No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOSE GUERRERO LOZANO,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent(s).

ON PETITION FOR WRIT OF CERTIORARI TO

SECOND DISTRICT COURT OF APPEAL, STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

JOSE GUERRERO LOZANO
OKEECHOBEE CORR. INST.
3420 N.E. 168th STREET
OKEECHOBEE, FLORIDA, 34972

QUESTION(S) PRESENTED

Whether the State of Florida Court or the Petitioner is more to blame for the delay. Whether, in due course, and petitioner asserted a claim of ineffective assistance of counsel for failing to file a timely motion asserting his right to a speedy trial, and for the long delay he suffered prejudice as the delay's result.

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 UNTIED 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☐ is unpublished.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☐ is unpublished.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 to the petition and is

☒ reported at Lozano v. State, 2018 App. LEXIS 2881 (Fla. 2d DCA Feb. 28, 2018).;or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the court to review the merits 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☐ is unpublished.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 _____.

☐ 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 February 28, 2018.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: May 4th 2018, 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

A violation of Petitioner's Sixth Amendment of the United States Constitutional Right to a Speedy Trial. The State Court failed to inquiry pursuant to Doggett v. United States, 505 U.S. 647, 112 S. Ct. 268, 120 L. Ed. 2d 520 (1992) See e.g. Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972).

STATEMENT OF THE CASE

On August 15, 1991, the Defendant was charged by way of Information with three counts of sexual battery (Exhibit "A"). On May 19, 1992, pursuant to a plea agreement, the Defendant was sentenced to twenty-five (25) years Department of Corrections on Count One, on Court Two, twenty years consecutive probation to Count One, and concurrent with II and IV, on Count Three, twenty years consecutive probation to Count I and concurrent with Count II and IV, on Count Four twenty years probation, consecutive to Court I, concurrent with Courts II and III. (Exhibit "B"). The Second District Court of Appeal affirmed by mandate on June 25, 1993. See Lozano v. State, 621 So. 2d 1072 (Fla. 2d DCA 1993). Defendant filed a Motion for Post Conviction Relief on June 27, 1995, and the Court denied it as untimely. Defendant then filed a Motion for Rehearing based on a disputed date of filing of the June 27, 1995 motion. On July 25, 1995, the Court granted Lozano's motion for rehearing, and ordered Defendant's plea to be withdrawn. On August 23, 1995, the state filed a Motion for Rehearing of the court's order granting postconviction relief which Defendant's plea was withdrawn.[1] The Defendant was released on bond August 27, 1995. On September 9, 1995 the Court ordered a hearing October 18, 1995, on the state's Motion for Rehearing.

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[1] State not authorized to file a Motion for Rehearing. State v. Wilson, 17 So. 3d 1226 (Fla. 2d DCA 2009); King v. State, 870 So. 2d 69, 70 (Fla. 2d DCA 2003).

On September 11, 1995 the defense counsel (Wells) filed a Notice of Appearance, Waiver of Arraignment, Plea of Not Guilty, Request for Pre-trial Conference and for Jury Trial, and Request of time to file motions. On September 28, 1995, the Defendant filed to continue the hearing on the state's Motion for Rehearing. The Court granted the Defendant's Motion to Continue on October 3, 1996 and reset the state's Motion for Rehearing to November 29, 1996. The Court denied the state's Motion for Rehearing and set the case for trial on January 19, 1996. On January 19, 1996, the case was continued to March 12, 1996. The Clerk's notes indicates that the case was reset at the request of the Defendant then filed another Motion to Continue. On May 28, 1996, Defendant was arrested for possession of paraphernalia and the state moved to revoke Defendant's bond. On August 19, 1996, the Court revoked Defendant's bond and issued a bench warrant for his arrest. (Exhibit "C") On November 13, 1996, Defense counsel (Wells) filed a Motion to Withdraw as counsel on the grounds that he had *not* had contact with his client for over six months (Exhibit "D"). Defense counsel also filed a Motion for Continuance on the same day (Exhibit "E"). On December 2, 1996, the Court granted both motions and the case was continued indefinitely (Exhibit "F"). The Defendant was arrested in Calhoun County, Texas on July 17, 2007 for the Florida Collier County bench warrant.

