highly likely to recur, which resulted in a miscarriage of justice and violated the Petitioner's rights to due process, and of a fair, impartial, and speedy trial under the 5th, 6th, and 14th Amendments.
4. Did the 5th DCA depart from the essential requirements of law by denying ~~certiorari~~ certiorari review of the trial court's numerous independent and cumulative errors that were fundamental, plain, harmful, and reversible, including but not limited to denying standby counsel's presence at trial; granting the State's Motion in Limine - Rape Shield; overruling the Defendant's objection to prejudicial expert testimony and surveillance video; allowing the State's discovery violations without holding the required Richardson ^{hearing}, and by denying the Petitioner's Judgment of Acquittal, without ruling on the merits of the Petitioner's claims, which resulted in a miscarriage of justice in violation of his right to due process, and a fair and impartial trial, and right to confrontation protected under the 5th, 6th, and 14th Amendments.
5. Did the 5th DCA depart from the essential requirements of law by denying certiorari review and declining to review the trial court's errors, without considering the merits of the petition by dismissing the writ of prohibition before the record was received, and without providing a written opinion?
6. Did the 5th DCA depart from the essential requirements of law by denying certiorari review and failing to grant the Petitioner's writ of prohibition to prevent the lower tribunal from acting in excess of its jurisdiction if a new trial is granted, in violation of the Petitioner's 5th, 6th, and 14th Amendments of due process and a fair and impartial trial.
7. Did the 5th DCA depart from the essential requirements of law by denying certiorari review of the trial court's procedural errors, which led to fundamental errors that undermined the Petitioner's 5th, 6th, and 14th Amendment rights to due process and a fair and impartial trial, which resulted in a manifest injustice?
8. Did the trial court commit a reversible error and depart from the essential requirements of law by failing to advise the Petitioner of his right to self-representation and failure to hold the required Forefett Inquiry during a critical stage of the trial proceedings, in violation of his 5th, 6th, and 14th Amendment rights to due process, right to self-representation, and a fair and impartial trial, which led to a miscarriage of justice?
9. Did the trial court err and depart from the essential requirements of law by failing to bring the Petitioner to trial during the 30-day recapture period, and failing to grant the Petitioner's Motion For Discharge after the recapture period expired, in violation of the Petitioner's 5th and 14th Amendment rights to due process, resulting in a miscarriage of justice?
10. Did the trial court err and depart from the essential requirements of law by granting the State's Motion in Limine - Rape Shield and Various Subject Matters, in violation of his 5th, 6th, and 14th Amendment rights to due process and confrontation, resulting in a miscarriage of justice and requiring reversal?
11. Did the trial court err and depart from the essential requirements of law by failing to hold the required Richardson Hearing after the State disclosed additional discovery before and during trial, which violated the Petitioner's 5th, 6th, and 14th Amendment rights to due process and confrontation, and the right to a fair and impartial trial, resulting in a miscarriage of justice and requiring reversal?
12. Did the trial court err and depart from the essential requirements of law by committing independent and cumulative errors that were fundamental, plain, harmful, or reversible, including but not limited to denying standby counsel's presence at trial; granting the State's Motions in Limine; overruling the Petitioner's objections to admitting prejudicial expert testimony and surveillance video; allowing the State to admit evidence not disclosed in discovery without holding the required Richardson Hearing; and by denying the Petitioner's Judgment of Acquittal, which resulted in a manifest error and a miscarriage of justice in violation of his 5th, 6th, and 14th Amendment rights to due process and a fair and impartial trial?

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:

1. 18th Judicial Circuit - Lower Tribunal, and State Attorney's Office For Brevard County, FL
- ~~2. 5th DCA - District Court of Appeals, and the State of Florida at the Office of the Attorney General~~
3. Florida Supreme Court - highest state court, and State Attorney's Office
4. United States Supreme Court, and United States Attorney General

