

IN THE
SUPREME COURT OF THE UNITED STATES

FEBRUARY TERM 2018

No. _____

DELANO MARCO MEDINA,

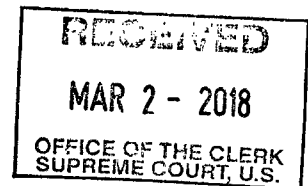
Petitioner,

-against-

JOHNNY CHOATE, et al.,

Respondent

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



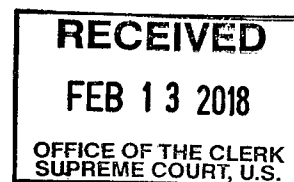
Self-Represented Party (Name and Address):

Delano Marco Medina, Pro Se, DOC # 129304

Colorado Territorial Correctional Facility

P.O. Box 1010

Canon City, CO 81215



QUESTION PRESENTED

Whether a federal district court can deny a petition for habeas corpus under 2241 requesting speedy trial or dismissal of a criminal case.

PARTIES

The Petitioner is Delano Medina, a prisoner at Colorado Territorial Correctional Facility, in Canon City, Colorado. The Respondent is Johnny Choate, the Warden of GEO Aurora Detention Center.

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DECISIONS BELOW:

The decision of the United States Court of Appeals for the Tenth Circuit is reported. It is cited in the table at 875 F.3d 1025 (10th Cir. 2017) and a copy is attached as Appendix A to the petition (A.1). The Order of the United States District Court for the District of Colorado Case Number 17-CV-00924-LTB, is not reported. A copy is attached as Appendix 2 to this petition (A.2).

JURISDICTION

The judgment of the United States Court of appeals for the Tenth Circuit was entered on November 14, 2017. An order denying a petition for rehearing was entered on December 4, 2017, and a copy of that order is attached as Appendix 3 to this petition (A.3). Jurisdiction is conferred by 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

This case involves the Sixth Amendment to the United States Constitution, which provides:

“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 defense.”

This Constitutional right has been enforced by virtue of 28 U.S.C. 2241, the habeas corpus statute which states in relevant part:

§ 2241. Power to grant writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(3) He is in custody in violation of the Constitution or laws or treaties of the United States

STATEMENT OF THE CASE

The Petitioner's habeas corpus request sought a speedy trial, or dismissal, and was filed after he had been confined just over 2 years without a trial date being set. This request came after numerous request for a speedy trial due to concern of a soon to be missing witness who could have provided exculpatory testimony, and substantiate an alibi. Also noteworthy is the fact that Petitioner was seeking speedy disposition of his case from concern of other relevant evidence in the form of phone records that would also confirm his alibi defense. Importantly, this evidence has been lost since the courts denied his petitions and has therefore caused substantial prejudice to Petitioner's defense. Petitioner's request were wrongfully denied, and as a result has caused him to suffer irreparable harm from a wrongful conviction which would have been avoided, but for the erroneous denial of his request for habeas corpus relief.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the right to a speedy trial under the Sixth Amendment to the United States Constitution by virtue of the habeas corpus statute 2241. The proceedings all occurred in federal courts and interpret federal law.

REASONS FOR GRANTING THE WRIT

A. Conflicts with Decisions of other Courts

The holdings of the courts below that a criminal defendant isn't entitled to request speedy trial of his criminal case via habeas corpus is in direct conflict with numerous decisions, including this Honorable court's decision in *Braden v. 30th Judicial Cir. Ct.*, 410 U.S. 484, 93 S. Ct. 1123 (1973), which states:

“The District Court held that the petitioner had been denied a speedy trial, and ordered the Kentucky officials either to secure the petitioner's presence in Kentucky for trial within 60 days or to dismiss the indictment;” see also *Moore v. DeYoung*, 515 F.2d 437, at 443 (3d Cir. 1975), stating: “federal courts have “pre-trial” habeas corpus jurisdiction; that jurisdiction without exhaustion should not be exercised at the pre-trial stage unless extraordinary circumstances are present.” Accord, *Atkins v. Michigan*, 664 F.2d 543, 548-49 (6th Cir. 1981).