The next Court record was a letter from a Texas attorney (Alex Hernandez) representing Defendant requesting the Court to lift the Florida Collier County

bench warrant. (Exhibit "G"), which was granted, on September 12, 2007 (Exhibit "H"). Defendant was released from Calhoun County Jail, Texas (Exhibit "I"). Some forty (40) months later, a second bench warrant was served and Defendant was again arrested by the Calhoun county Sheriff on December 20, 2010 (Exhibit "J"). Defendant was extradited to Collier County, Florida (Exhibit "K").

On February 4, 2011, the State of Florida filed an Amended Information adding specific facts not alleged in the original information, and adding a fourth charge of Failure to Appear, 901.31 Fla. Stat. (1995). (Exhibit "L"). Defendant's counsel (Lee Hollander) then stipulated to continue with waiver of speedy trial, without Defendant's consent. Defendant entered into a plea agreement without providing him a sentencing guideline score sheet, whereby he agreed reluctantly to plea nolo contendere to three counts of attempted sexual battery, first degree felony. On April 12, 2013 Defendant was sentenced to 30 years each count, concurrent.

On January 22, 2015, Defendant filed a "Motion for Post Conviction Relief" which the Court dismissed on January 29, 2015 as facially insufficient for failing to specifically seek to withdraw his plea. On February 19, 2015, Defendant filed a Motion for Rehearing" which the Court dismissed on March 6, 2015. Defendant filed an "amended Motion for Post Conviction Relief; on March 19, 2015. The postconviction court ordered the State to respond by June 10, 2015. The State filed

their response on June 10, 2015 Assistant State Attorney Kevin D. Dalton). Defendant first argued that:

> "DEFENDANT'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO SPEEDY TRIAL WERE VIOLATED, THEREBY ENTITLING HIM TO DISMISSAL OF HIS CASE AND TO DISCHARGE FROM CUSTODY. ALTERNATIVELY, COUNSEL WAS INEFFECTIVE IN VIOLATION OF DEFENDANT'S 6TH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE, WHEN HE FAILED TO FILE A PRE-TRIAL MOTION TO DISMISS THE CASE DUE TO THE SPEEDY TRIAL VIOLATIONS, THEREBY RENDERING HIS PLEA INVOLUNTARY.

The State had addressed both the (a) "State law speedy trial rights," and (b) "Federal speedy trial rights." The State has concluded that "[t]he delay in this case was the fault of the Defendant, he never attempted to assert his constitutional right to speedy trial, and he has totally failed to plead and show how he was actually prejudiced by an alleged violation of his constitutional right to speedy trial. Therefore the Defendant cannot reasonable claim defense counsel was ineffective for failing to file a Motion to Discharge on speedy trial grounds because he has totally failed to demonstrate that defense counsel had a meritorious claim for discharge to argue. "'Trial counsel cannot be deemed ineffective for failing to make a meritless argument." Velez v. State, 77 So. 3d 685, 687 (Fla. 3d DCA 2011). Consequently, the State respectfully submits that his claim should be denied.'" State Response page 6. The State also made a second argument that "[w]hether the Defendant's motion is an impermissible attempt to go behind his