RELATED CASES

1. 18th Judicial Circuit in and For Brevard County, Florida Lower Tribunal Motion to Dismiss and Motion For Discharge Case No. 052019CF021200AXXX ... August 16th, 2024
2. 5th District Court of Appeals District Court of Appeals Writ of Prohibition Case No. 5D2024-2579 ... September 6th, 2024
3. Notice of Appeal to 5th DCA Case No. 052019CF021200AXXX ... September 6th, 2024
4. 5th DCA Motion Filed and Response to Order to Show Cause Accepted ... October 4th, 2024
5. 5th DCA Order to File Appendix ... October 28th, 2024
6. 5th DCA - Petitioner's Request for Extension to File Appendix ... November 1st, 2024
7. 5th DCA - Order to Show Cause from 5th DCA ... December 9th, 2024
8. 5th DCA - Response to Order to Show Cause - Petitioner's Response ... December 13th, 2024
9. Notice of Appeal to Florida Supreme Court ... January 8th, 2024
10. Florida Supreme Court - Order Dismissing Petitioner's Motion Case No. 5D2024-2577 ... January 24th, 2025
FL SC No. 5C2025-0107

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18. <i>DuFau v. State</i> , 495 So.2d 154, 1986	... 23A11
19. <i>Barker v. Wingo</i> , 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 1972	... 23A14

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2. <i>Reynolds v. State</i> , 934 So.2d 1128 Fla. 2006 U.S. 127 S. Ct. 943, 166 L. Ed. 2d 721 2007	... 23A16
3. <i>McDuffie v. State</i> , 970 So.2d 312, 330 Fla. 2007; <i>State v. Williams</i> , 711 So.2d 1088, Fla 2001	... 35, 46, 47, 23A16
4. <i>Sibert v. Hare</i> , 276 So.2d 523 Fla. 4th DCA 1973; <i>Sherrard v. Franza</i> , 427 So.2d 161 Fla. 1983	... 17A, 35
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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. (JANUARY 3RD, 2025 from the 5TH DCA)

The opinion of the FLORIDA SUPREME COURT court appears at Appendix A to the petition and is

- ☒ reported at GOLDENBERG V. STATE SC2025-0107 PLA. JAN 24TH 2025; 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 _____.

☐ 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 01/24/2025.
A copy of that decision appears at Appendix A.

☐ 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 under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 6TH AMENDMENT OF THE U.S. CONSTITUTION

- A. The Trial Court and the State deprived the Petitioner of his constitutional and statutory rights to a speedy trial.
- B. The Trial Court and the State deprived the Petitioner of his right to a fair and impartial trial.
- C. The Trial Court and the State deprived the Petitioner of his right to confrontation.
- D. The Trial Court and the State deprived the Petitioner of his right to the compulsory process to obtain witnesses in his defense.
- E. The Trial Court deprived the Petitioner of his right to effective counsel by restricting standby counsel's involvement, and refusing to reinstate counsel after defendant requested reinstatement during trial.

2. 5TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION FOR DUE PROCESS OF LAW

- A. The State's unreasonable 44-month delay deprived the Petitioner of his ability to preserve exculpatory evidence.
- B. The State's unreasonable 44-month delay was presumptively prejudicial and caused actual prejudice to Petitioner's defense.
- C. The State's unreasonable 44-month delay prevented the Petitioner from timely asserting his right to a speedy trial.
- D. The State's unreasonable 44-month delay violated the Petitioner's constitutional and speedy trial rights.
- E. The Trial Court and the State acted in excess of its jurisdiction.
- F. The Trial Court and State deprived the Petitioner of his right to demand a speedy trial by failing to bring him to trial within 60 days.
- G. The Trial Court deprived the Petitioner of his right to self-representation by denying his request for a *Faretta* Inquiry at a critical stage of the trial proceedings.
- H. The State deprived the Petitioner of his right to prepare a defense by failing to disclose discovery after multiple demands.
- I. The State committed Brady violations by failing to disclose victim cell phone data and a police interview that contained exculpatory evidence and impeachment evidence.
- J. The Trial Court and State's admission of prejudicial evidence and exclusion of exculpatory evidence violated the Petitioner's due process rights.
- K. The Trial Court's failure to hold the required Richardson Hearing violated the Petitioner's right to due process.
- L. The Trial Court's denial of the Petitioner's Judgment of Acquittal violated the Petitioner's right to due process.
- M. The 5th DCA's dismissal of the Petitioner's Writ of Prohibition before receiving the record and not ruling on the merits, violated the Petitioner's right to due process.
- N. The 5th DCA's failure to invoke its discretionary certiorari review and prohibit the lower tribunal from acting in excess of its jurisdiction, violated the Petitioner's due process rights.
- O. The trial court deprived the Petitioner of his due process rights by excluding standby counsel and refusing to reinstate counsel after the defendant requested reinstatement.

