

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Boaz Pleasant-Bey — PETITIONER
(Your Name)

VS.

State of Tennessee — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Supreme Court of Tennessee At Jackson
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Boaz Pleasant-Bey #473110
(Your Name)

NECX, P.O. Box #5000
(Address)

Mountain City, Tenn. 37683
(City, State, Zip Code)

423-727-7387
(Phone Number)

Questions Presented

I.) Whether the State of Tennessee's inordinate appellate delay and continuous refusal to provide the Petitioner with a right to a direct appeal (after he timely filed a premature notice of appeal on 2/4/11 under Tenn. R. App. Proc. 4(d) according to Houston V. Lack) violated both the Due Process and Equal Protection Clauses of the XIVth Amend. to the U.S. Const., if so, did it also violate his Due Process rights to a speedy appeal after the State has created the right to appeal and what relief should he be entitled to?

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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5-8
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A *Order no. W2017-02170-SC-UNK-CO, 11/08/17*

APPENDIX B *Order no. W2017-02170-SC-UNK-CO, 11/21/17*

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>City of Cleburne v. Cleburne Living Center</u> , 473 U.S. 432 (1983)	7
<u>Gonzalez v. Thaler</u> , 565 U.S. 134 (2012)	5
<u>Harris v. Champion</u> , 15 F.3d 1538 (10 th Cir. 1994)	7
<u>Houston v. Lack</u> , 487 U.S. 226 (1988)	5
<u>Paul v. State</u> , 75 S.W. 3d 926 (Tenn. Crim. App. 2001)	7
<u>Slack v. McDaniel</u> , 529 U.S. 473 (2000)	6
<u>State v. Pleasant Bay</u> , Order no. W 2017-02170-SC-unk-co (Tenn. 11/08/17)	5
<u>State v. Siliski</u> , 238 S.W. 3d 338 (Tenn. Crim. App. 2007)	6
<u>Turner v. Bagley</u> , 401 F.3d 718 (6 th Cir. 2005)	8
<u>U.S. ex rel. Green v. Washington</u> , 917 F. Supp. 123 (N.D. Ill. 1996)	7, 8
<u>U.S. v. Smith</u> , 94 F.3d 204 (6 th Cir. 1996)	

STATUTES AND RULES

Tenn. Code Ann. § 16-3-201	6
Tenn. R. App. Proc. 4(d)	5

OTHER

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.

The opinion of the Tenn. Supreme court appears at Appendix B 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 _____.

☐ 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 11/08/17.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 11/21/17, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

U.S. Const. Amend. XIV

STATEMENT OF THE CASE

On July 19th 2010, Shelby County Criminal Court Division 8 entered a judgment on a jury verdict against the Petitioner to 23.5 years in the Tenn. Dept. of Corr. for 1 (one) count of T.C.A. §39-13-522. The Petitioner timely filed a premature notice of appeal with his motion for a new trial and his motion for new trial was denied on 12/21/11. The notice of appeal that was filed prematurely was supposed to take effect on 12/21/11 under Tenn. R. App. Proc. 4(c). Currently, the Petitioner has been waiting to appeal his conviction since 12/21/11 and the State of Tenn. has not provided him a right to appeal as guaranteed under Tenn. R. App. Proc. 3(b).

On January 30th 2015, the Tenn. Court of Crim. App. denied the Petitioners' Motion To Appeal As of Right. State v. Pleasant-Bey, W2014-01807-CCA-MR3-CD (Tenn. Crim. App. Jan. 30th 2015). A copy of this Order is annexed to the Appendix of the Petition To Assume Jurisdiction And For Release From Confinement Without Having Right To Appeal filed in the Supreme Court of Tenn.). Perm. to appeal to Sup. Ct. denied. On November 8th 2017, the Supreme Court of Tenn. denied the Petitioners' Petition To Assume Jurisdiction And For Release From Confinement Without Having The Right To Appeal. (See Appendix A) On November 21st 2017, the Supreme Court of Tenn. denied Petitioners' Petition To Rehear Petition To Assume Jurisdiction As A Motion To Appeal As of Right. (See Appendix B) (The Sup. Ct. of Tenn. denied it as a Petition To Rehear and not as a Motion To Appeal As of Right.)