plea." State's Response, page 7. On September 25, 2015, Circuit Court Postconviction Judge FREDERICK R. HARDT issued an "Order Denying Defendant's Motion for Post Conviction Relief." The denied order only addressed Defendant's State law speedy trial violation and not his Constitutional speedy trial rights under a Sixth Amendment challenge. See order denying Defendant's Motion for Post Conviction Relief. Defendant timely appealed, to the Second District Court of Appeal. In an opinion the Second District Court of Appeal, opinioned that "[t]he postconviction court, however, failed to address Lozano's claim of ineffective assistance of counsel for failure to assert his constitutional right to speedy trial." Lozano v. State, 202 So. 3d 148 (Fla. 2d DCA October 14, 2016). The Court "reversed the postconviction court's order insofar as it failed to address Lozano's claim concerning his constitutional speedy trial right and remand for the court to address that claim. If the postconviction court determines that the claim is facially insufficient, the court should strike it with leave to amend within sixty days. See Fla. R. Crim. P. 3.850 (f)(2). Id. Mandate issued November 8, 2016 (Exhibit "M"). The Defendant's petition to the Florida Supreme Court under Case Number SC16-2017. The petition for review was denied on January 31, 2017. (See Exhibit "N").

On March 28, 2017, prior to the postconviction court ruled on Petitioner's amended motion for postconviction relief. Petitioner filed his motion for leave to file second amended motion and amended motion for postconviction relief.

On April 25, 2017, the postconviction court entered an order denying Defendant's amended motion for postconviction relief.

On May 4, 2017, Defendant filed a motion for rehearing stating to the postconviction court that it may have overlooked his "motion for leave to file second amended motion, and "second amended motion for postconviction relief."

The postconviction court on June 23, 2017 denied rehearing by stating in part:

> "... having reviewed the copy attached to his motion for rehearing, the Court notes that Defendant's amendment is untimely because it raised new grounds not previously raised or remanded to this Court by the Second District Court of Appeal mandate issued November 8, 2016, and was filed well beyond the two-year limitation of Rule 3.850."
>
> It is further ORDERED AND ADJUDGED THAT Defendant's Second Amended Motion for Postconviction Relief is DISMISSED as untimely." (Exhibit "O").

Petitioner timely appealed to the Second District Court of Appeal, Lakeland, Florida. The appeal was per curiam affirmed on February 28, 2018. (Exhibit "P").

Petitioner filed a motion for rehearing, which was denied on May 4, 2018. (Exhibit "Q").

This Petition for Writ of Certiorari follows:

REASON FOR GRANTING THE WRIT

DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO FILE A TIMELY PRE-TRIAL MOTION TO DISCHARGE BASED ON HIS CONSTITUTIONAL SIXTH AMENDMENT SPEEDY TRIAL VIOLATION.

Supporting Facts And Law: On July 23, 1995, the Defendant was granted postconviction relief and was allowed to withdraw from his May 19, 1992 plea agreement, thereby returning his case to pretrial status. Defendant was granted Bond and then released from the custody of the Collier County Sheriff's Department. On May 28, 1996 Defendant was arrested for possession of paraphernalia, the State moved to revoke Defendant's bond. On August 19, 1996 the Court revoked Defendant's bond and issued a bench warrant for his arrest. (Exhibits C).

State Of Florida Is Blame For The Delay

On November 13, 1996, Defendant's counsel (Wells filed a Motion to Withdraw as counsel on the grounds that he had not had contact with his client for over six months. (Exhibit "D") Defense counsel also filed a Motion for Continuance on the same day. (Exhibit "E".

On December 2, 1996, the Court granted both motions and the case was continued indefinitely. (Exhibit "F") Neither motion contained a Certificate of Service showing Defendant was served at his Immokalee address. Therefore, Defendant was unaware that counsel (Wells) had withdrawn from his case. It was