3. FLA. R. CRIM. P. 3.191

- A. The State's unreasonable 44-month delay violated the Petitioner's statutory right to a speedy trial.
- B. The Trial Court's granting of the State's continuance prior to trial in April 2023, violated FLA. R. CRIM. P. 3.191(1)(1-5).
- C. The Trial Court and State's failure to bring the Petitioner to trial during the 30-day recapture period violated the Petitioner's right to speedy trial.

4. FLA. R. CRIM. P. :

- A. 3.220 Discovery
- B. 3.361 Witness Attendance and Subpoenas
- C. 3.580 Court May Grant New Trial
- D. 3.590 Time For and Method of Making Motions
- E. 3.600 Grounds For New Trial (3.600(a)(2) and (3) and (b)(6) and (8))
- F. 3.610(b) Motion For Arrest of Judgment

5. FLA. R. APP. P. :

- A. 9.030(b)(3) Jurisdiction of Courts
- B. 9.100 Original Proceedings.

6. ARTICLE V SECTION 4(b)(3) FLA CONST.

STATEMENT OF THE CASE

1. A sexual battery was reported on 1/29/2018, and a DNA sample connected the defendant to the victim.
2. The Petitioner was arrested on 11/5/2018 for a violation of probation and was transported to Orange County Jail and has been in continuous custody since November 2018.
3. On 3/22/2019, the State filed an Information and issued a capias in the instant case, and placed a detainer on the Petitioner. The State then took no further action for 44 months.
4. The Petitioner filed a Notice of Inquiry on 9/23/2022, and the State transported the Petitioner to Brevard County on 10/12/2022 to be arrested. The Petitioner filed a Notice of Expiration of Speedy Trial Time on 11/07/2022. The capias was served 1,725 days after the allegation, 1,620 days after the DNA match, and 1,310 days after the Information was filed. The Petitioner filed a Motion to Dismiss based on a speedy trial violation that was withdrawn after the State admitted that the statute of limitations had expired. However, due to misconduct by the judge, the motion was withdrawn and not resubmitted.
5. On 1/25/2023, the Petitioner filed a Motion to Dismiss based on constitutional speedy trial violation and due process violation.
6. The Trial Court denied the motion on 3/30/2023, and trial was scheduled for 4/17/2023, but the State admitted it was not ready for trial, and the court granted the State a continuance over the defense's objection, and not permitted under 3.141(1).
7. The Petitioner filed a writ of prohibition on 4/15/2023, and the 5th DCA issued a stay that inexplicably lasted 15 months. On 6/12/2024, the 5th DCA denied the writ after the Petitioner filed an Amended writ of prohibition.
8. The Petitioner filed a second Notice of Expiration of Speedy Trial Time and trial was set for 7/22/2024. The Petitioner's counsel misadvised the Petitioner regarding his right to appeal the 5th DCA's denial, and on 8/7/2024, the Petitioner filed a Belated Appeal and Motion For Rehearing.
9. On 7/22/2024, the Petitioner's counsel was unexpectedly ill and substitute counsel waived the Petitioner's right to speedy trial. The Petitioner immediately objected and before concluding the hearing, the Petitioner requested a Faretta Inquiry, twice. The court denied the oral motion and instructed the Petitioner to submit it in writing, but failed to hold the required hearing, inform the Petitioner of his right to self-representation, grant a continuance for extraordinary circumstances without waiving speedy trial, or ordering substitute counsel to submit his request for a continuance in writing. The receptive period expired on 7/24/2024.
10. On 8/21/2024, the 5th DCA dismissed the Belated Appeal. This cause was appealed to the Florida Supreme Court (Case No. SD2023-1321).
11. On 8/16/2024, the Petitioner's Motion to Dismiss and Motion For Discharge (filed on 8/8/2024) were denied by the trial court, and he filed an appeal to the 5th DCA on 9/6/2024. The 5th DCA acknowledged a new case (SD2024-2574) on 10/04/2024, but did not issue a stay.
12. On 10/28/2024, the 5th DCA ordered the Petitioner to file an Appendix, and on November 1st, 2024 the Petitioner requested an extension. On 11/01/2024, the Petitioner filed a Records Request to the 13th Judicial Circuit Clerk of Courts.
13. On 12/09/2024, the 5th DCA ordered the Petitioner to show cause as to why the appeal should not be dismissed since the Petitioner was convicted after jury trial. On 12/13/2024, the Petitioner responded. On 1/03/2025, the 5th DCA denied the appeal without receiving the record, ruling on the merits, or issuing a written opinion. On 12/12/2024, the Petitioner requested the record from 5th DCA.
14. On 1/08/2025, the Petitioner filed a Notice of Appeal to the Florida Supreme Court. On 1/24/2025, the Florida Supreme Court denied the appeal.