B. Importance of the Question Presented

This case presents the fundamental question of the Court’s interpretation of *Braden v. 30th Judicial Cir. Ct.*, 410 U.S. 484, 93 S. Ct. 1123 (1973). This question is of great public importance because it affects the right to speedy trial to numerous criminal defendants in county jails and prisons in the entire nation. This court has already determined a criminal defendant is entitled to demand speedy trial of a case while he is confined in another jurisdiction. *Smith v. Hooey*, 393 U.S. 374, 89 S. Ct. 575 (1969).

The District Court and the Tenth Circuit Court of Appeals failed to analyze and apply the *Braden* decision into its rulings and has therefore ignored Supreme Court authority.

The lower court’s reasoning that Petitioner must wait for the trial court to make a correct ruling, or that he must wait for a direct appeal, even when that option is unavailable is flawed. This option does not coincide with the exhaustion requirement. Indeed, because there is no other way to exhaust, the exhaustion requirement is satisfied. Furthermore, Petitioner had shown the trial court the same amount of prejudice as in *United States v. Seltzer*, 595 F.3d 1170 (10th Cir. 2010), and because the trial court erroneously denied relief, Petitioner had filed for reconsideration and was being denied effective assistance of counsel thereby satisfying exhaustion and showing exceptional circumstances. The same type of

ineffectiveness occurred in *United States v. Velazquez*, 2016 U.S. Dist. LEXIS 82611 (E.D.NY. June 24, 2016), and it was found that the Strickland test was satisfied.

Moreover, the lower courts stated that “Although there may be exceptional circumstances in which § 2241 is available to a federal prisoner awaiting trial in federal court, no such circumstances are present here.” This finding cannot be justified due to the fact that Petitioner had made repeated demands just like the defendant in *Braden*. Also, Petitioner was being denied his right to represent himself and being forced to have counsel in violation of his right to self-representation. In *Faretta v. California*, 422 U.S. 806 (1975), this Court recognized a defendant's Sixth Amendment right to conduct his own defense. By being denied this fundamental right, Petitioner's defense was prejudice from losing his key witness and exculpatory cell phone records which would have vindicated him. The loss of these two fundamental rights combined together was certainly enough to amount to “exceptional circumstances”.

The issue's importance is enhanced by the fact that the lower courts in this case have seriously misinterpreted the meaning of “exceptional circumstances,” and this phrase is simply being used as a ruse to never provide relief by not properly analyzing if in fact there were exceptional circumstances present, and leaving this phrase to only be satisfied if a judge wants to say exceptional circumstances were shown.

Thus the courts below did not make a proper finding if Petitioner was entitled to the relief he sought and completely disregarded the standards to examine in a situation like this where a speedy trial violation had already occurred and other fundamental rights were being compromised in the process. The Court should correct this injustice by making clear that a defendant is entitled to a speedy trial with a 2241 habeas corpus even if he is in custody of that jurisdiction and is being denied a speedy trial. And further find that when a criminal defendant is invoking his right to pro se status so as to protect his defense, he should be allowed

to demand speedy disposition of the matter by virtue of the habeas corpus statute; just like the defendant in *Braden* was able to. Without these basic constitutional rights being protected, the criminal justice system is able to sit on cases indefinitely and wait till they are ready to start the process, and then to add insult to injury, they would be able to force a lawyer upon a defendant and continue to cause further delay. This tyranny must not be tolerated in a system that already makes it hard for fairness and equality to criminal defendants to get justice. If this type of conduct is accepted by this Court, it will in essence be eliminating the Sixth Amendment out of existence. Petitioner prays to GOD that it not allow this.

CONCLUSION

For the foregoing reasons, Certiorari should be granted in this case.

February 5, 2018.

Respectfully submitted,

A handwritten signature in cursive script, reading "Delano Medina", is written over a horizontal line.

Delano Medina, Petitioner

Colorado Territorial Correctional Facility

P.O. Box 1010

Canon City, CO 81215

CERTIFICATE OF SERVICE

I, Delano Medina, the Petitioner, declares under penalty of perjury pursuant to 28 U.S.C. §1746 and hereby certify that on this 5th day of February, 2018, I placed within the United States Mail, original and/or copies of this Petition to the following:

Solicitor General of the United States
Room 5614.
Department of Justice
950 Pennsylvania Avenue, N. W.
Washington, DC 20530-0001

Supreme Court of the United States
1 First Street, N. E.
Washington, DC 20543

A handwritten signature in cursive script, reading "Delano Medina", is written over a horizontal line.

Delano Medina, Petitioner
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