fundamental miscarriage of justice for the trial court to allow counsel (Wells) to withdraw before appointing a counsel. Because, such orders left Defendant without counsel during a critical stage of his proceeding such that the likelihood is unreliable. Cf. United v. Cronic, 466 648, 104 S. Ct. 2039 (1984). The trial court further denied a Faretta hearing [v. California, 422 U.S. 806, 95 S. Ct. 2525 (1975). Such a hearing would provided Defendant due process and equal protection. The Court would have had to determine whether Defendant was competent to represent himself, or whether Defendant could have afforded to hire a different attorney, or whether the Defendant became indigent, where the court would have to appoint the Office of the Public Defendant. Defendant was denied counsel at a critical stage, and the right to seek counsel. Defendant had been without counsel because the trial court failed to hold a Faretta, hearing, Defendant had been without counsel, from December 2, 1996 the day the trial court granted Counsel (Wells) motion to withdraw and a continuance. It was not until September 10, 2007 when Defendant hired Attorney Alex R. Hernandez, Jr. a Texas attorney to represent him on this July 17, 2007 bench warrant arrest for Collier County, Florida. (Exhibit "G") Thereafter, attorney Hernandez received a Court Order granting his request to lift the Florida Bench Warrant. (Exhibit "H") Based on attorney Hernandez statement, that the bench warrant from Florida had been dismissed. Defendant was released from the Calhoun County Jail on August

28, 2007. Believing no news is good news, Defendant purchased a home in Calhoun County, Texas.

Defendant had no reason not to believe otherwise that all charges were not dropped. Collier County Sheriff did not attempt to extradite Defendant while he was being held solely on the Collier County Bench Warrant. Therefore, although "absence from the County did not relieve the government of its obligation to make good faith efforts to have him returned," U.S. v. Kresler, 392 Fed. Appx. 765, 777 (11th Cir. 2010), in this case one of the early reasons for the delay was that trial court granted counsel (Wells) motion to withdraw and motion for continuance without notifying Defendant at his Immokalee, Florida address, showing by a Certificate of Service notification. Defendant could not have known he was without counsel, and his case was continued indefinitely.

In the instant case Defendant was arrested on July 17, 2007 in Calhoun County, Texas on the August 20, 1996 Collier County Bench Warrant. (Exhibit "C") Defendant hired a Texas Lawyer (Alex Hernandez) to seek "the lifting of the warrant and credit for time served in the Calhoun County, Texas jail. (Exhibit "G) His attorney's motion was granted on September 12, 2007. (Exhibit "H") Defendant on August 28, 2007 was released from Calhoun County, Texas on the Collier County Bench Warrant (Exhibit "I"), because Collier County, Florida took no action for extradition. Approximately forty (40) months after his August 28, 2007 release, Defendant was again arrested on December 20, 2010 on the August

20, 1996 bench warrant, although it was satisfied on July 17, 2007, and August 28, 2007.

Indeed, where the Collier County Sheriff's Office was notified by Calhoun County Sheriff in Texas, that Defendant is being held solely on their bench warrant for he was arrested on July 17, 2007 and remained there until his release by Calhoun County Sheriff some 43 days later because Collier County, Sheriff's Office took no action on the Calhoun County Sheriff's notification that Defendant was in their custody based on Collier County Bench Warrant.

The delay squarely falls on the State. Defendant had no reason to expect any charges were pending, because of his August 28, 2007 release from the Calhoun County Jail. The State waited from his first Calhoun County arrest on July 17, 2007 until his second arrest on December 20, 2010 to extradite Defendant back to Collier County, Florida, forty (40) months (3 ½ years) later, surely the blame is on Collier County, Florida. Florida. Because that delay was uncommonly long.

It now appears from the Amended Information the Sate was delaying its case to gain some sort of tactical advantage over Lozano. The Information filed by the State of Florida against Lozano on August 15, 1991 (Exhibit "A"), are different criminal offenses from an amended information, filed on February 4, 2011 (Exhibit "L").

Lozano's original information filed on August 15, 1991 reads as follows in all three (3) counts:

COUNT I: being eighteen (18) years of age or older, did unlawfully commit a sexual battery upon _____, a child less than twelve (12) years of age, by digital and penile penetration of the child's anus and vagina,

COUNT II: being eighteen (18) years of age or older, did unlawfully commit a sexual battery upon _____, a child less than twelve (12) years of age, by digital penetration of the child's anus and vagina, and penile penetration of the child's mouth,

COUNT III: being eighteen (18) years of age or older, did unlawfully commit a sexual battery upon _____, a child less than twelve (12) years of age, by digital penetration of the child's vagina and anus and penile penetration of the child's anus.