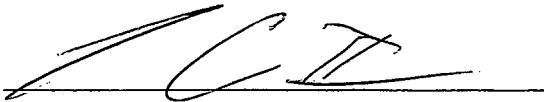
REASONS FOR GRANTING THE PETITION

1. The 5th DCA departed from the essential requirements of law by declining to invoke its certiorari jurisdiction, and allowing the lower tribunal to prosecute the Petitioner in the absence of its jurisdiction resulting in a manifest injustice and irreparable injury occurred.
2. The 5th DCA and lower tribunal committed Fundamental error by denying the Petitioner's Motion to Dismiss and Motion For Discharge, and writ of prohibition, when the Petitioner's constitutional and statutory speedy trial rights were violated, resulting in a miscarriage of justice.
3. The 5th DCA and lower tribunal committed Fundamental, plain, harmful, and reversible error by denying standby counsel's presence at trial, ^{and refusing to reinstate counsel upon defendant's request,} granting the State's Motions in Limine and admitting prejudicial evidence, failing to hold the required Richardson hearing, and by denying the Petitioner's Judgment of Acquittal, and the 5th DCA's Failure to rule based on the merits denied the Petitioner of his right to due process, resulting in a miscarriage of justice.
4. The 5th DCA and lower tribunal committed Fundamental, plain, harmful, and reversible error by excluding exculpatory evidence which violated the Petitioner's right to confrontation and a fair and impartial trial, which violated his rights to due process, resulting in a miscarriage of justice.
5. The U.S. Supreme Court's discretionary review is required to establish specific, clear, and unambiguous guidelines for the starting of the speedy trial clock regarding incarcerated inmates in the state of Florida to eliminate confusion as to the State's responsibility to timely serve the capias, warrant, and notice of charges during the 175-day speedy trial window, and to also prescribe the permissible sanctions for violating a defendant's rights.
6. The U.S. Supreme Court's discretionary review is required to establish specific, clear, and unambiguous guidelines to the trial courts in the 18th Judicial Circuit, the State Attorney's and Public Defender's Office, and the 5th DCA regarding when the speedy trial clock begins for an incarcerated inmate in the State's custody to prevent future injury to hundreds of incarcerated inmates throughout Florida.
7. The U.S. Supreme Court's discretionary review is required to establish specific, clear, and unambiguous guidelines to the trial courts in the 18th Judicial Circuit regarding standby counsel's functions, responsibilities and limitations on participation in trial proceedings, while protecting a defendant's rights to self-representation. This issue affects dozens of inmates who seek self-representation in fair and impartial trial proceedings.
8. An affirmative ruling granting the Petitioner's writ of certiorari would have significant impacts on the 18th Judicial Circuit, district courts of appeals, and the Florida Supreme Court and establish binding precedent on the courts in Florida, which would protect the statutory and constitutional rights of hundreds of incarcerated inmates who were denied the statutory or constitutional rights to speedy trial when the court acted in excess of its jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "C. T.", written over a horizontal line.

Date: 22 MAY 2025