REASONS FOR GRANTING THE PETITION

"And Houston v. Lack... we held that a prisoners' notice of appeal was 'filed' when it was delivered to prison authorities for forwarding to the District Court." Gonzalez v. Thaler, 565 U.S. 134, 166 (2012) (Quoting Houston v. Lack, 487 U.S. 226, 270 (1988)) Attached to the Appendix of the Petition To Assume Jurisdiction And For Release From Confinement Without Having The Right to Appeal filed in the Supreme Court of Tenn. on Nov. 3rd 2017 is a copy of the Feb. 4th 2011 Motion For A New Trial Transcripts showing proof that the Trial Court recieved the Petitioners Pro Se Motion For New Trial and Premature Notice of Appeal (Appendix. A) The Petitioners' premature notice of appeal was deemed "filed" when it "was delivered to prison authorities for forwarding" to the Trial Court; Gonzalez, 565 U.S. 134 at 166; Paul v. State, 75 S.W.3d 926, 928 (Tenn. Crim. App. 2001) ("In other words, the jailer is in effect the clerk of the Court.") (Quoting Houston v. Lack, 487 U.S. 266 at 270) Where Tennessee law allows the Petitioner to file a premature notice of appeal in a criminal case (Tenn. R. App. Proc. 4(d)), his right to appeal commenced on Dec. 21st 2011 when the Trial Court denied his Motion For New Trial and any appellate delays thereafter "by the court are attributable to the state." Turner v. Bayley, 401 F.3d 718, 726 (6th Cir. 2005) (citation omitted); State v. Siliski, 238 S.W.3d 338, 373-374 (Tenn. Crim. App. 2007) ("Rule 4(d) of the Tenn. R. App. Proc... states: 'A prematurely filed notice of appeal shall be treated as filed after the entry of the judgment from which the appeal was taken'")

The Supreme Court of Tenn. can "Assume jurisdiction over an undecided case in which the notice of appeal... is filed." Tenn. Code Ann. § 16-3-201 (d) (1) Thus, the Supreme Court of Tenn. erred in denying the Petitioners' "Petition To Assume Jurisdiction" in that Court on the grounds that "The Petitioner has no case currently pending in the appellate courts." Appendix A. Order no. W2017-02170-SC-UNK-20 (Tenn. 11/08/17) Attached to that Petition To Assume Jurisdiction is proof that the Petitioner timely filed a premature notice of appeal in the Trial Court. Id Thus, the Supreme Court of Tenn. could "assume jurisdiction" Tenn. Code Ann. § 16-3-201 (d) (1). The Tenn. Court of Crim. App. denied the Petitioners' Motion To Appeal As of Right (State v. Pleasant-Bey, W2014-01807-CCA-MR3-20 (Tenn. Crim. App. Jan. 30th 2015)) and the Petition To Assume Jurisdiction was denied by the Sup. Ct. of Tenn. (Appendix A and B) How many years does the Petitioner have to spend in prison without a right to appeal his conviction? Will this court deny certiorari thus causing him to be further deprived of Due Process And Equal Protection? U.S. Const. Amend. ~~XIV~~?

"While it is not clear whether a due process right to a 'speedy appeal' may be the basis of habeas relief (since it has not been recognized by the Supreme Court, Turner v. Bagley 401 F.3d 718 at 728 This Court has not decided whether the Due Process and Equal Protection Clauses of the ~~XIV~~th Amend. to

the U.S. Constitution requires that States give a speedy appeal or a timely appeal once that State grants the right to appeal. Id However, "When it comes to appellate delay, all courts of appeals addressing the issue have reached the same basic conclusion: 'An appeal that is inordinately delayed is as much a 'meaningless ritual' as an appeal that is adjudicated without the benefit of effective counsel or a transcript of the trial proceedings.'" U.S. v. Smith, 94 F.3d 204, 207 (6th Cir. 1996) (Quoting Harris v. Champion), 15 F.3d 1538, 1588 (10th Cir. 1994)) ; See Smith, 94 F.3d 204 at 206-207 (citing cases) The State of Tennessee's refusal to give the Petitioner his state right to appeal is a denial of his right to appeal and a denial of his right to have that appeal in a timely fashion (i.e. a speedy appeal). U.S. Const. Amend. XIV; Harris v. Champion, 15 F.3d 1538 at 1566-67 ("Delay in adjudicating prisoners' direct appeal may give rise to an independent Due Process" violation claim.) Where the State of Tenn. did not equally treat the Petitioner as it does other criminal defendants within its jurisdiction who file notices of appeals whether Pro Se or not, it establishes an equal protection claim as well. City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1983) (The Equal Protection Clause mandates that "all persons similarly situated should be treated alike."), U.S. Const. Amend. XIV

The U.S. Sup. Court has defined the importance of a direct appeal as being "[a] continuation of the litigation started in the trial court" (Slack v. McDowell, 529 U.S. 473, 483 (2000)) and a "distinct step." (Id) A direct appeal is also, "the introduction

of a second trier of adjudication unavoidably" affecting "the operation and significance of the first trier." Smith, 94 F.3d 204 at 207 (Clearly, "due process places constraints on an appeal even if it does not require an appeal in the first place." Id) The question here is, how long should the State of Tenn. be allowed, by this Courts' opinion, to delay or deny equal rights to appeal granted to citizens within its jurisdiction before it becomes a violation of Due Process and Equal Protection under the XIVth Amend. to the U.S. Const. and what relief should be afforded to persons victimized by a states' denial of the right to appeal or its delay? U.S. ex rel. Green v. Washington, 917 F.Supp. 1238, 1270 (N.D. Ill. 1996) (Holding that "the State is not permitted with one hand to grant such a right" to appeal "and with the other take it away in an arbitrary fashion, as by... preventing a prisoner from filing a timely notice of appeal... or simply refusing to decide an appeal.")

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bongbong Marcos-Bey

Date: 12/06/17