Whether Lozano Ever Asserted His right To Speedy Trial

The State has taken the position that "[t]he delay in this case was the fault of the Defendant, he never attempted to assert his constitutional right to speedy trial, and he has totally failed to plead and show how he was actually prejudiced by an alleged violation of his constitutional right to speedy trial. Therefore, the Defendant cannot reasonably claim because defense counsel was ineffective for failing to file a motion to discharge on speedy trial grounds because he has totally failed to demonstrate that defense counsel had a meritorious claim for discharge to argue." State's Response page 6.

The primary issue here is the reason for the delay in Lozano's trial. Lozano claims it was defense counsel's failure to investigate, because the extraordinary length of the delay was sufficient to trigger the speedy trial inquiry. Lozano cannot be charged with constructive knowledge of his constitutional speedy trial rights,

since his ineffective assistance claim assailed counsel for failing to discover and file a motion for discharge, because his speedy trial rights were violated. Compare Porter v. State, 670 So. 2d 1126 (Fla. 2d DCA 1996).

A reason attorney would have investigated why Lozano's case took twenty (20) years to bring him to trial. Notwithstanding, Lozano's absence from the jurisdiction of Florida. A reasonable attorney would have inquired and discovered, when Lozano was arrested on July 17, 2007, by the Calhoun County Sheriff of the State of Texas, solely on the Collier County, Florida bench warrant. Counsel would have discovered that Lozano hired attorney (ALEX HERNANDEZ, JR.) a Texas Attorney that filed a letter requesting to have the Collier County bench warrant lifted with time credit in Calhoun County Jail. (Exhibit "H") The request was granted on September 12, 2007. (Exhibit "H").

Collier County, Florida was negligent in its refusal to extradite Lozano to Collier County, Florida.

Thus, Lozano could not be charged with failing to resolve the 1991 case, because his Texas attorney Mr. Hernandez, Jr. informed him the Collier County, Florida bench warrant was lifted, the Collier County Court granted his request. (Exhibit "H") Therefore Lozano had no reason to expect or believe, that there was an outstanding bench warrant pending against his person.[2]

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[2] Compare U.S. v. Kresler, 392 Fed. Appx. 765 at 771 (11th Cir. 2010) (quoting United States v. Tehibassa, 452 F. 3d 918, 926 (D.C. Cir. 2006 "where a defendant is aware that charges are

Upon his release from the Calhoun County Jail on August 28, 2007 he remained living in Calhoun County, Texas.

It was the State deliberate delay, that hampered Lozano's defense this weighs heavily against the prosecution. See Baker v. Wingo, 407 U.S. 514 at 531, 92 S. Ct. 2182 at 2192, 33 L. Ed. 2d 101 (1972). Once Lozano's case resumed, new counsel Lee Hollander, Esq. continued the case, without investigating the long delay that caused Lozano's case to linger for twenty (20) years. Counsel Hollander ignored Lozano's request to file a motion to dismiss on a speedy trial right violation. Counsel continued his case from April 1, 2011 until November 30, 2012. It is these facts and circumstances that Lozano claim counsel Lee Hollander proved ineffective assistance of trial counsel.

There is a reasonable probability that the outcome of this proceeding could have been different.

Lozano Was actual Prejudice

"Prejudice includes...difficulties in defending a state case, but also interference during the delay with the defendant's liberty, disruption to this employment, public humiliation, and the creation of anxiety for him, his family, and his friends." See U.S. v. Waingasinghe, 545 F. 3d 595, 598-99 (7th Cir. 2008). Here, Lozano can reasonably claim a disruption to his liberty and employment

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pending against him, his failure to make any effort to secure a timely trial on them (and his apparent desire to avoid one) manifest a total disregard for his speedy trial right."

because the Collier County, Florida bench warrant was lifted. (Exhibit "H"), and the Collier County, Sheriff was negligent in its refusal to extradite Lozano to Collier County, Florida upon being notified by Calhoun County, Sheriff of the State of Texas on his July 17, 2007 arrest. Lozano was further prejudice in defending his case attributable to the State's delay.

Lozano was prejudiced because, upon his arrest on July 17, 2007, by Calhoun County Sheriff, his Texas attorney requested that the Collier County bench warrant be lifted with credit for time served (Exhibit "G"). The request was granted, and Lozano was released from Calhoun County Jail solely from the Collier County bench warrant on August 28, 2007.

On December 20, 2010, Lozano was again arrested on the Collier County Bench warrant. On February 3, 2011, the State of Florida filed an amended information. The amended information not only added a fourth count, but made substantive change in Count I, II and III. The changes in Counts I, II and III charge Lozano in the "conjecture." That is to say the August 14, 1991 information not only omit the victims name, but allege in count one "...digital and penile penetration of the child's anus and vagina." Count Two, allege "...digital penetrating of the child's anus and vagina and penile penetration of the child's mouth," and Count Three alleges "...digital penetration of the child's vagina and anus and penile penetration of the child's anus." The State did not establish venue in its 1991 information. Venue is an essential element in any criminal charge.

State v. Black, 385 So. 2d 1372 (Fla. 1980). Venue must be alleged in the body of the information. (Exhibit "A") The February 4, 2011 amended information in Counts I, II and III, alleges "union with." (Exhibit "L").

This amendment to Lozano's information prejudice this defense, because a finger is an object, that must penetrate, not union with. Richards v. State, 738 So. 2d 415 (Fla. 2d DCA 1999). See Tillman v. State, 559 So. 2d 754 (Fla. 4th DCA 1990). The State cannot charge a defendant with "speculation or conjecture." Firkey v. State,557 So. 2d 582 (Fla. 1989). Amendment of substance is made when an addition or different offense is charged. Huene v. State, 570 So. 2d 1031 (Fla. 1st DCA 1990). Therefore, Lozano was not on notice which element of the amended information to defend against, whether "penetration" or "union with."

The delay in this case was the fault of the state. Lozano was not extradited back to Collier County, Florida upon Lozano's July 17, 2007 arrest solely on Collier County bench warrant. It's the State's negligence because of their refusal to extradite Lozano. Thus, Lozano was released from Calhoun County Jail, because the court granted his Attorney Hernandez request to lift the bench warrant. Counsel informed him that the bench warrant was lifted. Thereupon, he was released from Calhoun County Jail, Lozano purchased a home in Texas, believing that there were no charges pending against his person. Upon Lozano's second arrest he was extradited to Collier County, Florida. Lozano informed Counsel Lee Hollander, to file a motion to discharge on his constitutional speedy trial, which he

did not. If, counsel Lee Hollander would have timely filed a motion to discharge on Lozano's constitutional speedy trial violation. The court would have made finding that upon Lozano's July 17, 2007 Calhoun County, Texas arrest was solely on Collier County bench warrant triggered Lozano's speedy trial right. The court would have determined that the delay was extremely long, the State cause the delay, and Lozano was prejudiced by the delay. The trial court would have granted counsel's motion to discharge on Lozano's speedy trial violation. If, denied the issue would have been properly preserved for appellate review. Where the District Court would have reversed. A reasonable trial attorney would have investigated, and inquired through motion, why Lozano's case lingered for twenty (20) years. There is a reasonable probability that the outcome of his proceeding would have been different.

Lozano is entitled to an evidentiary hearing, to further give sworn testimony, that counsel was ineffective. Without doubt, a delay of from July 17, 2007 until April 12, 2013 is a sufficient time to make the delay presumptively prejudice and require an inquiry pursuant to Doggett v. United States, 505 U.S. 647, 112 S. Ct. 268, 120 L. Ed. 2d 520 (1992).

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

Jose Guerrero Lozano

JOSE GUERRERO LOZANO, Pro se

Date: July 18 2018